M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1073 Press ~~Mis.~~

Dated 12th August 1859.

Not to be folded or roughly handled

No. 41. Read the following letter from W. HUDLESTON, Esq., Sub-Secretary to the Board of Revenue; to J. D. BOURDILLON, Esq., Secretary to Government, R. D.; dated 19th June 1859, No. 2824.

Enclosure in from North Arcot, dated 2d Oct. in Con. 28th Dec. 1858, No. 4522.

On 17th May 1855, with reference to the orders of the Board of Revenue, dated 5th October 1854, the Collector of North Arcot, issued a notification to all concerned, that in future no extra assessment, "Fusl jasty," would be charged on a second crop raised on one crop land by means of the water of charity tanks, natural pools, or jungle streams, in creating, or improving which Government have incurred no expense, but that except in the case of charity tanks, Government reserved to itself the right to make use of the water from these sources when required for any future improvements, and that, pending such event, its untaxed use was permitted solely on the condition that by such use the supply of no Government work, as tank or channel, was lessened.

2. The Board's Proceedings referred to were held on a letter from the late Collector proposing sundry modifications in the Hukumnamah of his district, and on the particular point under reference were in accordance with his recommendations save inasmuch as their orders reserved the rights of Government intact, as expressed in the notification of the Collector.

From North Arcot, 11th Sep. 1856, in Con. 26th March 1858, No. 3655.
26th March 1858.

3. Subsequently, however, on the reference by the Collector of a proposition made by his Additional Sub-Collector that persons cutting channels from springs in river beds to their cultivated lands might be allowed the same exemption from taxation on improvements as is enjoyed by those who sink wells in their lands, the Board communicated to the Collector, the Proceedings of Government, 16th December 1857,

In Con. 18th Dec. 1857, No. 5064.

No. 1308, R. D., on a Guntoor case, in which it was declared that the proposal "to reserve the right of Go-"vernment to the future appropriation of the water (of jungle streams) when required, leaving "its intermediate use free, was open to objection," inasmuch as, "the free use of the water for "10 or 15 years would certainly be looked upon as constituting a prescriptive right, and much "outcry would be raised when the Government exerted its right of appropriating the water to "remunerative purposes," which order of Government the Board held to be applicable to the case referred by the Collector.

4. The Collector, however, considered apparently that the orders of Government were of general application and superseded those of the Board on which the notification above mentioned was based, and he, accordingly, on 19th April 1858, issued a second notification cancelling his former one and declaring that, if water from jungle streams should be made use of by ryots for their cultivation, extra assessment would be charged for the future.

5. The fact of this second notification having been issued was brought to the Board's knowledge incidentally in an enquiry connected with a petition addressed to them.

Dated 16th Dec. 1857, R. D., No. 1308, in Con. 18th Dec. 1857.

6. The Board, I am directed to say, do not believe that the Government order of December 1857, above quoted, was intended to bear so extended an application as the Collector put upon it, but as its spirit is not inconsistent with that officer's interpretation they desire me to solicit its reconsideration.

7. The principle on which the modification of the North Arcot District Hukumnamah was originally sanctioned by the Board was that the payment required by Government of the Ryot is for the occupation and use of the land according to its natural qualities, and for the consumption of water supplied by Government, and that, therefore, the demand of an extra payment for the use of natural sources of supply, unimproved by Government, was an undue enhancement of the Government tax.

8. This principle the Board believe to be sound, and they are not disposed to attach much weight to the possible risk of opposition to future improvements, based on a prescriptive right to use the water, derived from long enjoyment, as apprehended by Government, more especially if its rights to turn the sources of supply to the utmost advantage be specially reserved as proposed by the Board.

9. They are not aware that any such opposition has ever yet been any where experienced. They incline to believe on the contrary, that few rights of Government would be more generally admitted by the community than that asserted, and they cannot but think that the strict enforcement of the principle laid down by Government in their Proceedings above quoted, will involve much hardship, if not positive injustice in very many instances, where the facilities for obtaining water for the cultivation from rain-fed streams unimproved by Government, formed a material element of the estimated value of the land in determining originally its "Tarum" or class, and fixing the assessment on it, or in districts like South Arcot, where the privilege of using such sources of irrigation untaxed has been enjoyed by all from the earliest times.

