

Public Works (1899) Department.

G.O., No.

2183

W

DATED

15 August

1899.

[Despatch Abstract.]

^{Excessive}
Private Property. Opinion of the Advocate
General stating that Govt is within its
legal rights in asserting that it cannot
accept responsibility in the case of
^{by natural causes,}
~~losses~~ of ^{private property} on the banks of the Adyar
where ~~the same~~ ^{the same} ~~is~~ ^{is} ~~caused~~ ^{caused} ~~by~~ ^{by} ~~natural~~ ^{natural}
causes recorded.

P. W. Curren N^o

Received 1. 8. 99.

From
Ernest Barclay
Government Solicitor
Madras

To
The Secretary to Government
Public Works Department
Madras

No: 2182 W 7/15-8-8

Recorded.

N^o 377

Date. 29 July 1899

Encls: File of papers

Forwarded with enclosures
with reference to the Memo-
randum of Government W 3108
C. dated 11th July 1899. Public
Works Department.
E. C. Bailey

Ernest Baileys
Government Solicitor

Note. This opinion has been obtained with reference to His Excellency's remarks on the note flagged B. It will be observed that Govt. is within its legal rights in asserting that it cannot accept responsibility in the case of erosions of private property on the banks of the Adyar, when such erosions are produced by natural causes.

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 H. G. R. R. R. ... n. n. 1/4

2108 ca/11-7-99
1599 ca/22-6-82
352 ca/9-4-85
659 ca/28-7-95
1468 ca/18-5-86
1995-96 ca/31-5-86
1961 ca/2-8-82
264 ca/2-8-86
999 ca/15-2-99
2086 ca/23-6-97
+ file

OPINION

1. The question in this case is whether Government is under any liability in respect of erosions of land caused by the action of the Adyar river.

2. There does not appear to be any G.O. which, in terms, constitutes the Government conservators of the river, but it would seem from the G.O., No. 475, P.W.D., dated 3rd March 1860, the letter of Mr. Melville to the Board of Revenue dated 8th May 1882, the proceedings of the Board of Revenue noted in the margin of paragraph 4 of this letter, and the G.O. dated 5th June 1882, that Government are de facto conservators of the river, and that they are the owners of the greater part (if not the whole) of the lands which form the northern and southern banks of the river.

3. The rights and obligations of the Government, or of the Department which represents the Government, as Conservators of the river, have never been defined by Statute or otherwise. Consequently the decisions in such cases as Bramlett v Tees Conservancy Commissioners 49 J.P. 214 and Dixon v Metropolitan Board of Works 50 L.J. Q.B. 772, do not throw much light on the question raised in the present case. As regards erosion brought about by natural causes, the Government are under no obligation to prevent such erosion, nor are they under any liability in respect of damage caused by such erosion. But if it could be established that erosion had been caused, either wholly or in part, by artificial works carried out by Government, either in connection with the conservancy of the river or otherwise, I think that Government, in the absence of any protecting enactment, would be under a legal liability to pay compensation to the injured party. In such a case the erosion, so far as the party injured is concerned, would be the result of misfeasance, not of mere non-feasance.

4. On the facts, I think that the Government were right in declining to accept responsibility in connection with the Somerford property in 1886.

5. The cases dealt with in the G.O.'s of March 6th 1885, April 9th 1885, and July 28th 1885 are governed by different principles, and must be dealt with separately.

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6. As regards the G.O. 1179 Revenue dated March 6th 1885 (bursting of Red Hills Tank), I am of opinion that Government were under no legal liability in respect of the damage caused thereby. The principle upon which Rylands v Fletcher (L.R. 3 H.L. 330) was decided, does not apply to such a case. See Madras Railway Coy: v Carvetinagarum 30 L.T. 770.

7. As regards the case dealt with in the G.O. No. 352 J dated April 9th 1885 (destruction of Koriar embankment and injury to Messrs Parry & Co's factory) I think that, on the facts, Government were right in declining to admit any obligation to protect the factory.

8. As regards the case dealt with in the G.O. No. 659 J dated July 28th 1885 (loss to local fund Board by breaching of Vennar bank, Tanjore) there was no evidence of neglect of ordinary precautions to prevent damage, and, in my opinion, Government were under no liability for the damage done.

C. Arnold White

Advocate General.

Madras)
28th July 1899)

(True Copy)

Ernest Barclay

Government Solicitor.