[L. & M.
2,000—28-10-97.]

Local & Munl. (1898) Department.

MISCELLANEOUS.

G.O., No. 438 M

DATED 25.2.98

INDEXED.

DESPATCHED

[Despatch Abstract.]

Petition Informing Muhammad Sultan Saheb & others of Negapatam that their request that the Chairman of the Negapatam municipality may be ordered not to interfere with their burial ground cannot be complied with.

BACK PAPERS.

	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

---

23 AUG. 97

Local & Munl. (1898) Department.

Ml — $\frac{130}{Ml}$ of 97

CURRENT No. 478 M

Ref on C No $\frac{130}{ml}$ of 97

Forwarded.

2. I agree with the Chairman. No rights to which Petitioners are entitled have been, or are likely to be, violated, & their grievances are imaginary. Petitioners do not represent local feeling, & they recommend that Government decline to interfere.

3. I delayed forwarding this as some confidential enquiries were being made into the alleged grievance, & I only received a report 3 days ago.

Vizagapatam.
25. 1. 98.

I. Andrews.
Collector.

Current No. $\frac{501}{SEKR}$ of 1897

From
Mr. R. G. P. Ratnasabapathy Pillay al.
Chairman Mnl Council
Vizagapatam

SECRETARY TO GOVERNMENT
28. JAN. 1898
LOCAL & MUNICIPAL DEPARTMENT
No. 45

Order.

Dated 20th August 1897.
Received ~~23rd Fe~~ 28-1-98
Registered 28-1-98
Enclosures – 6. + C. No 2654 M of 1897 retd.
Spare copies

RV
26.1.98

DESPATCHED
26 JAN. 1898

Secy
Asst.
[illegible]

SUBJECT.

Order No. 438 Muni. d 25/2/98
Circ 2654 Mn of 97 & 478 Mn of 98

The Government cannot interfere as requested by the Petitioners.

A. T.
25-2-98

V. R.
22/2/98

Submitting certain information with reference to Endorsement No 808 Mnl. dated 29th July 1897 regarding the burial ground which goes by the name of Turkey Sahib Thaikal.

Despd. 1/3/98

S 210

To Petrs thro' the Collr. & the Chairman Mc Vizagapatam.

4/2/98

A1 2/12

BACK PAPERS.

G.O.	No.	Department.	Date.
Go	716	M	21-4-96
"	1397	LM	19-10-89
"	116	LM	28-1-89

FURTHER PAPERS.

G.O.	No.	Department.	Date.

No 450.

OFFICE OF THE MUNICIPAL COUNCIL.

Negapatam 17th August 1897.

From

M.R.Ry. P. Ratnasabhapathy Pillayavergal.
Chairman, Municipal Council,
Negapatam.

478M

To

The Secretary to the Government of Fort Saint George,
Madras,
Local and Municipal Department,

Through the Head Assistant Collector and the Collector of Tanjore.

Sir,

Adverting to your Endorsement No 808 ML. dated 29th July 1897. on the Mahazar from certain Mohomedans of Negapatam, I have the honor to report as follows:—

The land in question is situated in the Inam Village of Theagarajapuram and belongs to Sri Kayarohanaswamy temple. On 28th November 1863, one Vappu Maraicayer obtained a lease of this garden from the Panchayet of the said temple, executed a lease deed, and was enjoying the same. On his death in the year 1879, Mohomed Hussain and 5 others Mohomedans took wrongful possession of the land. An ejectment suit was brought by the Panchayets, and

No 106 of 97

and the District Munsiff's Court of Negapatam passed a decree in O.S No 407 of 1883 in favour of the temple. The decree was Confirmed by the High Court in S. A 172 of 1888.

2. From the judgments in the above said cases (Copies of which are enclosed for reference. Enclosures A + B.) it will be observed that the land was found to be the temple property and that the Mohomedans had no right whatever to it, Save that of resorting to the tomb situated therein for the purposes of worship. In pursuance of the decrees in the said civil suits the Panchayets of the temple were put in actual possession of the land in question on 14th 17th March 1890 (Court delivery account Enclosure C).

3. On the 16th November 1893, the late Mr Frank Oliver, who was then the Chairman of this Municipality, acquired, with the sanction of the Council, a lease of the garden for a term of 99 years, with the object of improving it and adding it to the proposed Victoria Park opened in honor of Her Imperial Majesty's Jubilee of 1887. (Enc. D. lease) The land has since been the property of the Council in the possession of its lessee.

4. In January 1896, Mohomed Hussain the defendant in O.S. No 407 of 1883 and another buried a Corpse on that land in defiance of the objections of the Municipal Servants. The offenders were prosecuted before the Head Assistant Magistrate, found guilty, convicted and fined Rs 20 each (Judgment in Calendar Case No 6 of 1896, Enclosure E).