10. Since the above was written the Board have received a letter from the Sub-Collector in charge of North Arcot asking, whether as was the opinion of Mr. Whittingham, the Collector, the orders of Government of 16th December 1857 above quoted are to be considered as cancelling the rules for the formation of private tanks approved by Government in Extract Minutes Consultation, dated 16th April 1855, and circulated by the Board to all Collectors on 30th idem.

12th in Con. 13th July 1859, *No.* 3421.

In Con. 18th Dec. 1857, *No.* 5064.

Board's C. O. for 1855, *page* 57.

11. Mr. Sullivan observes that although the formation of a tank does not so completely divert the jungle stream that feeds it, as does the erection of an annicut, which was the nature of the work prohibited by Government in the above order, still the terms and spirit of that order are scarcely consistent with the existing rules for permitting private individuals to construct tanks, and the Board agree with him in thinking that both orders cannot stand in their integrity. The difficulty of reconciling them affords an additional reason for soliciting reconsideration of the latter order.

12. The Board have also before them a report on a Petition from certain Ryots of North Arcot complaining of the levy of "Teerwajasty" on their *dry* lands irrigated from so-called *wells* of their own construction, but which from the Collector's report appear to be reservoirs filled with water raised from an adjacent jungle stream.

Petition 846 *of* 1859.

31*st May in Con. 6th June* 1859, *No.* 2595.

13. Exemption from this extra demand had been conceded under the Board's orders as quoted at the commencement of this letter, but was withdrawn by the Collector from the close of Fusly 1267, as being contrary to the Government order.

14. The Board direct me to say that although as before stated they do not believe that this order of Government was originally intended to bear so extended an application as has been put upon it in the district of North Arcot, they still cannot but feel convinced, from the difficulty that has been found in that one district of maintaining a liberal policy towards the Ryots without violating its letter, that its spirit is inconsistent with that of the late Honorable Court's Dispatch, dated 2d June 1852, which conceded to all Ryots the full benefit of their own improvements and which has been productive of so great advantage to the agricultural community throughout the country.

Board's C. O. vol. 2, page 112.

15. The Board have not thought it necessary to detain this letter until they could ascertain from Guntoor how far the Government rule has been acted upon in that district in connection with which it was originally issued, and to which district alone besides that of North Arcot it was communicated by the Board, but should Government desire to have this information before them, it can be applied for at once.

No. 42. ORDER THEREON, 11th August 1859, No. 1073.

The Board of Revenue solicit the instructions of Government on the question how far it is allowable for Ryots to use the water of jungle streams without payment; confusion and dissatisfaction having been caused in North Arcot by the interpretation put by the Collector on an order of Government on the subject, dated December 16th 1857, No. 1308.

2. The Board's order of October 5th 1854, permitted ryots to apply to their own use, without additional charge, the water of natural pools and jungle streams, so long as there were no Government works to require the water. It was based on the principle repeatedly recognized by Government, that the land revenue properly consists in payment for the use of the land, and payment for water supplied by Government. It was a wholesome and beneficial order; because it enabled ryots to turn to use by their own labor, that which otherwise would be wholly useless and unproductive both to them and to Government. For the imposition of Teervah jasty in such cases generally acts as a prohibition.

3. The Government order of December 1857, on the other hand, was based on the apprehension that rights being once thus established, it would be practically impossible for Government to enforce its own previous and reserved rights, when occasion might arise. On now reconsidering the subject the Governor in Council agrees with the Board that the supposed danger is practically unimportant; and that it is unwise to maintain on this account a restriction which prevents benefit to the ryot without any gain to the Government. It is to be remember ed also that, now that remissions for waste and accidents and short crop on dry land are to cease, it is the more necessary that no needless obstacle should be thrown in the way of ryots making the most of their land, especially by means of water; as every rood of watered crop is so far an insurance to the ryot against casualties of season in his wholly dry crops.

