

(1) பக்கங்களின் எண்ணிக்கை 8

(2) புதுக்கித் திருப்பிய நாள் 21.12.90

(3) ஆதாரங்குறிப்பவர் சுருக்கொப்பம்

45

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

சீ.ம.டி துறை

அரசாணை எண். மு. கோப்புத் தாள் எண்.	823	அச்சகம் பலவகை
நாள் : 20 - 3 - 1891 198		

மடிக்கவோ கண்டபடி கையாளவோ கூடாது

Ap. Sheds

G.P

ஆவண. கர-1-18,006-15-6-87.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

THE HON'BLE J. GROSE.

Read—the following G.O., dated 4th December 1890, No. 985, Revenue :—

Read—again the following G.O., dated 13th August 1890, Mis. No. 5000, Revenue :—

Read—the following Proceedings of the Board of Revenue (Land Revenue), dated 14th June 1890, No. 330 :—

THE FULL BOARD.

Read—again Proceedings of the Board of Revenue (Land Revenue), dated 5th February 1890, No. 768.

ABSTRACT.—Passing orders on petition of Arian of Thondur village, Tindivanam taluk, South Arcot district, claiming the Taliari office of that village.

Read—also the following letter from H. SEWELL, Esq., Collector of South Arcot, to the Secretary to the Commissioners of Land Revenue, dated Cuddalore, 22nd February 1890, Ref. on Regr. No. 145-B.L. :—

I have the honor to acknowledge receipt of Board's Proceedings of the 5th instant, Mis. No. 768, and to respectfully refer to its Proceedings, dated 24th April 1889, No. 292, as the orders seem to conflict to some extent. In the former order it appears to be left to discretion whether to admit the suit or not; in the latter it seems that the suit must be admitted so long as there is a claim of right put forward. I would therefore request the favor of a distinct ruling for future guidance.

Resolution—dated 14th June 1890, No. 330.

The subject of declaratory decrees under Regulation VI of 1831 having been again brought under the notice of the Board in the foregoing correspondence, it resolves to submit the matter, with a statement of the more recent decisions on the point, for the orders of Government.

2. The Government having held in a Government Order of the year 1877 that "the law does not contemplate such declaratory decrees," and the Board having in 1882 ruled on a petition which came before it, that "the petitioner was entitled to a declaratory decree on a suit properly tried under the regulation," a reference was made to the Government Pleader on the subject, and in his opinion, dated 4th April 1883, that officer held that "claim of a declaratory nature may be maintained before the Collector under section 4," it being a question to be decided according to the circumstances of each case whether relief should be given or not. On this opinion being brought to the notice of Government, His Excellency in Council recorded the opinion that the Government Order of 1877 went too far, but added that declaratory decrees under the regulation should nevertheless be discouraged.

3. In 1886 the Government in disposing of an appeal, laid down that where a defendant had been in office three years and could not, therefore, be dispossessed, it was still not competent to a Collector to throw out a plaint on this ground and that he must entertain the suit and arrive at a decision, though in his executive capacity he might decline to execute it. On the Board pointing out the administrative inconvenience likely to arise from this ruling, the Government cancelled its order and resolved that the procedure advocated by the Board should be allowed to continue in force pending legislation. The procedure referred to was to refuse to entertain suits, of which the object was to oust, by reason of inferior title, office-holders of more than three years' standing.

4. The practical effect of the last-mentioned ruling was that in cases where consequential relief was impossible, no declaratory suit or decree was allowable. In 1888 the matter again came before the Board and it was then laid down that the same rule applied to cases where a minor on attaining his majority seeks to oust a 3 years' holder, or, failing that, to obtain a declaratory decree of his right to succeed. But in the following year 1889, in Proceedings, No. 292, dated 24th April 1889, the Board declared that where a plaint had been entertained and suit heard, there was nothing to prevent a Collector from putting a declaratory opinion on record. Finally, in Board's Proceedings, dated 5th February 1890, No. 768, which was passed when the Board was differently constituted, a further departure from the views set forth in 1886 and 1888 was made, it being held that a claimant was entitled to have his claims inquired into and a declaratory decree passed, though his suit was time-barred and though he could obtain no consequential relief.