5. The allegation in para 10 of the petition Connecting my name with the acquisition of the lease is absolutely false. The other allegations are equally false. The petition Suppresses the fact of the Magisterial prosecution and Conviction, from which it does not appear that any appeal was even preferred. The right of worship at the existing tomb reserved to the Mohomedans in the judgment of the High Court is most scrupulously respected by all the parties Concerned. The petition has evidently been got up by the defendant in OS No 407 of 1883, referred to above, who wishes to keep the whole land as a burial ground as he gets a living thereby, in spite

spite of the Judgment of the High Court which has decreed the property to the Panchayets of the temple. I beg to return the petition under reference.

I have the honor to be
Sir
Your most obedient Servant

Chairman

No 1906 of 97
Rec

D.3897

COLLECTORATE
29 AUG 1897
TANJORE.

Submitted to the Collector.

2. The facts would appear sufficiently clearly from the Chairman's letter. The land in question has been taken on lease by the Municipality, and does not appear to belong to the petitioners by any show of right whatever. Vide the judgments and the course of the litigation.

3. The right of worshipping the "religious luminaries whose sleeping remains are mutilated by the plough" appears to be reserved to the Mahomedans. What they desire now is to use the spot as a burial ground.

4. The Chairman says that the petition has evidently been got up by the defendant in the previous litigation. There are many Signatories but I do not observe among them the names of any

the date of the plaint is [illegible]
in
[illegible]

any of [illegible] influential Mahomedans of the town, such as Mr. Chinna Maricayar, at present the Chairman-delegate of the Council, and Mr. Oosman, the Civil Surgeon. It is hardly possible that in its proceedings the Council can have entirely disregarded Mussalman feelings, with several Mahomedans among its members.

5. Mr. Marjoribanks who fined 2 men Rs. 20 a piece for illicit burial (trespass) is inclined to think that in the past burials have been acquiesced in by the Municipality. They have, however, clearly notified in 1896 that sepulture is prohibited.

6. To my mind there is some objection to the Municipality having taken on lease and intending to devote to a Park, a place sacred to Mahomedans by any old associations whatever.

But the land was found to belong to [illegible]vadu pay[illegible] and the Mahomedans are proved to have no right therein, save the right of worshipping (with others at certain tombs existing on the land.

7. If the Collector thinks additional information necessary, the opinion of Mr. Chinna Maricayar may be obtained. As he does not know English, it will take time for him to peruse the correspondence.

8. Personally speaking, the explanation of the Chairman and the copies of judgments filed appear conclusive evidence against petitioners, without calling for any one's else opinion.

J J Cotton
27 8 97
Ag. Head Asst Collector.

Camp: Tranquebar.
Dated 26th. August 1897.

DESPATCHED.
27 AUG. 97

But the land was found to belong to

and the Mahomedans are proved to have no right

therein, save the right of worshipping (with others)

at certain tombs existing on the land.

7. If the Collector thinks additional information necessary, the opinion of the Shrine Manager may be obtained. As he does not know English, it will take time for him to peruse the correspondence.

8. Generally speaking, the explanation of the Chairman and the copies of judgments filed afford conclusive evidence against petitioners, without calling for any one else's opinion.

Camp: Tranquebar. } Sd/- Head Asst Collector
Dated 26th August

1/478 Mis of 1898

Enclosure A to letter No 450 20.8.97

In the Court of the District Munsiff of Negapatam
Monday the 27th day of December 1886.
Present:- M.R.R.S. Subbaiya Avergal
District Munsiff.
Original Suit No 407 of 1883.

Plaintiff	Versus	Defendants
1. Venkatesa Chettyar and another		1 Mohomed Hussain and 5 others

This Suit Coming on for hearing, the Court delivered the following

Judgment.

This Suit is brought by the plaintiffs as Punchayet of the pagoda of Kayarohanasamy for the recovery of possession of 2 gardens described in the plaint said to have been rented out to one Vappu Maraicayar on the 28th November 1863 under a document and wrongfully taken possession of by the defendants at the close of 1879 after the death of Bappu Marakayar 4 years ago.

2. Plaintiffs State that the gardens belong to the pagoda of Kayarohanasamy, that defendants, who have no manner of right to the Same, have erected a brick building and 5 huts thereon

nature of the plaint is false
in

But the land was found to belong to

and the Mahomedans are proved to have no righ

thereon, save the right of worshipping (with other

3. The Claim is [illegible] rupees 110, of which rupees 100 are stated to be the value of the gardens, and rupees 10, the cost of removing the buildings.

4. The 5th defendant allowed the suit to be tried ex parte.

5. The 6th defendant did not defend the suit.

6. The 2nd defendant pleads that he occupies a house in the garden under a rent deed from the 1st defendant for the last 10 years and the 4th defendant states that he is tenant under the 1st for the last one year.

7. The 1st defendant in whose statements the 3rd concurs, pleads that the gardens described in the plaint are the common charity property of all the Mohomedans, that it is known as Turkey Sahib Taikkal and used from before the days of the Dutch Government as the burial ground of the Mohammedan community,

Enclosure A to letter No 450 20.8.97

In the Court of the District Munsiff of Negapatam

Monday the 27th day of December 1886.

