

Public Works (1898) Department.

G.O., No. 495 I

DATED 24 June 98

[Despatch Abstract.]

Keyyanur Taluk in Pottu Kottai Taluk,
Tamilnadu : Pro: Rev. Dept. According
Correspondence relative to the levy of
Contribution for the repair of —, recorded
with reference to G.O. No. 808 I of 2 Oct 95

Government {1898} of Madras.
PUBLIC WORKS.

Spare copies

JUNE.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Irrigation.

Read—the following paper:—

G.O., Mis. No. 2185, Revenue, dated 20th May 1898.

Read—the following paper:—

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1227, dated 7th May 1898.

Read—the following papers:—

Endorsement of the Chief Engineer for Irrigation in charge of Tank Restoration Scheme, Madras, dated 24th February 1897, No. 249 T., on letter from the Superintending Engineer, V Circle, dated 25th November 1896, No. 287.

Reference thereon, dated 6th March 1897.

From the Collector of Tanjore, dated 25th February 1898, No. 796/Rev.

ABSTRACT.—Furnishing information regarding the extent and assessment under the Meyyanur tank in Pattukkottai taluk, and stating that the inamdars are bound to contribute a share towards the cost of its repair.

From the Chief Engineer for Irrigation, Tank Restoration Scheme, dated 23rd April 1898, No. 811 T.

Resolution—Mis. No. 1227, dated 7th May 1898.

In its order, No. 808, dated 2nd October 1895, Government sanctioned an estimate amounting to Rs. 1,710 for repairing the Meyyanur tank in Pattukkottai taluk, Tanjore district. The tank has an ayacut of 288 acres, of which 185 acres are shrotriend lands; and it was accordingly proposed, before the work was started, that a contribution of Rs. 1,367 should be levied from the shrotriend lands (*vide* paragraph 8 of the report accompanying the estimate printed at page 3 of G.O., No. 808 I., dated 2nd October 1895). In the remarks recorded by Mr. Winterbotham in Board's Proceedings, No. 4269, dated 26th August 1895, it was suggested that certain items should be reduced or struck out from the estimate, on the ground that the shrotriend lands might reasonably demur at paying so large a sum as Rs. 1,367. The Public Works Department, however, considered that the whole amount was necessary to put the tank in a state of efficient repair (*vide* paragraph 3 of the note by the Chief Engineer for Irrigation at page 2 of G.O., No. 808 I., dated 2nd October 1895).

2. The shrotriend lands now object to the demand for contribution on the grounds that they have no proprietary right in the tank and that Government has all along repaired the tank at its own cost and has performed various acts of ownership in respect of it, enjoying the trees standing on the bund and levying a charge from the shrotriend lands for the use of the water (*vide* communication from the Head Assistant Collector, Madura, to the Collector, No. 897, dated 28th August 1896). The Superintending Engineer, V Circle, having enquired in his letter, No. 287, dated 25th November 1896, whether in these circumstances the repairs and improvements to the tank might not be carried out wholly at the cost of Government, the Chief Engineer for Irrigation referred the papers to the Board, and a report was called for by the Board from the Collector of Tanjore in Board's Reference, dated 6th March 1897.

3. The Collector of Tanjore reports that the tank used to be repaired by the Public Works Department at the sole cost of Government and that the inam lands are entered in the paimash accounts as entitled to gratuitous irrigation from the tank for a single crop. It further appears that both second-crop assessment and water-rate on dry lands have been levied from the shrotriend lands and that the proposed improvements, when carried out, are likely to bring in additional revenue to Government in the shape of water-tax, as stated in paragraph 2 of Mr. Winterbotham's letter, No. 158, dated 27th February 1893. The Collector, however, considers that the shrotriend lands are bound to pay their share of the cost of repair with reference to Board's Proceedings, No. 70 (Settlement), dated 18th March 1895, and proposes to institute a suit for the recovery of the cost after the completion of the work.

4. For the reasons to be presently stated, it is doubtful whether the ruling in the case of the Parayankolathur tank printed in Board's Proceedings, No. 70 (Settlement), dated 18th March 1895, can be applied to the case now under consideration. In the former case, the Government and the zemindars were co-owners of the tank; but the shrotriend lands interested in the Meyyanur tank disown all proprietary right in it, and from the survey map of the Tunjanur village, of which Meyyanur is a hamlet, it appears that the entire water-spread of the Meyyanur tank is included within the limits of the Government village. Further, the entry in the paimash accounts to the effect that the inam lands are entitled to a gratuitous supply of water for a single crop strengthens the presumption that the irrigation work belongs to Government. In a case somewhat similar to the present one which was dealt with in G.O., Mis. No. 2915, dated 20th July 1895, the Government negatived the Board's proposal to claim contribution for repairs from the shrotriend lands of Mannangidinnai in the Nellore district. The Government Order contained the following observations: "Most important of all is the fact that when the shrotriend was settled by the Inam department in 1873, a title-deed was issued in which a certain extent is entered as the area which the shrotriend lands can irrigate without any additional charge for water. This condition implies that the irrigation work is a Government source (as otherwise there could be no claim to charge for water) and that, to the extent mentioned in the title-deed, the Government is bound to supply water free of charge." For the same reason, where water-rate is paid for irrigation beyond the limit to which free supply is admissible, it would appear that a separate contribution for repairs to the source of irrigation is not leviable, in the absence of an express understanding on the subject.

