M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1198 — Press ~~Mis.~~

227-228

Dated 19 - 7 - 1860.

Not to be folded or roughly handled

No. 227. Read the following Proceedings of the Board of Revenue, dated 14th July 1860, No. 3,232 :—

Read letter from the Collector of South Arcot, dated 3rd July 1860, No. 97.

(In Cons., 7th July 1860, No. 3,284.)

Read letter from the same Officer, dated 10th July 1860, No. 100.

(In Cons., 12th July 1860, No. 3,394.)

O. S. No. 7 of 1859, on the file of the Principal Sudder Amín's Court at Cuddalore.

1. In the above letter the Collector of South Arcot requests permission to defend a Suit instituted against him and another for the recovery of certain lands.

2. From the correspondence it appears that the land in dispute is situated in the bed of a tank and that on this account several applications made for it by 2nd Defendant had been rejected. Plaintiff in Fasli 1267 applied for it after the usual period for such applications and the Tahsíldár made out a patta in his name which document the then Collector signed and issued at the Settlement. The 2nd Defendant complained of this and Mr. Ratliff, who had meanwhile been appointed Acting Collector, cancelled the patta and issued one to 2nd Defendant on the plea that through the misconduct of the villagers, the land had not been offered to him before being granted to Plaintiff.

Plaintiff.
Víra Reddi of Mélakondai in Villupuram Táluq.
Versus.
1. *A. E. R. McDonell, Esq., Acting Collector.*
2. *Para Rásen of Mélakondai.*

3. By the suit now reported, Plaintiff seeks to annul this act and recover the land.

4. The Collector, Mr. Wood, pleads in effect that the Court has no jurisdiction, and that the withdrawal of the patta was correct.

5. The Board are unable to concur in this view and consider that no valid defence can be made on behalf of Government. The patta was formerly issued by the Collector of the District and his successor had no legal power to cancel it or disturb Plaintiff's possession. His proper course was to refer 2nd Defendant to the Courts for recovery of the land, the matter being clearly within their jurisdiction. The fact that Plaintiff did not pay the assessment in Fasli 1267 when the land was waste is of no consequence, for if being justly liable for it, he yet failed to pay the assessment the Collector might have realised the arrear by legal process, but could not summarily eject him.

6. For these reasons the Board consider that Government should withdraw from the Suit and leave 2nd Defendant to uphold his possession if so disposed.

7. The time for filing the answer expired on the 12th instant, but the Collector has applied for an extension of three weeks.

(A true Extract.)

(Signed) J. D. SIM, *Secretary.*

No. 228. ORDER THEREON, 19th July 1860, No. 1,198.

1. This is a dispute respecting a piece of waste land in South Arcot. The facts are given in the Board's Proceedings and in the plaint and answer, especially the latter.

2. The Plaintiff obtained the land and received a patta for it from the Collector. On a complaint from the second Defendant, the Acting Collector then in charge of the District reversed the first order on the ground of fraud and misrepresentation, and gave the land to the said second Defendant. Plaintiff brings this action to recover possession; and the Board of Revenue hold that it cannot be defended, as the Acting Collector had no power to recall an order passed by his predecessor in the same office.

3. The Government agree on this point with the Board: but they are of opinion, that as the case now stands, the proper course to adopt is to leave the point at issue to be decided by the Court.

4. The Honorable the Governor in Council therefore sanctions the defence of the suit in the first instance at the public expense. The Collector's answer should be confined simply to a statement of the facts, leaving the decision of the question of law to the Court. The Government will determine when a copy of the decree shall be submitted, whether the costs, if any be adjudged against the Collector shall be borne by that Officer or by the State; if Mr. Ratliff's order is declared illegal, he will be made to pay the costs.

5. The Board of Revenue will ascertain and report for the information of Government what notice was taken of the conduct of the Tahsíldár and of the village officers in this case.