5. These decisions, which are in evident conflict with one another, represent different views held by the Board as differently constituted at different times. On the one hand, it is held that declaratory decrees being, as pointed out by the Government Pleader in 1883, admissible under the regulation, there is no sufficient authority for refusing to entertain a suit merely because consequential relief is impossible, and that therefore suits for a declaratory decree must be entertained and determined. This is, in fact, the view taken in G.O., 2nd June 1886, No. 3249, which was afterwards abandoned at the request of the Board, and against it is to be set the great administrative inconvenience then pointed out by the Board as likely to result. This inconvenience, however, might be greatly diminished by a distinct ruling as to the classes of cases in which declaratory decrees would be admissible. For instance, it might be laid down that they might be granted in cases in which consequential relief was refused because the incumbent of the office sued for had occupied it for more than three years, or because the claimant was related to a former dismissed office-holder or was not sufficiently educated or was otherwise personally disqualified; but not otherwise.

6. A second opinion on the matter is that when a plaint shows on its face that consequential relief is impossible, the suit shall be at once rejected; but that when a Collector has actually heard a suit and finds that no consequential relief can be given, he is not thereby debarred from placing on record in the form of a declaratory decree the conclusions at which he has arrived. This is the view expressed in Board's Proceedings, dated 24th April 1889, No. 292, and is a modification of that held by the Board in 1886 and 1888. Against this opinion it is argued that it is based on no principle, inasmuch as it would cause the question whether a declaratory decree is given or not to depend mainly on the degree of care with which plaints are scrutinized on admission and so in a great measure on chance.

7. Finally it has been represented, that the opinion of the Government Pleader *Vide Vija Ragunadah Rani, Kolandapur to the effect that declaratory suits are maintainable under the regulation at all Natchiar v. Dorasingah Taver, 15 B.L.R. 83.* is itself unsound and that, even if it is admitted that such suits are maintainable, the general principle observed by the civil

courts to the effect that no declaratory decree can be given unless consequential relief might be claimed, ought to be applied thereto. The practical result of this view would be in accordance with the opinion of Government as declared in 1884, viz., to limit declaratory decrees within a very narrow compass.

8. The Board accordingly requests that the Government will be pleased to decide between these conflicting views, taking anew the advice of the Law officers on the subject, if that course is considered necessary.

(True Copies and Extract.)

(Signed) A. G. CARDEW,
Acting Secretary.

To the Secretary to Government, Revenue Department,
with nine enclosures in Petition Register No. 877 of 1890,
to be returned; and with copies of Board's Proceedings, dated
23rd November 1888, No. 972; 24th April 1889, No. 292; and
5th February 1890, Mis. No. 768.

Order—dated 13th August 1890, Mis. No. 5000, Revenue.

Forwarded to the Advocate-General for his opinion.

2. The Government further desires to be informed whether, in the opinion of the Advocate-General, the provisions of G.O., dated 31st August 1888, No. 611, a copy of which will now be forwarded to him, can be held to be legally binding on revenue courts administering Regulation VI of 1831.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Advocate-General, with copy of G.O., No. 611 of 1888,
and papers, in original (to be returned).
„ Board of Revenue (Land Revenue).

Read—again the following G.O., dated 13th Nov. 1890, Mis. No. 6932, Revenue :—

Read—the following paper :—

In the matter of Madras Regulation VI of 1831, and of G.O., No. 611, dated 31st August 1888.

Opinion.

1. I understand that my opinion is asked upon two points, viz. :—

- as to declaratory decrees under the regulation, and
- as to whether the provisions of G.O., No. 611, of 31st August 1888, are legally binding on revenue courts administering the regulation.

2. The regulation does not provide for declaratory suits, but even if such suits be maintainable on the ground that they are not expressly excluded, I think that the revenue courts should be guided by principles which have been laid down by “the ordinary courts of judicature.”