Present:— M.R.Ry. S. Subbaiya Avergal District Munsiff.

Original Suit No 27 of 85 and that they had been enjoying the same and living in houses built long ago. 1st defendant denies the title of the pagoda to the gardens, the alleged lease to Vappu Marakkayan, his enjoyment as pagoda tenant, and the wrongful possession attributed to him (1st defendant) and the other defendants. He adds further that the property is worth more than rupees 2000, and that the lease deed which has been ~~forged~~ forged and written on a Judicial Stamp purchased by somebody for putting in a petition ~~petition~~ into Court cannot be accepted in evidence and will not bind him, even if true, and that this suit instituted at the instigation of Muthusami Pandaram should be dismissed with costs.

8. The 3rd defendant died subsequent to the suit and the 1st was

Stated

the case of the plaint is false

in

[illegible] represented so

The following issues were recorded.

) Whether the defendants took illegal possession of the properties Set out in the plaint at the time alleged.

(ii) Whether the deed of rent Set out in the plaint is genuine.

(iii) Whether the defendants are bound by the document.

(iv) Whether the Suit is barred by the Statute of Limitation.

(v) Whether the land is the property of Kayarohanasami.

10. First Issue. — That the lands in dispute were rented out to Vappu Marakayar under Exhibit A is Shewn by the finding under the 2nd issue. In the plaint which was instituted in 1883 Vappu Marakayar is Stated to have died 4 years previously. The plaintiffs 6th 7th and 9th witnesses who were examined at the close of 1884 and the beginning of 1885 deposed that Vappu Marikayar died 5 or 6 years previously. In his evidence given in May 1886, the 1st defendant Stated that Vappu Marikayar died 10 years previously. Even if this allegation is true, it would Shew that Vappu Marakayar died

died

for discrediting the testimony

[illegible] tion

died about 7 years prior to the date of the plaint. On the part of the defence Certain Municipal notices and receipts dated from 1867 are filed, and they Shew that the defendants who were Fakirs were living in houses built in the garden So far back as 1867. Exhibit III is a registered lease deed executed to the 1st defendant by one Chinnasami Chetty, defence 1st witness. It Shews that a piece of land to the extent of 20×22 Kols of 14 feet each adjoining the house of the 1st defendant was rented out by him to the Said Chinnasami Chetty for a period of 5 years. These facts are put forward as Shewing that the garden was [illegible] the possession of the defendants long before the death of the Vappu Marakayar and that the alleged wrongful possession 4 or 5 years prior to the date of the plaint is false

in

[illegible]

The following issues were

Vappoo naraKayan's lease of the garden under A was for a term of 6 years from 1863 and he seems to have enjoyed the gardens in dispute up to the time of his death.

The enjoyment of the garden by the defendants during the period of Vappu naraKayan's enjoyment by virtue of rent deed A must have been by his permission or in collusion with him. It must be observed that there are two tombs in the garden in which two Mussalman from Turkey are interred, and these tombs have been in existence for nearly 40 years or so. These facts are admitted on both sides, and on this ground the disputed garden is itself Ki

that Vappu

name of Turkey years previously.

Turkey Sahib ion is true,

it was the that Vappu naraKayan died

for discrediting the testimony

defendants (Fakirs) in the garden and perhaps for its lease by Vappu naraKayan himself from the pagoda under A. I hold that defendants assumed wrongful possession subsequent to the death of Vappu naraKayan though they appear to have been previously living in houses built in the garden.

11. Second Issue. – I find this issue in plaintiff's favor. The lease deed A is engrossed on the Judicial Stamp sold in the name of one Muthu Kumarapillai and this is urged as one of the grounds for the contention that it is forgery; but this Muthu Kumarapillai is shown to have been an agent in the death of the Vappu Amman Pagoda and that the plaintiff's 2d witness possession 4 or 5 years to the date of the plaint is false

in

of the document. The attestations of their witnesses are identified by persons who might be expected from their connection with the attestors to be fairly aware of their signature. These persons were examined as 3d. 4th and 5th witnesses for the plaintiffs.

12- The document itself was produced from the custody and records of the Pagoda Committee by the plaintiffs 1st witness, who was the managing member of the Committee, and a Municipal Councillor. He also produces a list of papers handed over by the former Panchayets of the Pagoda of Veelayadakshy Amman to the present Panchayets, the present plaintiffs. In this list J. Exhibit A is distinctly referred to and described by its date. It is true the individual who produces the list and document is the Vakil

hardly be urged as a [illegible] to the [illegible] for discrediting the testimony on oath considering his position in life. It is said that in A, space is left for the extent of the garden, but this circumstance goes rather in support of its genuineness than the contrary. An objection was taken to the reception of document A in evidence on the ground that it was engrossed on a Judicial Stamp contrary to the provisions of Section 2 of the Act X of 1862 and that the latter portion of it relating to the trees is an agreement, and that this fact made it liable to an additional Stamp duty. I could not, however, take notice of these objections inasmuch as my predecessor Mr Ranga Row admitted it in evidence and documents once admitted in evidence cannot be questioned at any later stage of the same

proc

name of the gardens in dis

issues were

the [illegible] under Section 34 of the Stamp act.

