M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 797	Press Mis.
Bundle 10 57 & 52	
Dated 17 — 6 — 18 59	

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, from 11th to 17th June 1859.

No. 51. Read the following Extract from the Proceedings of the Board of Revenue, dated 3rd June 1859, No. 2038.

Read again letter from the Collector of Nellore, dated 22d February 1859, No. 23.

(In Con. 25th February 1859, No. 772.)

Read also letter from the same Officer, dated 6th May 1859, No. 58.

(In Con. 9th May 1859, No. 2088.)

Ordered that the above letters be submitted to Government with a request that the Collector may be authorized to refund Rupees 60, the amount of certain fines levied and carried to account by him, but remitted on appeal by the Civil Court.

2. On an appeal to the Collector in 1856 from a decision passed by the Acting Head Assistant Collector under Regulation IX of 1822, the Collector concurred in the Acting Head Assistant's opinion that the Curnums were unfit for office and in his conviction of them on the first charge of placing Villager's lands in lower "Tarums" than should have been done, but he modified the sentence which really inflicted the only *fine* awarded, by reducing its amount to Rupees 60.

3. In two other cases he found that the Curnums were in possession of more Manyam land than they were entitled to hold and that part of their holding was entered in the accounts at too low a rate, and he ordered the proper assessment to be levied in each case. The terms of this decision are alone sufficient to show that in these instances the Curnums were not convicted of *fraud* which constitutes the essence of the category of offences against which Regulation IX. of 1822 is directed, and that the Collector's order directing the levy of the established rate of assessment was an ordinary revenue decision with which the Court had no power to interfere.

4. On appeal however the Court has thought fit to decide that not only must the fines levied be refunded but that the Government demand assessed by the Collector under the circumstances stated must be remitted, and on application for a review of judgment by orders of the Board, as this award was considered to be beyond the Court's jurisdiction, the Court has refused to modify this portion of its appeal decision on the ground that the charge necessarily involved the offence of fraud against the State and that convinction of it was therefore properly subject for appeal to the Court as punishable under Regulation IX. of 1822.

5. No precept appears to have been issued directing the Collector to give effect to this appeal decision, and the Board therefore propose to take no further notice of what they consider its objectionable features, but with the sanction of Government to direct the Collector to refund the *fine* properly so called but to make no further modification of his former order without the Board's permission first obtained.

(A true Extract.)

(Signed) W. HUDLESTON, *Sub-Secretary.*

No. 52. ORDER THEREON, 17th June 1859, No. 797.

The Governor in Council resolves to refer the Board to para. 2 of the Government order of March 30th 1859, which gave the Board power to order re-funds in such cases as the present.

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

In Con. 9th May 1859, No. 2088.

From F. B. ELTON, Esq., Collector of NELLORE,

dated Nellore, 6th May 1859, No. 58.

With reference to an Extract from the Board's Proceedings dated 19th March 1859, I have the honor to state for their information, that I applied through the Government Vakeel to the Civil Court of Nellore for a review of judgment on the points mentioned therein and have received an Extract from the Court's Proceedings under date the 18th ultimo, stating that for reasons therein set forth, the review sought does not appear allowable.

2. I beg to forward copy of the Court's Proceedings, and to observe that in my decision, I stated that the sums ordered to be paid by the Curnums, with the exceptions of the fines awarded against them in the 1st Count of the Head Assistant's sentence, were not properly speaking fines, but the rent of the lands.

3. Under these circumstances I beg to solicit further instructions on the points mentioned in my letter of the 22nd February 1859.

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Enc. 1.

Extract from the Proceedings of the Civil Court in the Zillah of Nellore, under date the 18th April 1859.

Read again Miscellaneous Petition, No. 128 of 1859, presented on the 24th March 1859, by N. Singaracharry, Government Vakeel, on behalf of Collector of Nellore, requesting as per instructions of the Board of Revenue conveyed in the Extract of their Proceedings dated 19th March 1859 which accompanied this Petition, a review of the Court's order passed under date the 30th December 1858.

Read also the Extract from the Proceedings of the Board of Revenue dated 19th March 1859.

Read also the Original Proceedings in the case.

Order of the Court.

