

(1) Number of pages _____

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MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. 1350 (2)

Press
Mis.

Dated 20-4-1877.

Not to be folded or roughly handled

No. 471. Read the following endorsement of the Chief Engineer for Irrigation, dated Fort St. George, 11th April 1877, No. 183 W :—

From Major J. O. HASTED, R.E., Superintending Engineer, Kistna District, to Lieutenant-Colonel J. MULLINS, R.E., Chief Engineer for Irrigation, dated Masulipatam, 2nd June 1876, No. 27.

I HAVE the honor to forward a letter* from the Officer in charge of Bezwada

* One No. 87 of 22nd May 1876, from the Bez- wada Division Officer. Division, and to request that permission of

" Copy of plaint with two enclosures. Government may be obtained to defend the

" Sketch. suit brought against him, if you consider

" Sluice Register. it advisable.

To be kindly returned.

2. The case is a peculiar one. In

1864 the Range Officer, Ellore, Godavery District, gave the Zemindar permission to construct a sluice in the Ellore canal bank, and dig a channel to irrigate his own lands. In 1872 the wooden sluice that used to irrigate the Jalipudy village lands below the zemindary was washed away, and Mr. Peters then gave permission to the Jalipudy villagers to take water through the Zemindar's channel, making arrangements that the supply to the Zemindar should always be in excess of his wants. The Zemindar bunded his channel across so that the Jalipudy villagers should get no water. They complained to the Delta Superintendent, who referred the matter to the Tahsildar, at whose request the Zemindar removed the bund. He then complained to the Range Officer and subsequently to me that the Jalipudy villagers were taking his water. I think it probable that I did not clearly understand the Zemindar had executed the works entirely at his own expense, and on the assurance of the Range Officer that sufficient water would be supplied for both parties, I informed the Zemindar that the Jalipudy villagers would be supplied through the channel, after he had been supplied. He now sues Mr. Peters and the villagers of Jalipudy, asking the Court to establish his right to the sluice, value Rupees 130, channel, value Rupees 350, and to grant him Rupees 60, said to have been expended in putting up bunds (I suppose those he removed at the instance of the Tahsildar), and expenses of this suit.

3. Mr. Peters attaches a sketch plan showing the channel and sluice, and a statement of water supplied through the sluice during last year. The latter gives a somewhat larger discharge than I should estimate, but there is no doubt that the supply was more than sufficient for the Zemindar.

4. I do not however think the suit can be defended. I should think that the Zemindar had a right to put up a bund in the channel, if he wished, even though it would be shown that his only object was to prevent others benefiting by the water, and it seems to me that we should lose no time in buying the sluice and channel from the Zemindar, whether the village of Jalipudy is to be supplied by its means or not. I consider it objectionable that Zemindars should have private sluices in the canal banks.

5. As the suit is expected to come on soon after the Courts open in the end of this month, I have the honor to request an early reply.

No. 16 K.S.

IRRIGATION—MEMORANDUM.

In reply to the letter No. 27 of the 2nd instant, from the Superintending Engineer, Kistna, the undersigned has the honor to state that he fully concurs with the Superintending Engineer in the opinion that the permission originally given to the Zemindar to construct a sluice and channel for the supply of his lands from the Ellore Canal was a mistake; that the fair value of the work constructed by the Zemindar should be ascertained, and an offer made to him of the amount, and that the whole control of the distribution of water from canals and in all channels supplying more than one village must be in the hands of the Canal officers.

2. The Zemindar should be informed accordingly, and the village of Jalipudy should not be supplied from this distributary until the channel has been made over to the department, and until revised arrangements for distributing the water in a satisfactory manner has been made.

3. The expenditure which may be incurred in the purchase of the channel will be chargeable to the Minor New Works grant of the district.

12th June 1876.

(Signed) JOHN MULLINS,
Chief Engineer for Irrigation.

From Major J. O. HASTED, R.E., Superintending Engineer, Kistna, to the Chief Engineer for Irrigation, dated Masulipatam, 4th April 1877, No. 1.

REFERRING to your memorandum No. 16 K.S., dated 12th June 1876, I have the honor to inform you that negotiations have since been carried on with the Zemindar, who instituted the suit, without avail.

One Copy of the Plaint.
" Translation of Plaint.
" Copy of answer.
" Translation of answer.
Two Sketches.
Return requested.