13. Third Issue - I find this issue also against the defendants. They have not made out the title set up by them in their defence as will be shewn under the finding on the fifth issue and are not shewn to have enjoyed the gardens in dispute adversely to the pagoda for more than 12 years prior to this suit. They must, therefore, be presumed to have come into occupation under Vappu Marakayar or in collusion with him, and though they may not be bound by the terms of the lease deed, which is not sought to be enforced against them, I cannot say that they are entitled to question it.

14. Fourth Issue. - If the defendants have established their contention that the gardens have been

in

---

in [illegible] issue [illegible]

than 12 years adverse [illegible] to the pagoda or Vappu Marakayar, the suit might be barred; but though a number of Mussalman depose that the property has been in the possession of the defendants for many years on behalf of the Mussalman Community, so long as Vappoo Marakayar's enjoyment under the lease deed continued, the defendant's possession cannot be taken to be adverse. Many of the defence witnesses attempted to shew that Bappu Marakayar had no connection with the garden, but could not succeed. Defence 5th witness distinctly stated that Bappu dug the well in the garden, and others say that he was seen hedging the garden around. The defence 3rd witness, who is Bappoo Marakayar's brother deposes that he dug one of the

the

[illegible] of the gardens in dis

issues [illegible]

[illegible] this issue against defendants.

15. Fifth Issue—Exhibit H. is an abstract from the Paimash accounts of Fusli 1234, and this shews that the gardens in dispute are measured in No 39 and belong to the pagoda of which the plaintiffs are [illegible]. The Karnam examined as plaintiffs' 7th witness deposes that the lands belong to the pagoda and that the Kovil fees are paid. Exhibit F. the Inam title deed shews that the whole Village of Thiagarajapuram in which the lands in dispute are situated, belongs to the pagoda of Kayarohanasami. F. gives the extent of the whole Village and H. gives the boundaries of the garden in dispute and refers to No 40 as a burial ground. If as contended by the defendants the gardens in dispute belonged to the

Mussalman

---

selves to the

17

17. There are, however, houses in the garden in the actual occu

Mussalman Community and were from the days of the Dut Government used as a bu ground, the Paimash accou would mention the fact as does in describing No 40. Th defendants are not in a pos to say how they acquired ti to the property or when. They not say whether it is Inam or Their Vakil attempted to argue that it was Porambo land belonging to Governm and was therefore used as burial ground, but referen to the title-deed F. of the Inam Commissioner shews that whole Village of Thiagaraja including poramboke gifted by the Maharajah of to the pagoda and held Inam. If the gardens in dis issues were

this issue against

defendants.

15. Fifth Issue—Exhibit H is a

abstr 14

ascer documentary evidence of title

Shew have omitted to procure any

dispute deed from the Inam Com-

and missioned when all lands

which allowed for public or charitable

The purposes were enfranchised.

plain defendants are able to point

that the existence of the tombs in

and which two Turks are interred

said. I rely on the name of the garden

deed Turkey Sahib Tottom in

of This support of their title. They also

the bur that the Corpses of Mussalmans

been buried in the garden

Rohaim time immemorial, but

extent fact is denied by the plaintiffs

H. gives the existence of the two tombs

in dispute the name of the garden is

burial Turkey Sahib Tackal or Tottom

by the deft be gainsaid. The Story

in dispute the tombs is somewhat

selves to the h

17. There are, however, houses 17

in the garden in the actual occu-

to beg a potaum and went to Kiro)

Kindersley, the then Collector lises,

beg alms. That gentleman ga I & II tre-

them a rupee which they indig ^ it is

-tly flung back at him. The in

Circumstances provoked the

Collector and he ordered them

to be arrested. They ran through

the streets and were pursued unted

by a mob which they many tho

to defy, and in their attempt decree

escape were killed. They were

then under the orders of the Col anchary

buried in the garden in dispos-

because they were not all appeared

to be buried in their usual a

grounds. It is said that at many

time the Collector was in charge

of Devasthanam property and th

that this fact accounts for the

burial in the garden war

dispute. The Story, a dubi

penalty and Stat

issues ma

con[illegible] for this those against

Namyparkam.

15. Fifth Issue - Exhibit H. is an abstract from the Paimash account. 1 &

16

Shew ces. cemeteries are objects of Veneration
disp among Mussalmen, and though
ann corpses of the Turks who brought
which that and by Violence were
The l allowed a Mussalman burial
plainist they Came to be Subsequently
that tended with Veneration by the
and ple and Vappu Marakayan
paid ems to have leased the garden
died self and planted trees there and
of Thi also dug a well in it with Subs.
the tantial brick-work. There is
belong a tiled building in the garden
Rohan ch though Stated by the
extent of nesses examined by the
H. gives the dants to have been built
in dispute 1st defendants' ancestors
burial gr not from its appearance
by the def like a building erected
in dispute akir for his habitation.
~~[illegible]~~ however, think

---

selves to the

17. There are, however, houses in the garden in the actual occupation of the defendants (Fakirs) and from the Municipal notices and receipts produced by the defendants and marked I & II, it is Clear that they have been in occupation from 1867.