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

The question seems to me a purely legal question.
If the Law be as stated by the Board, the
Case cannot be entertained by the Court. If, as stated
by the Board of Revenue it can be entertained, I
vote be given against the Govt. Surely, there must
be some Legal authority that can decide this
preliminary point. — If a Collector has no power to
rescind a Grant, when fraudulently obtained, the Govt
must contend itself with punishing the Defaulter, when
misrepresentations lies to the amount of the fraud.
If it can rescind the Grant, at once do /
as the simplest mode of punishing all
concerned. But this the Attorney Genl must decide.
I should only further observe that the Grant
itself seems very objectionable, the Land being situated
within the limits of a Tank upon which the cultivation
of other Lands depends. Such Lands would never be
sold, leased, or Sold in Ceylon. J&W

Mr Morgan will be able to give a valuable opinion on the
point of Law —

I think with the R B — a Petition having once been
heard & Possession given — the case cannot be
not legally be opened as the Collector & the Revenue
Petitioner — the 2d Defendant having originally
defeated the Land Court Decree in Appeal
upon the merits — the Petitioner to Appeal
Dismissed & the Decree declared final by the Privy
Council upon the Collector's appeal from the
Court under the Regulation — I am
of opinion that the Collector has no
power to set aside the Decree

Remarks by the Hon.ble Mr. Morehead.

I think with the Revenue Board's Puttah having once been issued and possession given - the occupant could not legally be ejected, as the Collector Mr. Ratcliff has seen fit to do. The 2nd Defdt having been originally refused the land - could give him no legal right to contest the Puttah conferred on Plaintiff by Defendant and therefore as remarked by Mr. Bourdillon for the Collr. to have referred him to the Court would have been a farce.

I do not see that any deceit or fraud is alleged as having been committed by the Plaintiff

the

the villagers did not wish 2nd Defdt
to get the land - they therefore
falsely represented that the land
in question formed the bed of
a Tank - When Plaintiff sup-
plied they seem to have remained
quiet - No wrong therefore that
I can discover has been com-
mitted by Plaintiff and up to
the time the Puttah was granted
to Plaintiff I presume the Collr
could treat applications for
the land as he saw fit - This
he did - and with the Puttah
granted to Plaintiff Mr Rat-
liff ought not to have inter-
fered. —

I would let the suit
go on - desiring the Collector
to state the facts as they are -

and

and leaving it to the Court to
deal with the case as it sees fit

If the Collector act of
turning out the 2nd Defendant
is pronounced illegal I would
make the Collr pay the costs

Signed J W Morehead

Revenue 1860 Dept.

Remarks by the Hon.ble
Mr. Morehead.

Dated } July 1860.
Rec.d 17 }

-cond Defendant, the acting Collector then in charge of the District reversed the first order on the ground of fraud and misrepresentation, and gave the land to the said second Defendant. Plaintiff brings this action to recover possession; and the Board of Revenue hold that it cannot be defended, as the acting Collector had no power to recall an order passed by his predecessor in the same office.

3. The Government agree on this point with the Board: but ~~they are of opinion to prefer the second defendant to the Court, as the Board say the Collector ought~~ opinion that as the case now stands, the proper course to adopt is to leave the point at issue to be decided by the Court.

~~ought to have done, would have been utterly useless, as the fact of his having been originally refused the land, could give him no legal right to collect the rents conferred on Plaintiff by the first Defendant.~~

4. ~~With these remarks~~ The Honorable the Governor in Council therefore sanctions the defence of the suit in the first instance at the public expense. The Collector's answer should be confined simply to a statement of the facts, leaving the decision of the question of law to the Court. The Government will determine when a copy of the decree shall be submitted, whether the costs, if any be

be adjudged against the Collector shall be borne by that officer or by the State; if Mr. Ratliff's order is declared illegal, he will be made to pay the costs.

5. The Board of Revenue will ascertain and report for the information of Government what notice was taken of the conduct of the Tahsildar and of the village officers in this case.

12 Copies
To the Board of Revenue
with 6 Encls
24th Sept 20

Suit against the Collector of South Arcot

Immediate — with Tr.
Immediate Secs to amendment —

I circulate the draft as I am not quite sure that it is what is intended — the resolution to defend the suit and direct payment of the amount in accordance with the decision contained in Para 3 that it cannot be defended

Copy July 18