3. The subject of declaratory decrees was fully discussed in the *Sivaganga case* reported in 15 Bengal Law Reports, page 83 (P.C.) and L.R. 2, I. A., p. 169, and the decision was approved of in *Sheo Singh Rai v. Dakho*, I. L. R., All. 11, page 688. The principle laid down was that a declaratory decree ought not to be made unless there is shown to be a right to some consequential relief, which, if asked for, might have been given by the court, or unless a declaration of right is required as a step to relief in some other court.

4 BOARD OF REVENUE (LAND REVENUE), 17TH FEBRUARY 1891, No. 107.

4. The revenue courts should also consider section 43 (? 42) of the Specific Relief Act I of 1877 when called upon to exercise their discretion in making or refusing a declaratory decree. The discretion must be a judicial discretion and not an arbitrary or capricious exercise of power and should be exercised with great caution.

5. I do not think that "declaratory suits" properly so called are maintainable under the regulation which deals with claims to vested and present rights to offices. Either the right claimed exists or has been lost. If it exists it should be allowed. If improperly disallowed, the claimant has his remedy by appeal to the Board of Revenue, or memorial to the Governor in Council under section 6 of the regulation. If the right claimed has been lost by lapse of time, no consequential relief can be given, and no declaration of title can be made.

6. I do not think that G.O., No. 611, of 31st August 1888, is legally binding on revenue courts administering this regulation, but as Government can revise and modify the orders and decisions of the revenue courts, it may act as a guide to those courts in the exercise of the discretion vested in them if declaratory suits are maintainable under the regulation.

MADRAS,
27th August 1890.

(Signed) J. H. SPRING BRANSON,
Advocate-General.

No. 422.

Forwarded, with enclosures, with reference to the endorsement of Government, No. 5000, dated 13th August 1890, Revenue Department.

MADRAS,
29th August 1890.

(Signed) ERNEST BARCLAY,
Government Solicitor.

Order—dated 13th November 1890, Mis. No. 6932, Revenue.

The opinion furnished by the Honorable the Advocate-General in regard to the admissibility of suits for declaratory decrees under Regulation VI of 1831 is not very definite, and His Excellency the Governor in Council accordingly resolves to remit the question for further consideration with the following observations.

2. The principle enunciated in the Sivaganga case to the effect that a declaratory decree ought not to be made, unless there is shown to be a right to some consequential relief, which if asked for might have been given by the court, or unless a declaration of right is required as a step to relief in some other court, was based on section 15 of the old Code of Civil Procedure (Act VIII of 1859), which has since been expressly repealed by the Specific Relief Act. Section 42 of the latter Act differs materially from section 15 of Act VIII of 1859, and it seems to Government that the rule as to the admissibility of declaratory suits is now exactly the reverse of what it was under the old Code of Civil Procedure. Instead of declaratory suits being made admissible only when there is a right to consequential relief, which, if asked for, might have been given, such suits are barred in cases in which consequential relief might be, but is not, asked for. All the illustrations to section 42 go to show that the intention of the legislature was to enable a person, who has a right to any property or office, of which for some reason he is not entitled to immediate possession, to obtain a decree affirming his title thereto.

3. As regards the question whether declaratory decrees are maintainable under Regulation VI of 1831, the Advocate-General states that he does not think they are, because the regulation "deals with claims relating to vested and present rights to offices." And he goes on to say—"Either the right claimed exists or has been lost. If it exists, it should be allowed. If improperly disallowed, the claimant has his remedy by appeal to the Board of Revenue or memorial to the Governor in Council under section 6 of the regulation. If the right claimed has been lost by lapse of time, no consequential relief can be given, and no declaration of title can be made." In the first place, it must be noted that the Limitation Act does not apply to suits under Regulation VI of 1831, so that no right can be lost by mere lapse of time. The order

823
3
BOARD OF REVENUE (LAND REVENUE), 17TH FEBRUARY 1891, No. 107. 5

of Government, which declares that an office-holder shall not be liable to be ousted, in favor of a claimant alleging superior title, after the former has held office for 3 years, does not extinguish the right, but merely bars the remedy. There is nothing to prevent the latter from bringing a suit for the office at some future time on the occurrence of a vacancy.