2. I first wrote to the Zemindar, stating that other arrangements would be made to supply the Jalipudy lands, that no sluices under private control could be allowed in the canal bank, but that I was willing to pay the amount expended in constructing the sluice and excavating the channel, and would undertake to supply water in future for the extent of cultivation declared. To this I received no reply for a long time, and meanwhile the suit was pressed on. I then instructed the Divisional Officer to apply for a postponement of the suit, on the ground that I had proposed certain settlements, and to endeavour to come to terms with the Zemindar, through the Pleader.

3. The Divisional Officer now reports that the Zemindar will not come to terms. Meanwhile the suit has been postponed till the 17th May 1877, and the Collector of Godavari District has been made a supplemental defendant. I enclose copies of the plaint and answer thereto, and have the honor to request the sanction of Government to the suit being defended. I have already been compelled to make use of the services of the Government Pleader, and a small sum has been expended on a stamp.

4. Even if the suit is decided against the Zemindar, he will still retain his right to the sluice. Should he then refuse to sell, I think it is within my power to construct a notch or regulator, in front of the sluice, of such dimensions as to ensure a full supply to the Zemindar's present wet cultivation. The channel from the sluice is partly in Government and partly in zemindary land, but I think I have no power to interfere with it.

SENT FOR THE CONSIDERATION OF GOVERNMENT.

2. A Zemindar, whose appellation is not clearly ascertainable from the papers, was allowed in 1864 by the then Range Officer to construct a sluice in the right bank of

the Ellore Canal near its lower end, and to dig a channel therefrom to water his lands in the village of Komaravole.

3. A temporary sluice which supplied the village of Jalipudy was washed away in 1872, and the Range Officer, Mr. Peters, gave permission to the Jalipudy villagers to take water from the Zemindar's channel, through which an adequate supply for the lands in both villages could be afforded, and the Superintending Engineer, not understanding the right of the Zemindar to the exclusive use of the sluice and channel, approved of the arrangement; whereupon the Zemindar filed a suit to establish his right to the works, and to recover Rupees 60 stated to have been expended by him on work rendered necessary by the diversion of water to Jalipudy.

4. The undersigned considered it to be desirable that the sluice and channel should be purchased from the Zemindar, and the Superintending Engineer was instructed accordingly, but he declines to sell them.

5. There is no ground on which the suit could be defended so far as it relates to the right of the Zemindar to the exclusive use of the sluice and channel, which ought not to have been interfered with in any way without the consent of the owner. Whether the 60 Rupees claimed as compensation is properly claimable must depend upon the facts, and unless the sum be clearly exorbitant the claim should be adjusted, or the amount paid into Court.

6. The exclusive use of the sluice and channel gives the Zemindar no right to more than an adequate supply of water, and the Canal Officer has the power of regulating the supply according to the acreage under irrigation, but he must do so without other interference than that necessary to prevent waste of water by the shutter being unduly raised. Such difficulties as may be experienced, will be due to an unwise proceeding on the part of a former Range Officer in allowing the construction of the sluice as a private off-take.

7. When the arrangements of this part of the canal come to be revised as they will shortly be, an endeavour should be made to place the supply of the zemindary village on a more satisfactory footing, and the probability of effecting this will be increased if the Zemindar's rights be respected, and if it be remembered that apparently the supply from the Ellore Canal was granted as an equivalent for the interception of a supply from the Tammileru by the canal.

(Signed) JOHN MULLINS, Lt.-Col., R.E.,
Chief Engineer for Irrigation.

No. 472. ORDER THEREON, 20th April 1877, No. 1,350.

IRRIGATION, No. 45-A.

Establishment.

HIS GRACE the Governor in Council is of opinion that the suit instituted by the Zemindar cannot be defended, and the Superintending Engineer will direct the payment into Court of the Rupees 60 claimed, and admit the Zemindar's claim to the exclusive use of the sluice and of the water drawn off by it. This admission does not confer any right on the Zemindar to take or receive more water than is necessary adequately to supply the lands to be irrigated in the village for which the sluice was constructed.

which

Proceedings of the Madras Government, Public Works Department,
20th April 1877. No. 1,350.

2. The Government notice with regret that the channel was used, without the necessary consent of the owner, for the supply of another village.

(True Extract.)

Lieut.-Col., R.E.,
Joint Secretary to Government, P.W.D.,
Irrigation Branch.

To the Superintending Engineer, Kistna.
" Chief Engineer for Irrigation.
" Examiner of Public Works Accounts.
" Revenue Department.
" Judicial do.

No. 183 W.