18. Reference to the lease deed Shows that Vappu Marakayan had previous to its date planted trees in the garden and the plaintiffs also produce a decree of the Village Munsiff obtained against him in 1870 by the Panchayat but whether this decree was executed or not does not appear. The defendants produce a number of documents many of which are liable to Stamp duty, but they were inadvertently Shewn to witnesses, and the defendants Vakil afterwards decline to pay Stamp duty and penalty and Stat

that they were nevertheless receivable in evidence for a Collateral purpose citing IV. Bombay, page 349, Indian Law Reports. None of the documents produced is dated anterior to the lease deed marked A and one of them, Exhibit VI, is a palpable forgery for the stamp is purchased on the 8th December 1877 while the document purports to be executed on the 1st December 1877. The evidence does not in my opinion establish any title to the property in the defendants while it abundantly proves the title of the pagoda to the garden in dispute.

The mere fact that defendants have been occupying buildings on the lands would not create any title in them as they do not prove how they got the land. They are, therefore, liable to remove the buildings

of the defendants or the Mussulman Community to have access to the tombs in the garden for religious purposes is not affected by this decree.

19. I decree, therefore, that plaintiffs do recover possession of the gardens claimed from the defendants who will remove the buildings raised by them thereon and pay the costs of this suit.

(Signed) S. Subbaiya

(True Copy)

Chairman, Mly Cl
Negapatam

[illegible] respondent [illegible]
[illegible] and this time against

2/478 No of 1898

sels to the

Enclosure B to Letter No 450/2089)

In the High Court of Judicature at Madras Monday, the Eleventh day of February one thousand eight hundred and eighty nine.

Present: The Honorable Sir Arthur J. H. Collins Knight Chief Justice and the Honorable Justice Wilkinson

Second Appeal No 172 of 1888.

1. Venkatesa Chettiar. 2. Seena Sena, Rena, Seena Mayandi Chettiar, Vide order on C.M.P. 623 of 88 dated 26th October 88 } Appellants

Mahomed Hussain — Respondent.

Second appeal against the Decree of the Dt. Court of Tanjore in Appeal Suit No 62 of 1887 reversing the Decree of the Court of the Dt. Munsiff of Negapatam in Original Suit No 407 of 1883.

This Second Appeal coming on for hearing, the Court delivered the following Judgment: We are unable to maintain the Decree of the Lower Appellate Court. The Defendants were sued as trespassers. Time did not begin to run against the trustees of the temple until the death of the lessee Bapoo Marcayar, which admittedly was within 12 years of the filing of the present suit. The lease, exhibit A, was one for 5 years, but it was provided thereby that after the expiring of 5 years, the lessor and the lessee should enjoy the profits of the property leased for ever, the property remaining in the possession of the lessee.

So long as the lessee or his heirs and representatives remained in possession, the right of the lessor to sue did not accrue and had the defendants claimed under Bapoo Marcayar, the case would have been different. The Judge is in error, in stating that there was no evidence of Bapoo's possession, for it appears that the defendants' own witnesses admitted that Bapoo had had possession, sunk wells &c. The defendants denied the plaintiff's title but failed to make out any title of their own. We set aside the decree of the Dt Judge and restore that of the Munsiff with costs in this and the lower Appellate Court.

(True copy)

(Sd) W. Morgan Dy Registrar
Appellate Side

(A True copy)

(Sd) M. Ramanujachary
Supt of Copyists

Dt Mffs Court of Negapatam
O.S. No 21 of 1890 – Produced
on 23.8.1892 by 1st Deft & filed
on 23.8.1892 as Exhibit V.

Sd/ A. Kuppusamy
Dt Mff

(True copy)

Sd/ A. S. Abraham

No 450/97

Enclosure C to letter 450/20-8-97

[illegible] முன்சீப் கோர்ட்டு

1883 ௵ அசல் நெ 407

வாதிகள்	பிரதிவாதிகள்	
[illegible]	[illegible]	1
[illegible]	[illegible]	2
[illegible]	[illegible]	3
[illegible]	[illegible]	4
[illegible]	[illegible]	5
	[illegible]	6

[illegible] 5 [illegible]

[illegible] 1 [illegible] 1 [illegible] 2 [illegible] 1 [illegible]

[illegible] 1166 [illegible]

[illegible] 5 86 [illegible] (ஒப்பம்)

(ஒப்பம்) [illegible]

[illegible]

[illegible] 2 [illegible]

[illegible] (ஒப்பம்) [illegible]

[illegible] (ஒப்பம்) [illegible]

[illegible]

[illegible]