The charges against the appellants were tried and decided by the Acting Head Assistant Collector under Regulation IX. of 1822 and the appeal from his decision to the Collector was disposed of by that officer under the same Regulation. On an appeal to the Board of Revenue against the Collector's decision the appellants were referred for redress to the Civil, Court, probably under Clause 2nd, Section VI. Regulation VII. of 1828 which provides the mode of disposal of appeal to that authority from the decision of the Collector under Regulation IX. of 1822. The application now made, on the ground of want of Jurisdiction on the part of the Court, is for review of that part of Court's order in the appeal, upsetting the finding of the Collector to the effect that appellants were guilty of two of the charges, the one of having cultivated certain land in excess of their Maniem and the other of having entered land at lower rate as Metta which was chargeable as Mooloom of higher rate of sist. These, charges which appear in fact of defrauding the Government of certain money or sist, fall seemingly under the scope of Regulation IX. of 1822 and the Court therefore it is considered has Jurisdiction to decide thereon in appeal from the decision of the Collector, consequently the review sought does not appear allowable.

Ordered that an Extract of these Proceedings be sent to the Collector for his information.

Nellore,
23rd April 1859.

(True Extract.)

(Signed) F. H. CROZIER, Civil Judge.

(True Copy.)

(Signed) F. B. ELTON, Collector.

Printed Copy of
No 2088
From the Collector of Nellore
to Board of Revenue
Fort St George

Dated 9th May 1859
Received 12th May 1859
Entered
Enclosure
No 55

Communicating the decision of the Court of Sudder Adawlut on the application made for a review of Judgement in the case of the Curnums of Brammanakraka and requesting instructions

2
In Con. No 2038 of 1859.

In Con. 25th February 1859, No. 772.

From F. B. ELTON, Esq., Collector of NELLORE,

dated Nellore, 22nd, February 1859, No. 23.

I have the honor to inform the Board that under the authority granted by them, as communicated in Extract from their Procedings under date 25th February 1858, No. 713, a petition was presented to the Civil Court of Nellore by the late Curnums of Brammanakraka, appealing from my decision of the 4th June 1856, modifying a sentence of the late Acting Head Assistant Collector passed under Regulation IX of 1822. I beg to forward copies of the Court's proceedings, and of my decision appealed against.

2. The Court seems to have fallen into error on several points, but I do not propose to make any remarks on what properly comes under the Court's province to decide; the repayment of the fines. I consider however that the Civil Judge has no power* to order the refund of the assessment charged on the land which has been credited to land Revenue, and cannot be repaid without the orders of higher authority. nor should I deem myself justified in restoring the Curnums to their situations after the serious irregularities committed by them, as shown in my decision of the 4th June 1856, of the justice of which the Board have expressed no doubt

* Boards' C. O. 1st Vol. Page 116 Notes.

3. I regret to find that the fines imposed have been also carried to account, and cannot therefore be repaid without orders.

4. Some delay has occurred, and difficulty been experienced, in tracing ont, after such a length of time, the sumscollected from the Curnums which are now ordered to be refunded to them. It appear that Rupees 109 As. 3-0 is the amount that was collected from them on the 1st, 4th, and 5th countsviz; fines at 10 Rupees each Curnum on the the 1st count Rupees 60: shist of the lands cultivated by them in excess of their Maniums (4th Count) Rupees 41-2-0; and on account of Mooloom land entered by them as Metta in the accounts (5th Count) Rupees 8-0-0. These sums were remitted by the Tahsildar of Cavaly under Sevoy Jummah, and Land Revenue respectively, in the accounts of June and July 1856, after the disposal of the appeal by me, and were carried to account in the Hoozoor Treasury without any specific instructions, according to the particulars of the Talook remittances.

5. Under these circumstances I beg to request that sanction may be granted for the repayment to the late Curnums of Brammanakraka of Rupees 60 levied from them as fines; and that I may be instructed what to do regarding the amount levied from them as the assessment of the lands.

Enclosure 1.

No. 12.

Extract from the Proceedings of the Civil Court in the Zillah of Nellore under date the 30th December 1858.

Read again Miscellaneous Petition No. 178 of 1858 presented by C. Nursiah, a Vakeel on behalf of Sricuntum Soobbaroya dishatooloo, Do. Sambaná, Do. Puttabhy, Penooburty Ramiah, Vissa Venkatanursoo and Do. Soobbaroyadoo on the 8th May 1858 appealing from the order of the Collector of Nellore dated 4th June 1856 dismissing them from their Offices of Carenekum of Brammanakraka and fining &c.