4. In the second place, the Advocate-General's definition of the cases which may arise under the regulation is not exhaustive, and he appears to have overlooked the very class of cases in which the necessity for declaratory suits can alone arise, viz., those in which an individual possesses a vested right to an office, but cannot obtain immediate possession thereof owing to some rule which has been prescribed for administrative convenience. Cases of this nature are chiefly those in which a member of the mirasi family is debarred from obtaining possession of an office either because the office-holder has been in possession for three years or because the claimant is closely related to a former office-holder, who has been dismissed. The claimant in such cases has a vested right to the office, but is unable to obtain immediate consequential relief. Such cases therefore appear to fall under section 42 of the Specific Relief Act, and if this is to be taken as the guide in determining what declaratory suits are admissible, all the classes of cases specified in the concluding sentence of paragraph 5 of Board's Proceedings, dated 14th June 1890, No. 330, will be cognizable.

5. The Advocate-General is requested to favor the Government with an early reply to this reference.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Honorable the Advocate-General,
with a file of papers, to be returned.

Read—also the following letter from the Honorable J. H. SPRING BRANSON, Advocate-General, to the Secretary to Government, Revenue Department, dated Madras, 20th November 1890:—

With reference to the order of Government, dated the 13th instant, No. 6932, Revenue Department, I have the honor to forward, herewith, my opinion regarding declaratory decrees under Madras Regulation VI of 1831, and to return the papers sent to me.

ENCLOSURE.

DECLARATORY DECREES UNDER MADRAS REGULATION VI OF 1831.
Opinion.

1. I am of opinion that *Collectors acting under the Regulation are not empowered to make declarations of status or rights.*
- The reasons for my opinion are that—
 - (a) A "power of making declarators" is not inherent in courts in the mofussil. It must be conferred by legislative enactment. [*Sivaganga case* L. R. 2, I. A. at page 179.]
 - (b) Act VIII of 1859, section 15, did not, and the Specific Relief Act does not, extend to revenue courts. Act VIII of 1859 was "an Act to simplify the procedure of the courts of civil jurisdiction not established by Royal Charter," and the Specific Relief Act was passed "to define and amend the law relating to certain kinds of specific relief obtainable in civil courts."
 - (c) Madras Regulation VI of 1831 does not specifically confer the power of making declaratory decrees on Collectors acting under its provisions.
 - (d) The Regulation does not even impliedly include that class of cases in which the necessity for declaratory suits can alone arise. It deals with claims to present rights to office alone.

The right to hereditary offices referred to in the Regulation may be vested in certain families, but any member of those families who claims to hold office must base his claim upon his own superior right. Such present right does not arise if the claimant be passed over because of his being "closely related to a former office-holder who has been dismissed." It is lost by lapse of time when the claimant "is debarred from obtaining possession because the office-holder has been in possession for 3 years." In saying this, I do not refer to the Limitation Act which of course is inapplicable.

2. This paragraph and that which immediately follows it are based on the assumption that the above opinion is wrong, and that the Regulation is held to empower Collectors to make declarations of status or rights other than present rights to possession. In that case, as there is no legislative enactment to lay down the limits within which such claims are to be entertained, or the procedure to guide those who have to inquire into and decide upon such claims, each Collector must either be at liberty to act upon his own idea of the principles which should govern his action, or should be guided by principles enunciated by the civil courts so far as they are applicable. Under these circumstances, I think that all "revenue courts should be guided by principles which have been laid down by the 'ordinary courts of judicature'," and should also take into consideration G.O., No. 611, of the 31st August 1888, when exercising their discretionary powers.

3. There are certain general principles relating to the exercise of the power of making declaratory decrees which are of universal applicability, *e.g.*, that those who are entrusted with a discretionary power to make such decrees should only exercise that discretion after the most careful consideration of the propriety of doing so; that the discretion to be exercised should be a "judicial discretion," not an arbitrary and capricious exercise of power, &c.

There are certain special principles relating to the jurisdiction of courts to entertain suits for declaration of title. These necessarily change with the changes made in the law relating thereto. On this subject I considered the following question.