(ஒப்பம்) [illegible] (ஒப்பம்) [illegible]

[illegible] (Signed). Panchakakasiah [illegible]

[illegible] 2 [illegible]

He. No 668. (ஒப்பம்) [illegible]

[illegible] (ஒப்பம்) [illegible]

[illegible] (Signed) Meenda

(ஒப்பம்) [illegible] samy pillai Central Nazir. 17—3—90—

Filed. 18—3—90. (Sealed) V. Narayana Rao. District Munsiff

(True Copy)

Chairman [illegible]

[illegible] selu to tte [illegible]

Exc. Ditto
Letter No 450/2089

1893 [illegible]

[illegible] 1893 [illegible] 5 [illegible] 16 [illegible] 99 [illegible] 2 [illegible] 150 [illegible]

[illegible] 1883 [illegible] 1888 [illegible] 172 [illegible] 500 [illegible]

([illegible]) [illegible]

Witness R.R. Desyachariar Sub Manager Negapatam
[illegible]

(True Copy)

[illegible]
Chairman

4
4118 of 1898

[illegible] 994 [illegible]

[illegible] 3 [illegible]

[illegible] 22-23 [illegible]

[illegible]

Witness Mr. Desyachari Sub Manager Negapatam [illegible]

[illegible]

Register of Permanent Leases No 253 / 16.11.93

Lease of the Jubilee East garden by the Trustees of Perin coil for 99 years.

5 / 4728 M of 1893

Enclosure E to letter No 450 / 20.8.97

In the Court of the 1st class Subdivisional magistrate of Negapatam

Calendar Case No 6 of 1896

Defendants name - 1 Mohomed Hussain
2 Mohedeen Shamshudin

Charge :- Criminal trespass and Causing a corpse to be buried in an unregistered place belonging to the Negapatam Municipality under Sections 447 I. P. C and Section 238 of Act IV of 1884.

Finding ;- Guilty

Sentence :- To pay a fine of Rs 20 each, in default to suffer 3 weeks' simple imprisonment each.

Judgment

There is a piece of land in Negapatam known as Turki thottam and also as the Jubilee East garden. This land was in dispute between certain mohomedans on the one side and the Trustees of the Neelayathatchi temple on the other. The litigation was terminated by the decree of the High Court in S. A No 172 of 1888. The land was found to be the temple's & the opposite party Mohomed Hussain (first accused in this case) was found to have no rights therein save the right of worshipping (with others) at certain tombs existing on the land. In 1893 the Municipality of Negapatam acquired the land on a 99 years' lease from the temple

2. On the 24th of January last the accused before the Court are alleged to have taken part in burying a corpse on that land in defiance of the objections of the municipal servants. The evidence of the municipal servants (including the manager) is that the place is not registered or licensed as a burial ground as required under sections 234 to 237 of the District municipalities act; that the municipality caused it to be proclaimed by beat of drum that burials are prohibited on the said land; that the first accused who lives & tends the tombs on the ground was told this in person; that on the 24th of January a corpse was brought to the place for burial; that the Chief Sanitary Inspector tried to prevent the burial which was insisted on by both the accused; that the ~~Chief Sanitary~~ Inspector went away & reported to the Police returned and again & not getting assistance endeavoured to prevent the burial; that the burial however proceeded and was accomplished & that the 2nd accused read the burial service.

3 The acts of the accused constitute offences under section 238 of the District municipalities act and also under section 447 (Criminal trespass) of the Indian Penal Code for though their act is not an "offence" in the limited meaning which the word bears in section 447 I.P.C., their persistence in it after warning & notice appears to me to sufficiently make out an intention of criminal annoyance.

4. The defence of the 1st accused as stated to the Court by himself was that the body was buried according to custom & that he had nothing to do with it & that he knew of no prohibitions. The 2nd accused admits he read the burial service in spite of the Inspector's objection and says he did it because he was told to & did not know there was any prohibition.

5 I am inclined to think that although the municipal servants profess ignorance of ~~their~~ it, burials in the place in question have been acquiesced in ~~till~~ by the municipality (Vide exhibits III & IV). They have however notified that such burials are prohibited. First accused was told this himself. The evidence clearly shows he was taking an active part in the burial. The 2nd accused has practically no defence.

6. Two witnesses were examined by the 1st accused. They say it is customary to bury corpses in the ground. One of them is the son-in-law of the deceased whose burial gave rise to this case.

7 It appears to me clear that the accused had no clear justification for their action. As this, however, appears to be the first case in which the municipality have taken action I do not think it requires to be dealt with severely,

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

LOCAL & MUNICIPAL DEPT.
CURRENT No. 2654 M

CHIEF SECRETARY * GOVERNMENT OF MADRAS *
19. JUL. 1897

To,

His Excellency

The Governor in Council

May it please Your Excellency

The most humble memorial of the undersigned mohamedans residing in the Town of Negapatam and its Suburbs.