Read also endorsement of the Board of Revenue dated 25th February 1858 referring the Petitioners to seek redress in the established Courts of Udalut.

Read also records connected with the Case.

Order of the Court.

Of the 11 charges against the Petitioners, Curnums, the Collector dismissed the 2nd, 3rd, 6th, 7th, 8th, 9th, and 10th and it remains to consider charges 1, 4, 5. and 11.

1st Charge.—It is clear the lands of the village in question were classified under 4 heads according to their fertility, the pasture land at the lowest agreeably to the custom. The curnums in the explanation submitted in the case by the Collector plead they classed the lands regularly and adduce iustances in proof. The parties sent by the Collector to examine the lands, state the curnums classified them in the lowest terms agreeable to the representation of the Prosecutors and a few ryots and that they offer no other reasons for so doing. Of the two prosecutors, one resides in a distant Talook, of the ryots one only Vakareddy Nephew of the 1st prosecutor supports the prosecution, a second V. Tirmalacondareddy gave neither consistant nor precise evidence, the other ryots, Head Caupoos &c. assert on oath they never stated as represented by the Examiners; that the classification was correct and regular, &c. &c.

No admittance of incorrectness is allowed by the cultivators and nothing was proved against the Curnums by others of the village and the examiners admit they did not seek the opinion of the ryots to

the correctness or otherwise of the stated increase of cultivation or irregularity discovered by them.

In defence the curnums state the Peishcar, Tahsildar, and Mazoomdar examined the lands and cultivation in their company and their accounts do not differ from those submitted by them ; that the Sheristadar at the time of Jummabundy perused and Examined the accounts produced, classified the lands &c., and that they, the Curnums, are not responsible for fixing the classification. It is not stated by the Collector or his Assistant why the curnums should alone be held responsible for any irregnlarity discovered and in case of any irregularity and diminution of Sist discovered, such should have been duly reecovered but this was not done as stated by the Collector because " of the uncertain state of assessment prevailing in the district and the accounts and that indulgence should have consequently been shown to the curnums" still that officer imposes a fine under this head of Rs. 10 each curnum.

4th charge of cultivating wrong land as Maniums.

The curnums deny the cultivation by themselves or others of coroo lands for manium lands they assert the lands were Manium lands and that near the Manium lands there was no pasture land. They state the report of the examiners is not supported by evidence nor were boundaries specified by them ; neither is there evidence to prove the misappropriation of lands ; that the examiners themselves state it is difficult to ascertain the boundaries. The Collector while admitting this difficulty and dismissing that part of the charge of allowing other Maniumdars to cultivate wrong ground decided that Rs.41-2-0 part of the Sist Rs. 82-4-0 awarded by the Head Assistant to be paid by the curnums should be paid by them for lands cultivated by them in lieu of their own lands, but it is not shown by evidence the Curnums did enjoy lands not their own Maniums or lands in excess thereof, and the Collector does not state why they alone and not the Peishcar, Mazoomdar, or Tahsildar, whose duty it was to apparently inspect the lands each year prior to entering them in the yearly accounts or Statement, should not have been held equally responsible for any excess or wrong cultivation, if ascertained.

5th Mooloom land cultivated by two curnums and entered in the account as Metta.

The examiners state that the curnums cultivated 2 Gorroos watered by a well but having entered one Gorroo as Metta, lessened the assessment and that the small watering channels were visible. The curnums state one Gorroo was watered by the well and the other entered as Metta cultivation received only rain supply and was cultivated with sujja grain and well water was not required for it. They further plead the well was very old and out of repair and water for the one Gooroo was scarcely sufficient. It would appear the cultivation in question was long prior to the visit of the examiners and that the land had been since ploughed, the statement of the examiners therefore could with much difficulty be supported by their own observation and in the absence of direct evidence to the fact it seems unjust to find the curnums guilty and collect the sist from them. The Peishkar, Tahsisdar, &c. should also have mentioned in their accounts, the Gorroo in question had been cultivated as Mooloom, had snch been the case.

11th cultivation concealed and afterwards discovered.

The Collector states this to be the worst part of the charge. The Collector by supposition only concludes by the opposition of others in the village corrected accounts were produced by curnums subsequently but the record only shows complaints were first made June 23rd, while the accounts were given in by the curnums in May. The prosecutor alone states the curnums were previously aware that complaints would be brought forward. He states publicly and on many occasions he had stated his intention to the curnums, but there is no evidence to this. The supposition that the land was cultivated in January is merely grounded on the report of the examiners, no evidence to that effect is given by the Head capoos or others.