Which set of principles enunciated by the civil courts should be adopted in dealing with claims to declaration of status or rights under the Regulation? Being of opinion that the Regulation only deals with claims in which the claimants have a right to consequential relief, I thought that the decisions which construed section 15 of Act VIII of 1859 would be more applicable to such claims, and a better guide to Collectors who have to decide upon their admissibility, than those decisions which construe the wider provisions of section 42 of the Specific Relief Act.

I am, however, unable to appreciate the value of proceedings which lead to decisions by which no one apparently is bound, or which declare a status which may be ignored by those having the power of selecting the actual holders of hereditary offices.

4. I regret to find that, in trying to make my first "opinion" concise, I failed to express my meaning clearly. I did not intend to convey the impression that I thought Act VIII of 1859, section 15, was still in force, or that section 42 of the Specific Relief Act had made no change in the law. I did not intend by the phrase "lost by lapse of time" to refer to the Limitation Act, but to the fact that, as an office-holder in possession for three years cannot be disturbed, a claimant loses his alleged right to possession—his "present right"—on the expiration of that time, and must wait until a vacancy occurs before he can again put forward his claim. I did not overlook that class of cases in which the necessity for declaratory suits can alone arise, but I thought, and I still think, that that class does not and cannot exist under the Regulation.

MADRAS,
20th November 1890.

(Signed) J. H. SPRING BRANSON,
Advocate-General.

Read—also petition from MAHADEVA AIYAN, Nattamgar of Mannadimangalam village, Madura taluk, Madura district, dated 13th June 1890.

ABSTRACT.—Appealing against the Board's order directing the Collector to pass a declaratory decree in favor of one Seshaiyan in the suit filed by him for the Nattamai office held by petitioner, and praying for an authoritative ruling on the subject of the grant of declaratory decrees under Regulation VI of 1831.

Read—also petitions from MAHADEVA AIYAN, Nattamgar of Mannadimangalam village, Madura taluk, Madura district, dated 27th August and 15th October 1890.

ABSTRACT.—Praying for an early order on his previous petition.

Order—dated 4th December 1890, No. 985, Revenue.

Miscellaneous.

The Honorable the Governor in Council accepts the opinion of the Honorable the Advocate-General that suits for declaratory decrees are not maintainable under Regulation VI of 1831, and resolves to communicate it to the Board of Revenue for information and guidance with reference to its Proceedings, dated 14th June 1890, No. 330. The necessary addition should be made in the Board's Standing Order on the subject.

2. The petitions of Mahadeva Aiyar, which have been lying over pending the settlement of the general question of declaratory decrees, will now be forwarded to the Board for disposal in accordance with the above order.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Commissioners of Land Revenue, with enclosures returned, and the petitions of Mahadeva Aiyar.

Copy to the Honorable the Advocate-General.
Endorsement to Petitioner (paragraph 2).

RESOLUTION—dated 17th February 1891, No. 107.

Board's Standing Order No. 178 will be amended as follows:—

For paragraph 9 substitute "suits for declaratory decrees are not maintainable under the regulation and should not therefore be entertained."

And add to the list of Government Orders at the end of the Standing Order, "G.O., dated 4th December 1890, No. 985."

2. With reference to paragraph 2 of the Government Order, it is observed that Board's Proceedings, dated 4th February 1891, Mis. No. 750, passed on Mahadeva Aiyar's appeal to it disposes also of his appeal to Government.

(A true Copy and Extract.)

(Signed) H. A. SIM,
Acting Secretary.

(True Copy.)

(Signed) C. CLARK,
Registrar.

To the Collector of Madura, with eleven enclosures.
" all other Collectors.

Copy to the Secretary to Government, Revenue Department, with 3 petitions returned, and with copy of Board's Proceedings, 4th Feb. 1890, Mis. No. 750.

Exd. W. J. Lewis.

P.W.C. no. 31584

REVENUE DEPARTMENT.

1891.

Board of Revenue

(Land Revenue),

MADRAS.

No. 823 of 21st March
1891

Recorded -

DOB
20.3.91
BW

Printed March 4th.

dr S.C

Recd: 19.3.91

Proceedings, 17th February 1891, No. 107.

(H)

Amending Standing Order No. 178 (new
edition) regarding Regulation VI of 1831.

29C 22/3- 2.24/3.