5. Accordingly, this class of cases appears to be clearly distinguishable on the one hand from hissa tanks and dasabandam tanks properly so called, where there is an express understanding that the hissadar or dasabandamdar shall repair, or shall render help in order to repair, the work of irrigation, and on the other hand from such tanks as the Parayankolathur one where the obligation sought to be enforced is imposed on a joint proprietor by section 70 of the Indian Contract Act (1872). The Board is therefore of opinion that the shrotriend lands who are interested in the Meyyanur tank are not liable to contribute for the repairs of that tank.

6. The repairs must accordingly be carried out at the cost of Government, but the Public Works Department will be informed that no expenditure should be incurred beyond what is necessary to secure the supply and the upkeep of the tank-bund in its normal state.

(True Extract.)

(Signed) LIONEL DAVIDSON,
Ag. Secretary.

Order—Mis. No. 2185, Revenue, dated 20th May 1898.

Recorded.

(True Extract.)

(Signed) S. G. ROBERTS,
for Ag. Secretary to Government.

Public Works (189) Department.

(Irrigation)
CURRENT No. 4675

4 No. 495 I., 24TH JUNE 1898

ORDER—No. 495 I., dated 24th June 1898.

Recorded with reference to G.O., No. 808 I., dated 2nd October 1895.
(True Extract.)

Under Secretary to Government,
Irrigation Branch.

To the Chief Engineer for Irrigation.
" Superintending Engineer, V Circle.
" Examiner, Public Works Accounts.

Exd. T. K. Narayana Aiyangar.

A
Order

W. Office Inspector
detention with B's Prop.
M. 31/5/98

From The Revenue Department.

No 495 I. 24.6.98.

Dated

20. 6. 98

Recorded with reference
to G.O. No. 808 I. 2 Oct 1895.
27.5.98 11H

Received

Registered

Enclosures

Spare copies

No. 2185
1227
20/6/98

SUBJECT.

To The Chief Eng for
Suff Eng V
S. W. R.

To The Chief Eng for
Suff Eng V Circle
S. W. R.

Recording B.P. passing
orders on the correspondence
regarding the levy of contribution
for the repairs of elbeggams
lank in Puthukottai Taluk,
Tanjore DC. from the
Shrotriamdars bene filed
by it

FURTHER PAPER



No. 1227 Misc., dated 7th May 1898.

1. Endorsement of the Chief Engineer for Irrigation in charge of T.R.S. Madras, No. 249-T, dated 24th February 1897, on letter from the Superintending Engineer Fifth Circle, No. 287, dated 25th ~~February~~ ^{November} 1896.

And Reference thereon dated 6th March 1897.

2. Letter from J. Andrew, Esquire, Collector of Tanjore, to the Secretary to the Commissioners of Land Revenue, Madras, No. 796/Rev. of 1898, dated 25th February 1898, furnishing information regarding the extent and assessment under the Meyyanur Tank in Pattukkottai Taluk and stating that the Inamdars are bound to contribute a share towards the cost of its repair.

3. Also letter from the Chief Engineer for Irrigation Tank Restoration Scheme, to the Secretary to the Board of Revenue, Land Revenue, No. 811 T, dated 23rd April 1898.

: 0 :

Resolution

In its order No.808 dated 2nd October 1885, Government sanctioned an estimate amounting to Rs.1710 for repairing the Meyyanur tank in Puttukothei taluk, Tanjore District. The tank has an ayacut of 288 acres of which 185 acres are shrotriem lands and it was accordingly proposed, before the work was started, that a contribution of Rs.1367 should be levied from the shrotriemdars (Vide para 8 of the report accompanying the estimate printed at page 3 of Government Order

No. 808 I, dated 2-10-94). In the remarks recorded by Mr. Winterbotham in Board's Proceedings 4269, 26th August 1895 it was suggested that certain items should be reduced or struck out from the estimate, on the ground that the shrotriendars might reasonably demur at paying so large a sum as Rs. 1367. The Public Works Department, however, considered that the whole amount was necessary to put the tank in a state of efficient repair. (Vide para 3 of the note by the Chief Engineer for Irrigation at page 2 of Government Order 808 I, dated 2nd October 1895).