4. The Governor in Council resolves therefore to recall the order of December 16th 1857, and to confirm the Board's order of October 5th 1854. In the case however of a permanent work such as an anicut, or a new spring channel in the bed of a stream, which may greatly affect existing interests, it is necessary that the same formalities should be required as are prescribed in the case of private tanks in the order of Government of 16th April 1855. The Board will be pleased to consider the subject, and prepare a circular to give effect to this general order of Government; to be submitted for approval before being issued.

(Signed) J. D. BOURDILLON,
Secretary to Government.

No. 1090.

Extract from the Proceedings of the Board of Revenue, dated 26th March 1858.

In Con. 26th March 1858. Read letter from the Collector of North Arcot, dated 11th September 1856.

(Here enter No. 187.)

The Board regret to find that the above letter has hitherto escaped notice. They resolve now to

In Con. 18th Decr. 1857. furnish the Collector with a copy of Extract Minutes Cousultation 16th December last, No. 1308, Revenue Department, which contain the views of Government on the appropriation by ryots of the water of streams, the property of the State.

(A true Extract.)

(Signed) G. S. FORBES,

Secretary,

To

C. WHITTINGHAM, Esq.,

Collector of North Arcot.

IN CON. 6TH JUNE 1859, No. 2595.

From C. WHITTINGHAM, Esq., Collector of NORTH ARCOT,
dated Palmanair, 31st May 1859, No. 144 A.

I have the honor to submit, for the information of the Board, the explanation called for in their Endorsement on Petition, No. 846 of 1859, in which the ryots pray that the water-rate, newly charged for their Poonjah lands irrigated by private wells, may be remitted. The alleged wells, stated to have been dug at the expense of the royts, are not supplied by a spring, but are filled with water raised from an adjacent jungle stream, the property of the State.

2. In Fusly 1267 the extra demand in question was remitted, because the orders* of Government on the subject, circulated with the Board's Proceedings of the 26th March 1858, were received only in that Fusly; due notice was however given to the ryots that such remission would not be allowed in the following Fuslies.

* Dated 16th December 1857, No. 1308.

3. Petition, No. 846 of 1859, is herewith returned.

ENC. 1.—Petition, No. 846 of 1859.

In Con. 13th July 1859, No. 3421.

From A. W. SULLIVAN, Esq., Sub Collector in charge, NORTH ARCOT,
dated Vellore, 12th July 1859, No. 191.

Previous to his leaving the district a difference of opinion had arisen between Mr. Whittingham and myself as to the effect of para. 3, Extract from the Minutes of Consultation, under date the 16th December 1857, No. 1308, Revenue Department, communicated with Proceedings of the Board of Revenue, No. 1090, dated 26th March 1858, would have on the instructions conveyed in Extract from the Proceedings of the Board of Revenue, dated 30th April 1855, No. 1050, embodying Extract from their Proceedings of the 8th January 1855, No 83.

2. Mr. Whittingham was of opinion that the one cancelled the other, and that under the order of Government of the 16th December 1857, No. 1308, it was not competent for a private individual to construct any work at his own cost, the effect of which would be the appropriation of the water of a jungle stream or indeed of any stream the property of the State.

3. Although it may be argued that, to a certain extent, every tank bund is an annicut across a stream, there is this difference that, the bund is only intended to store water within certain limits and for the irrigation of a certain and limited extent, whereas an annicut is intended to divert the water from its natural course, and for uses of an unlimited nature so long as the stream flows.

4. The more recent order of Government specially deals with the case of annicuts and as neither in the order itself or in the Board's Proceedings on it, is any allusion made to tanks or any intimation of the former orders of 1855 being cancelled, I am inclined to think that such was not the intention.

5. As however the principle involved in the latter order of Government tends some force to Mr. Whittingham's view of the case, I have the honor to solicit the Board's sentiments in the matter, as in the event of their agreeing with Mr. Whittingham it will be necessary that as wide publicity should be given to the more recent orders of Government as was given to the former orders conveyed in the Board's Proceedings of the 30th April 1855.