I A piece of land about $\frac{3}{4}$ of a (veli) in extent surrounded on the north by a Hindu burial ground, on the south by a Christian Cemetery, on the east by the sea shore and on the west by a waste land Called Avari Thidal, has been in undisturbed possession and enjoyment of all of us in Common as the burial ground of the departed Souls of our Community from the time of Dutch Government.

2077

II In it two Turks were buried in 1829 and after their burial, a few miraculous and wonderful exhibitions emanated from their tombs so as to Convince the mohamedans of the importance of those two great men. Thereupon our Community raised over their graves a superstructure

1st sheet.

(2)

denominating it Turkey Sahibs' Pallivasal, and also built (mosafarkha-na Travellor's bungalow) adjoining the same, dug out tanks, sank wells Created a garden and have since been performing daily Consecration and also annual (voorus Festival) to those holy souls through one mohamed-Hoosen Shaw whom we have appointed as a priest to the said Pallivasal.

III This mohamedan Cemetery having been thus Consecrated by the burial therein of two Mohans (greatmen) as above referred to (the Circumstance) led to many a mohamedan interring their relatives and friends under belief to have salvation.

IV While this Cemetery had been thus enjoyed by us from time immemo-rial, the Panchayet of Neelayathat-chi amman Covil sued the said mohamed~~an~~ hoosen Shaw and five others of his family in O.S. No 407 of 1883 on the file of the Dt Munsif's Court, Negapatam for recovery of possession of the Cemetery alleging that the land belonged to the temple.

2nd sheet

V This suit having been prosecuted to the higher Stage of appeal it was eventually decreed for the plaintiff Moyandy Chetty by the High Court of Judicature Madras in S. a - S. No 172 of 1888 reserving to us our Cemetery and the right of resort thereto for the purpose of worShips.

VI The decree obtained by Mayandy Chetty in the Said Suit Can neither restrain our usual right of burial nor worShips in the Cemetery.

VII We have in this manner been Continuing in undisturbed enjoyment of our worShips and burial in the Cemetery in question even after the said suit No $\frac{407}{83}$ of the Negapatam Dt Munsif's Court terminated by the decree in S. a - S. No $\frac{171}{88}$ of the High Court of Judicature Madras.

VIII The Said Moyandy Chetty who has established a partial title to the Cemetery by the decree, attempted in the Year 84 - 85 while Mr Oliver was our Municipal Chairman to give a long lease of it for the Municipality. But Mr Oliver being informed of our rights in the matter refrained from

3rd sheet

V This suit having been prosecuted to the higher Stage of appeal it was eventually decreed for the plaintiff Moyandy Chetty by the High Court of Judicature Madras in S. a. S. No 172 of 1888 reserving to us our Cemetery and the right of resort thereto for the purpose of worship.

VI The decree obtained by Mayandy Chetty in the Said Suit Can neither restrain our usual right of burial nor worships in the Cemetery.

VII We have in this manner been Continuing in undisturbed enjoyment of our worship and burial in the Cemetery in question even after the said suit No 407/83 of the Negapatam Dt Munsif's Court terminated by the decree in S. a. S. No 171/88 of the High Court of Judicature Madras.

VIII The Said Moyandy Chetty who has established a partial title to the Cemetery by the decree, attempted in the Year 84-85 while Mr Oliver was our Municipal Chairman to give a long lease of it for the Municipality. But Mr Oliver being informed of our rights in the matter refrained from

3rd sheet

interfering with the site.

IX This lease in question was again raked up by this Moyandy Chetty in the days of our present Chairman Mr Rettina Sabapadi Pilly, a pleader & a member of the said Devastanam probably actuated by motives of religious spite & animosity.

X This gentleman has under the strength of his public influence and position some how managed to take up the lease of the said land for the municipality and has been ploughing the ground through a Sub lessee throughout its length & breadth thereby raking up and scattering far & wide the holy remains of many a Mahatma dear to our hearts & souls.

XI The Municipal Chairman's act in having thus taken up a Cemetery for a fruitless & unprofitable lease on behalf of the Municipality at a mere loss of rent without any corresponding use whatever, is at all a breach of Section 240 of the Dt Municipalities Act IV of 1884. But apart from the legal aspect of the question, the Municipal Chairman's act in thus mutilating with the plough the sleeping

4th ~~[illegible]~~ sheet

remains of the religious luminaries of a Community is to Say the least of it but a blasphemous sacrilege neither warranted by the exigencies of the local Municipal administration nor Consistent with the spirit of Your excellency's benign administration of even handed tolerance of all religions leaving each to its own tradition & prejudices.

XII In January 96 while the Corpse of a Mohamedan was brought to the said Pallivasal for burial as usual, the Municipal Chairman with an intent to interfere with and insult the Mohamedans prevented those who had brought the dead body from being buried in the said Cemetery by the assistance of the police and recently gave an order to the Municipal Thotties to bury it in the sea shore.

We therefore most humbly pray that it may please Your gracious Excellency to institute the necessary inquiry into the facts herein set forth & to order that the Municipal Chairman should not anymore interfere with the Cemetery or disturb our usual burial & worship there.