From Superintending Engineer Kistna, No. 27.
2nd June 1876

To — do — No. 16. H. S. — 12th June 1876.

enclosure 9.

From — do — No. 1 — 1st April 1877.

Submitted for the consideration of Government.

2. A Zemindar, whose appellation is not clearly ascertainable from the papers, was allowed in 1864 by the then Range Officer to construct a sluice in the right bank of the Ellore Canal near its lower end, and to dig a channel therefrom to water his lands in the village of Komara-volu.

3. A temporary sluice which supplied the village of Jalipudi was washed away in 1872, and the Range Officer, Mr. Peters, gave permission to the Jalipudi villagers to take water from the Zemindar's channel through which

which an adequate supply for the lands in both villages could be afforded, and the Superintending Engineer not understanding the right of the Zemindar to the exclusive use of the sluice and channel approved of the arrangement; whereupon the Zemindar filed a suit to establish his right to the works and to recover Rupees 60 stated to have been expended by him on work rendered necessary by the diversion of water to Jalipudi.

4 The undersigned considered it to be desirable that the sluice and channel should be purchased from the Zemindar, and the Superintending Engineer was instructed accordingly; but he declines to sell them.

5 There is no ground on which the suit could be defended so far as it relates to the right of the Zemindar to the exclusive use of the sluice and channel, which ought not to have been interfered with in any way.

without the consent of the owner. Whether the 60 Rupees claimed as compensation is properly claimable must depend upon the facts, and unless the sum be clearly exorbitant the claim should be adjusted, or the amount paid into Court.

6 The exclusive use of the sluice and channel gives the Zemindar no right to more than an adequate supply of water, and the Canal officer has the power of regulating the supply according to the acreage under irrigation, but he must do so without other interference than that necessary to prevent waste of water by the shutter being unduly raised. Such difficulties as may be experienced will be due to an unwise proceeding on the part of a former Range officer in allowing the construction of the sluice as a private off-take.

7 When the arrangements of this part
of the canal come to be revised as they
will shortly be, an endeavour should
be made to place the supply of the
Gemindary village on a more satis-
-factory footing, and the probability
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the Gemindars' rights be respected and
if it be remembered that apparently
the supply from the Ellore Canal was
granted as an equivalent for the in-
-terception of a supply from the Tam-
-mileru by the canal.

Fort St. George
11 April 1877

Comdr. H. M. R. L.
Lieut. Col. R. L.

Chief Engineer for Irrigation

To
The Secretary to Government
P. W. D.

124FR77
2838

From

The Chief Engineer for Irrigation,

To

The Secretary to Government,
Public Works Department.

Dated 11 April.
Despatched 20 April 1877.
Received

ENCLOSURES 9

No. 183-N.

Subject.

Suit against Mr. Peters. - Sub.
- with correspondence relating to
the — for allowing water to be taken
from the Zemindar's Channel near
the sluice constructed by the Zemindar,
in the Elia Canal, with remarks.

By C 20 April 77 SB No. 471

No 1350

Public Works Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

UNDER date the 20 April 77

Read the following:

Endorsement of the Chief
Engineer for Irrigation } (H.E. No. 183 W. of 11 April 1877)

It is grace the Gover.
- nor in Council is of opinion
that the suit instituted
by the Zemindar cannot
be defended, and the
Superintending Engineer
will direct the payment
into Court of the Rupees
so claimed, and admit
the Zemindar's claim to
the exclusive use of the
sluice and of the ^{water} drawn
off by it. This admis-
sion.

admission does not con-
=fer any right on the
Zemindar to take or
receive more water than
is necessary adequately
to supply the lands to
be irrigated in the Vil-
=lage for which the
sluice was constructed.

2. The Government
notice with regret that
the channel was used,
without the necessary
consent of the owner,
for the supply of another
village.

124

S. S. Kistna. ✓
Ch. S. for S. with 9 Encls
to P. W. A. ✓
Secy. Dept. ✓
Secy. C. Dept. ✓
dtd. 5.5.77

Apr 30 38
Govt. of 1877 Madras
PUBLIC WORKS.

To The S. E. Kistna

Dated

Issued

Recd.

Encl.

G. O. 20 April 1877, No. 1350

Nos. 471-472
Sub. Paper orders on

Correspondence relating to
the suit instituted by a
Zaminadar against Mr
Sahay Sahas for allowing
water to be taken from a
channel constructed by
him near ^{his} the sluice
in the Elmore canal, following

Cent. in Regt.

11. 11. 11