Rev Dept

C. No 1073

Proceedings of the Madras Government
Under date the 11th August 1859.

Read the following
letter from the Secretary
the Board of Revenue

Bringing to notice certain Notification
issued by the Collector of North
Arcot on the subject of Jodgiary
to be charged on a Second crop
raised on one crop land, of water
from jungle streams to be made
use of by Ryots for their cultiva-
tion, and soliciting the reconsi-
deration of the Govt order of 16
Dec/57 & No 1308 on which the
above notification was based

(Here under 29th July 59 &c)

The Board of Revenue
solicit the instructions of
Government on the question
how far it is allowable for
Ryots to use the water of
jungle streams without
payment, confusion and
dissatisfaction having been
caused in North Arcot
by the interpretation put
by the Collector on the
order

Printed Copy of Report
1859 Aug 31/21

From
The Collector of
South Arcot

To the Secretary to the
Board of Revenue
Fort St. George

Dated Dlt 1st July 1859
Rec'd 13th July 1859 No 1308
Ans'd 13th July 1859.

Requests to be favored with the
sentiments of the Board as to
whether the second order
of Govt. Revenue 16th Dec 1857
No 1308) on the subject of
the use of water of jungle
streams, proceeds by Ryots
individuals cancels the orders
of Govt. communicated in
the Board's Ro: of the 30th
April 1858 No 1058.

Ans'd No 2824 of 1859

der of Government on the
bject, dated December 16
857, N° 1308.

The Board's order of
October 5th 54, permitted
yots to apply to their own
se, without additional
harge, the water of
natural pools and jun-
gle streams, so long as
there were no Government
works to require the water.
It was based on the prin-
ciple repeatedly recog-
nized by Government, that
the land revenue ~~demand~~ pro-
perly consists in payment
for the use of the land,
and payment per water
supplied by Government.
It was a wholesome and
beneficial order, because it
enabled ryots to turn
to use by their own labor,
that which otherwise
would be wholly useless
and unproductive both

to

them and to Government.
For the imposition of Tree-
-vah justly in such cases
generally acts as a pro-
hibition.

3. The Government order
of December 1857, on the
other hand, was based
on the apprehension that
rights being once thus
established, it would be
practically impossible
for Government to enforce
its own previous and
reserved rights, when
occasion might arise.
On now reconsidering
the subject the Govern-
-in Council agrees with
the Board that the
supposed danger is pra-
tically unimportant,
and that it is unwise
to maintain on this
account a restriction
which prevents benefit
to the ryot without a
gain to the Government

P

t is to be remembered also
hat, now that remissions
r waste and accidents
d short crop in dry
nd are to cease, it is
e more necessary that
e needless obstacle should
thrown in the way
ryots making the
t of their land, espe-
lly by means of water,
every road of watered
p is so far an insurance
the ryot against casu-
his of season in his
holly dry crops.

The Governor in
uncil resolves therefore
cancel the order of Dec.
57, and to confirm
Board's order of
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t work such as
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ing channel in
bed of a stream,
ch may greatly
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affect existing interests
it is necessary that the
same formalities should
be required as are pre-
scribed in the case of
private lands in the
order of Government of
16th April 1855. The Board
will be pleased to consi-
der the subject, and
prepare a circular to
give effect to this gene-
ral order of Government
to be submitted for ap-
proval before being
issued.

To Copies to Bds of Rev. Disp. 12

3-3-03

22-8-06

13-2-10

5-1-12

7-6-12

21-8-19

Revenue 1859 Deptt.

Pro: of Govt. 12th Augt.

No 1073.

Pro: of the Madras Govt.

Dd 11th Augt. /59.

From the Sub. Secry to the Bd of Revs

D/26th August/59. (2 Nos 1664 in Coms.

Recalling the order of 16th December 1857 relative to the Fusljasty by the use of water from Jungle Streams and requesting the Board to prepare and submit a Circular on the subject.

No 41 & 42