The curnums in defence assert to prove the report of the examiners to be erroneous, the crop in question *Peshanum* is never cultivated in January but is completed in October, that such prevails through the district and they further state the Tahsildar, Peishcar &c. &c. who examined the crop at the time did not so enter it in the accounts.

They further plead as the reason for the accounts having been given in May, that the Jummabundy for Fusly 1204 commenced in January, that they were ordered to be at the Cutcherry for the same in the December previous and to close their acconnts in conformity with those connected with the inspection of the lands by the Peishkar, Tahsildar and Mazoomdar, that they did so ; that after Jummabundy certain lands were cultivated in February and March with casory crops ; that these crops were measured in April and the accounts thereof were accordingly submitted in May that such is usual and that in June and July such accounts are sent in and they add the lands were examined by the Peishkar, Tahsildar &c. &c. according to these accounts submitted by them.

In opposition to the defence, Statement of curnums, there is the mere report of the examiners sent by the Collector, there is no evidence on the record, to support the report. The Curnums " Dowel Ejaffa" accounts were sent in prior to the charge ; intentional concealment of cultivation, therefore, under this head is not established against the curnums and no loss appears to have occurred to Government. After careful consideration of the whole case it appears, evidence to the guilt of curnums is entirely deficient, or such as to entail their dismissal from Office. The fine consequently inflicted on the first count and the sists directed to be received on account of the 4th and 5th counts, must be repaid.

Ordered that an Extract of these Proeeedings be sent to the Collector of Nellore for his information and guidance.

(True Extract)

(Signed) F. H. CROZIER,
Civil Judge.

(True Copy)

(Signed) F. B. ELTON,
Collector.

11th January 1859.

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Enclosure 2.

Endorsement.

This is an appeal against a decision of the Acting Head Assistant Collector passed under Regulation IX of 1822.

On a remission of the evidence for the Prosecution, and a consideration of the pleas urged in defence the Collector is of opinion that on the 1st count ; placing lands in lower tarums than should have been done the fact is proved, and the plea uged is insufficient to justify the act, but that considerable indulgence should be shown to the Curnums in consequence of the state of the assessment and accounts of this District.

On the 2nd count ; remission improperly given for land reported bad when it was really good Nothing has been considered proved against the Curnums nor any penalty awarded against them in the Original Decision, and with regard to the 3rd Count ; omission of Dowle Ejapha, this same remark is applicable.

On the 4th count cultivation of Maniums in wrong places. The persons who went to examine the village admit in their report that it is impossible, in consequence of the irrigular practice of the village in this respect, to say which is Manium and which is Coroo. This part of the charge is therefore not proved except as regards the excess Rupees 41-2-0 for not entering which in the accounts the Curnums are held answerable.

5th Count. Mooloom land entered as Metta which was cultivated by curnums Soobbaroyala Deeshta- and P. Ramiah. This charge is proved and these two curnums are especially answerable for it

6th Count. Small pieces of Garden cultivation concealed. No penalty has been awarded for this increase, found here and there in small patches of gardens, as the amount is small and to be divided into still smaller sums.

7th Count. Small garden of Plantains under charged. This small amount has been ordered to be collected but no penalty has been awarded.

8th and 9th Counts. Increase of Metta and Magany. These are the differences resulting from the remeasurement of land, the net increase after deducting the authorized per centage has been ordered to be charged and the decrease to be remitted and no further remark seems called for beyond stating how desirable it is to have the District Surveyed

10th Count. New Maniums allowed. This point had not been decided when the original decison was passed.

11th Count. Cultivation concealed at first and afterwards brought to account. This seems to be the worst part of the whole case against the Curnums ; from the report of the examiners there is reason to believe that lands bearing an assessment of Rpees 459-14-4 as per margin were cultivated before the Jummabundy which was in January, but were not entered in the cultivation accounts furnished by the Curnums till the following June, and then only it is supposed because they were compelled to do so by opposition to their plans in the village. The pleas of the Curnums in excuse are not borne ont by the accounts or the evidence. No fine however has been imposed on the Curnums for the part of the charge.