2. The shrotriendars now object to the demand for contribution on the grounds that they have no proprietary right in the tank and that Government has all along repaired the tank at its own cost and has performed various acts of ownership in respect of it, enjoying the trees standing on the bund and levying a charge from the shrotriendars for the use of the water (Vide communication from the Head Assistant Collector Madura, to the Collector No. 897, dated 28th August 1896). The Superintending Engineer, V Circle, having enquired in his letter No. 287, dated 25th November 1896, whether in these circumstances the repairs and improvements to the tank might not be carried out wholly at the cost of Government, the Chief Engineer for Irrigation referred the papers to the Board, and a report was called for by the Board, from the Collector of Tanjore in Board's ^{Minutes} Proceedings, dated 6th March 1897.

3. The Collector of Tanjore reports that the tank used to be repaired by the Public Works Department at the sole cost of Government and that the Inam lands are entered in the Paimash accounts as entitled to gratuitous irrigation from the tank for a single crop. It further appears that both second crop assessment and water rate on dry lands have been levied from the shrotriendars and that the proposed improvements, when carried out, are likely to bring in additional revenue to Government to the shape of water-tax, as stated in para 2 of Mr. Winterbotham's letter No. 158, dated 27th February 1893. The Collector however, considers that the shrotriendars are bound to pay their share of the cost of repair with reference to Board's Proceedings No. 70 Sett., dated 18th March 1895 and proposes to institute a suit for the recovery of the cost after the completion of the work.

4. For the reasons to be presently stated, it is doubtful whether the ruling in the case of the Parayankolattur tank printed

in Board's Proceedings No. 70 Sett., dated 18th March 1895 can be applied to the case now under consideration. In the former case, the Government and the ^{benin} Inamdars were co-owners of the tank; but the shrotriendars interested in the Meyyanur tank disown all proprietary right in it, and from the Survey map of the Tunjanur village, of which Meyyanur is a hamlet, it appears that the entire water-spread of the Meyyanur tank is included within the limits of the Government village. Further the entry in the Paimash accounts to the effect that the Inam lands are entitled to a gratuitous supply of water for a single crop strengthens the presumption that the irrigation work belongs to Government. In a case somewhat similar to the present one which was dealt with in G.O. No. 291 Misc., dated 20-7-1895, the Government negatived the Board's proposal to claim contribution for repairs from the shrotriendars of Manangidinnai in the Nellore district. The Government Order contained the following observations:-

"Most important of all is the fact that when the shrotriend was settled by the Inam Department in 1873, a title deed was issued in which a certain extent is entered as the area which the shrotriendars can irrigate without any additional charge for water". "This condition implies that the irrigation work is a Government source (as otherwise there could be no claim to charge for water) and that, to the extent mentioned in the title-deed, the Government is bound to supply water free of charge". For the same reason, where water rate is paid for irrigation beyond the limit to which free supply is admissible it would appear that a separate contribution for repairs to the source of irrigation is not leviable, in the absence of an express understanding on the subject.

6. According to this class of cases appears to be clearly distinguishable on the one hand from Hissa Tanks and Dasabandam tanks properly so called, where there is an express understanding that the Hissadar or Dasabandamdar shall repair, or shall render help in order to repair, the work of irrigation, and on the other hand from such tanks as the Parayankolathur one where the obligation sought to be enforced is imposed on a joint proprietor by section 70 of the Indian Contract Act (1872). The Board is therefore of opinion that the

shrotriendars who are interested in the Mayyanur tank are not liable to contribute for the repairs of that tank.

7. The repairs must accordingly be carried out at the cost of Government, but the Public Works Department will be informed that no expenditure should be incurred beyond what is necessary to secure the supply and the upkeep of the tank-bund in its normal state.

(True Extract)

/signed/ Lionel Davidson

Ag. Secretary.

To

X The Chief Engineer for Irrigation.

The Collector of Tanjore.

The Secretary to Government, Revenue Department, with Collector's letter & enclosures in original to be returned.

/True Copy/

Ld Swamikannu

Ag. Secretary. 18 JUN 1898

Md. R. H.

REVENUE DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

READ Proceedings of the Board of Revenue, Land Revenue, Madras,

ms: No. 1227, dated the 7th May 1898.

Passing orders on the correspondence regarding the levy of contribution for the repair of Mayyanur tank in Pattukkottai Taluk, Tanjore Dist., from the shrotriendars benefited by it.

ORDER THEREON, No. 2185^{ms}, dated the 20th May 1898.

Recorded.

(True Extract).

Sg. Rohit

For Under Secretary to Government

To The Board of Revenue. Land Rev. Copy to the P. W. D. (Irrigation). ✓