We most humbly beg to remain

Your excellency's most obt & humble memorial

5th & last sheet

நெ	பெயர்	நெ	பெயர்
1	[illegible]	34	فقير غني
2	[illegible]	35	[illegible]
3	[illegible]	36	قادر خان صاحب
4	[illegible]	37	W. Thambi Sahib Malim
5	[illegible]	38	அ. அலி கான் சேட்
6	[illegible]	39	[illegible]
7	[illegible]	40	[illegible]
8	[illegible]	41	அபுபக்கர்
9	[illegible]	42	[illegible]
10	[illegible]	43	[illegible]
11	[illegible]	44	[illegible]
12	[illegible]	45	[illegible]
13	[illegible]	46	[illegible]
14	[illegible]	47	[illegible]
15	[illegible]	48	[illegible]
16	[illegible]	49	[illegible]
17	செய்கு சாயபு	50	[illegible]
18	[illegible]	51	[illegible]
19	[illegible]	52	[illegible]
20	Mohamd Mouze Malim	53	[illegible]
21	Sheer Khan.	54	[illegible]
22	[illegible]	55	[illegible]
23	பகுருதீன்	56	[illegible]
24	அபுதல்லா	57	[illegible]
25	[illegible]	58	Syed Jaffer Sahib
26	[illegible]	59	[illegible] Mohamd Khan Sahib
27	[illegible]	60	[illegible]
28	[illegible]	61	செய்யது மெகம்மது சாயபு.
29	[illegible]	62	Sidick Kaderna Saib
30	Jather Khan Sheib	63	[illegible]
31	Assn Sahib Malim	64	[illegible]
32	அகம்து	65	[illegible] பாலயசாயபு
33	[illegible]	66	[illegible]

[illegible]

91
92
93
94
95
96
97
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
17
18
19
20

223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251

J. Malimsail Malimar

Abdul Mageed

باچاصاب

A. Abdul Kadir Marica

H. Mohamed Ismayl

Madar Sahib

S. Syedg Kook

91
92
93
94
95
96
97
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
18
19

223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250

S. Maliimsail Malimar

Abdul Mageed

باجاصاحب

S. abdul Kader marecar

H. Mohamed Ismayl

Madar Sahib

S. Syedg Rool

[illegible]

1

2

[illegible]

M. Allisahib Malim

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

V. Pakurmalim

[illegible]

[illegible]

D. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

جنا امیان

[illegible]

[illegible]

[illegible]

[illegible]

S. Malimsahib Malim

Y. Shaik Dawood Malim

[illegible]

B. Mohamed Cassim Maricayar

S. Muhammad Ghouse Maricayar

[illegible]

[illegible]

[illegible]

Mohammed Abdool Rhaiman Sahib

[illegible]

[illegible]

[illegible]

[illegible]

M. Kader Musahib Maricayer

[illegible]

[illegible]

H. Ahamed Maricair

V. Sulaiman Rowther

D. Savathoo Maricayer

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

E. Shaik Ismail Sahib

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

عبد القادر صاحب

[illegible]

[illegible]

Hamid Sultan

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

நெய்னா முகம்மது

[illegible]

அ. கா. முகம்மது [illegible]

குஞ்சு அகமது லெவ்வை

முகம்மது [illegible]

கா. [illegible]

வி. [illegible]

ம. [illegible]

செ. [illegible]

[illegible]

சு. [illegible]

செ. பா. வாசாயு [illegible]

ப. [illegible]

S. [illegible]

M. அப்துல் [illegible]

M. K. [illegible]

[illegible]

சா. மு. [illegible]

கா. [illegible]

S. [illegible]

கா. [illegible]

M. [illegible]

கா. [illegible]

[illegible]

[illegible]

M. [illegible]

[illegible]

கா. செய்யது [illegible]

அ. [illegible]

கா. [illegible]

[illegible]

[illegible]

[illegible]

Mhriamarikar

[illegible]

கா. ப. [illegible]

[illegible]

[illegible]

[illegible]

மு. முகம்மது தீன் சாயபு

[illegible]

مولوی قطب الدین صاحب

[illegible]

காதர் சாயபு [illegible]

M. [illegible]

L. [illegible]

[illegible]

அ. அலியாரு

[illegible]

[illegible]

அ. [illegible]

[illegible]

கா. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

عمر یوسف

ابینا مسنا صاحب

یوسف برکات

செ. [illegible]

[illegible]

யா. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

செ. [illegible]

ப. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

ப.வானசுந்தரம்பி

L.
000—28

L

ven f copying

opied 18-2-98

mined

sied 28/2

189

O., No. , DATED

URES TO C. No.

OF GOVERNMENT .. .. .. A A A A A A A

OF GOVERNMENT.

T WITH DITTO.

OT FILED UP, BEING MEANT FOR DESPATCH
N ORIGINAL.

= Copy in full.
= Not to be copied.
Copy abstract only.