	Rs.	A.	P.
Peshamun	251	6	0
Eswaracora	95	4	7
Moodooroo. Casary.	113	3	9
	459	14	4

P.C. to Govt. to Nellore 3d June 1859.

Under shese circumstances the Collector concurs with the Head Assistant Collector in the conclusion that the Curnums are unfit for their offices and unworthy to hold them any longer, but is unable to confirm without alteration the fines awarded against them on the 1st Count which are alone properly speaking fines, the other sums ordered to be paid by them being the rent of the lands. The fines in this case are therefore reduced to 10 Rupees each Curnum. The amount ordered to be paid on the 4th count should also he considers be reduced to the excess of Rupees 41-2-0 above alluded to. The other sums ordered by the Acting Head Assistant Collector to be charged should be collected accordingly.

Nellore, Collectors' Office.
4th June 1856.

(Signed) F. B. ELTON,
Collector.

Received 25th February 1859.
Read 1st March 1859.
No. 1142.
From the Collector of Nellore
To the Secretary to the Board of Revenue
Dated 22d February 1859
Rec'd 25th February 1859
No. 23.

Regarding the case of the Late Curnum of Brammanapalle.

In Con. 25th Feb. 1859.

Printed Copy of No. 1142.

Noted the following

No. 2038.

EXTRACT from the PROCEEDINGS of the BOARD of REVENUE, dated 3rd June 1859.

Read again letter from the Collector of Nellore, dated 22d February 1859, No. 23.

(In Con. 25th February 1859, No. 772.)

Read also letter from the same Officer, dated 6th May 1859, No. 58.

(In Con. 9th May 1859, No. 2088.)

Ordered that the above letters be submitted to Government with a request that the Collector may be authorized to refund Rupees 60, the amount of certain fines levied and carried to account by him, but remitted on appeal by the Civil Court.

2. On an appeal to the Collector in 1856 from a decision passed by the Acting Head Assistant Collector under Regulation IX of 1822, the Collector concurred in the Acting Head Assistant's opinion that the Curnums were unfit for office and in his conviction of them on the first charge of placing Villager's lands in lower "Tarums" than should have been done, but he modified the sentence which really inflicted the only *fine* awarded, by reducing its amount to Rupees 60.

3. In two other cases he found that the Curnums were in possession of more Manyam land than they were entitled to hold and that part of their holding was entered in the accounts at too low a rate, and he ordered the proper assessment to be levied in each case. The terms of this decision are alone sufficient to show that in these instances the Curnums were not convicted of *fraud* which constitutes the essence of the category of offences against which Regulation IX of 1822 is directed, and that the Collector's order directing the levy of the established rate of assessment was an ordinary revenue decision with which the Court had no power to interfere.

4. On appeal however the Court has thought fit to decide that not only must the fines levied be refunded but that the Government demand assessed by the Collector under the circumstances stated must be remitted, and on application for a review of judgment by orders of the Board, as this award was considered to be beyond the Court's jurisdiction, the Court has refused to modify this portion of its appeal decision on the ground that the charge necessarily involved the offence of fraud against the State and that conviction of it was therefore properly subject for appeal to the Court as punishable under Regulation IX of 1822.

4. No precept appears to have been issued directing the Collector to give effect to this appeal decision, and the Board therefore propose to take no further notice of what they consider its objectionable features, but with the sanction of Government to direct the Collector to refund the *fine* properly so called but to make no further modification of his former order without the Board's permission first obtained.

(A true Extract.)

Sub Secretary.

To

J. D. BOURDILLON, Esq., Secretary to Government, R. D.
Copy to Collector of Nellore.

In Con. 9th June 1859. No. 2038.

Revenue 1859 Report
Pro: of Govt 17 Copies
No 1032.

Extract from the Proceedings
of the Board of Revenue

Dated 3rd
Appd 7
Recd 8
C.2-

June 1859.

No 2038.

Submitting Letters from the
Collector of Bellary and re-
questing that he may be au-
thorized to refund Rupees
60/- the Amount of certain
Fines levied and Carried to
the account by him but re-
mitted on appeal by the
Civil Court.

No 791-17th June 1859
With an order

No 797

The Governor in Council
resolves to refer the Board
to para 2 of the Government
order of March 30/59 which gave
the Board power to order
refunds in such cases as
the present.

Fort St. Geo:
17th June 1859.

6 Copies to the B of Revl. Dated 18th

No 797

1st 6 159

2

No 51852.

6th June 816