M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1236	Press / ~~Mis.~~
301-302	
Dated 25-7- 18 69	

Not to be folded or roughly handled

No. 301. Read the following Proceedings of the Board of Revenue, dated 14th July 1860, No. 3,233:—

Read letter from the Collector of Salem, dated 22nd June 1860, No. 173.

(In Cons., 26th June 1860, No. 3,076.)

Read also letter from the same Officer, dated 29th June 1860, No. 186.

(In Cons., 2nd July 1860, No. 3,197.)

Read also letter from the Sub-Collector, dated 5th July 1860, No. 62.

(In Cons., 9th July 1860, No. 3,310.)

Read also letter from the same Officer, dated 6th July 1860, No. 63.

(In Cons., 9th July 1860, No. 3,311.)

O. S. No. 7 of 1860, *Sub-Court of Salem.*

Plaintiffs.

1. *Perumánda Mudali of Moganúr in the Námakal Táluq.*
2. *Kuppuswámi Náiken.*

Versus.

Defendants.

1. *T. J. Knox, Esq., Officiating Collector.*
2. *Musuku Mudali of Moganúr.*

1. The above correspondence has reference to a Suit instituted in the Sub-Court of Salem against the Collector of that District and another, for the recovery of a piece of land.

2. Plaintiffs it appears applied for the land in dispute to the Sub-Collector, who referred the matter to the Tahsíldár. This Officer granted them a Cowle for it, and the Sub-Collector issued a patta at the settlement. Certain Weavers of the village in which the land is situated, however, objected to the land being given for cultivation on the plea, that it formed part of a tope reserved for the use of their class.

3. This objection was inquired into, and overruled by the Sub-Collector prior to the issue of a patta; but on the matter coming in appeal before Mr. Knox, the Acting Collector, that gentleman deputed Mr. Hathaway, his Assistant, to visit the spot, and decide whether the land did belong to the tope or not. Mr. Hathaway decided that the former was the case, and Mr. Knox, therefore, cancelled the patta. The object of the present suit is to set aside this decision and recover the land.

4. Mr. Brett, the present Collector, takes the same view of the case as Mr. Knox did, and proposes to meet the claim by answering that the land in dispute is part of the tope specially reserved for the use of the Weavers of the village, and entered in the Survey Accounts as not available for cultivation.

5. The Board would add to this the plea that the Officiating Collector, as the Chief Revenue Authority of the District, had full legal power to revise, and on good cause being shown, to annul the proceedings of his subordinate, by whom the patta was issued.

6. In reporting the institution of the action, Mr. Brett gave it as his opinion that the Sub-Collector, Mr. H. G. Smith, had not thoroughly investigated the original complaint of the Weavers. The Board called upon Mr. Smith for an explanation of his conduct in the matter. His reply, which is the third of the papers above recorded, seems to show that he did not issue the patta until inquiry had been made by the Tahsíldár, and the latter Officer's report was confirmed by the Karanams and others of the village, whom Mr. Smith personally interrogated on the subject.

Procs. 27th June 1860, *No.* 2,977.

7. The last of the letters recorded above shows that Plaintiffs have greatly exaggerated their outlay in improving the land. The Revenue Officers calculate the outlay at 70 Rupees; one person states that Plaintiffs rated it at Rupees 150, while in the plaint Rupees 250 is the sum entered.

Dated 6th, in Cons., 9th July 1860, *No.* 3,311.

8. Had the Plaintiffs sued merely for the recovery of their outlay on the land, the Board would have recommended that the case should have been compromised, because the Revenue Officers should not have given the land at all under the circumstances, and this was a point for them, and not the Plaintiffs, to ascertain and decide.

9. As, however, Plaintiffs claim the land itself, which cannot be given without prejudice to the Weavers, the Board recommend that the claim be met by putting in the Collector's reply with the addition proposed in paragraph 5 of these Proceedings.

10. The time for filing the answer expires on the 23rd instant.

(A true Extract).

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

No. 302. ORDER THEREON, 25th July 1860, No. 1,236.

1. In this case a piece of waste land was given to the Plaintiffs for cultivation, on their application, and a patta for it was issued to them by the Sub-Collector; but afterwards the patta was cancelled by the Collector, on his being satisfied that the land formed part of a tope appropriated to the use of the Weavers of the village.

2. The propriety of the cancelment of the patta depends on the question whether the land really formed part of the tope, and had been so used up to that time. The papers before Government do not contain the means of forming a clear opinion on this question; and it is one for the Court to decide. An answer should be filed, stating the facts for the decision of the Court. If that decision is adverse to the Plaintiffs, the Government consider it fair that he should be reimbursed for his actual outlay on the land, since it was incurred on the authority of the patta given by the Sub-Collector; and the willingness of the Government to reimburse them should be included in the answer.

3. An answer to the foregoing effect may be filed at the expense of Government in the first instance; but they 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.

4. A plea should be inserted in the answer to the effect proposed by the Board in paragraph 5 of their Proceedings.

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

No. 3,132.

Proceedings of the Board of Revenue, dated 7th July 1860.

Read the following letter from H. A. BRETT, Esq., Collector of Salem, to J. D. SIM, Esq., Secretary to the Board of Revenue, Fort Saint George; dated Oossoor, 29th June 1860, No. 186 :—

I have the honor to acknowledge the receipt of the Board's Proceedings, dated the 27th instant, No. 2,977, and to state that I have requested the Sub-Collector to forward direct to the Board the required explanation, and to inform the Board what loss the Plaintiff has really sustained by his ejectment.

2. I submit a copy of my letter to the Sub-Collector, explaining in detail the defective character of his proceedings.

Enclosure No. 1.

From H. A. BRETT, Esq., Collector of Salem, to H. G. SMITH, Esq., Sub-Collector of Salem; dated Oossoor, 29th June 1860, No. 474.

I have the honor to transmit a copy of the Board's Proceedings, dated the 27th instant, No. 2,977, with other papers noted in the margin, and to request you will be good enough to forward direct to the Board (so that it may reach the Board within the time specified) the explanation called for in paragraph 2.

Copy of my letter to the Board, dated 22nd June 1860, No. 173, with enclosures.
Copy of Takid to the Tahsildar of Namcul, dated 26th January 1860.
Do. do. 26th June 1860.
Do. do. 29th June 1860.

2. You will observe that paragraph 8 of my letter to the Board refers to the defective character of your proceedings in the case in question. You were, I think, wrong in giving a Putta to the Plaintiffs on the bare report which the Tahsildar of Namcul entered in the Settlement Book for Fasli 1268. It appears from that report that the persons on whose appeal Mr. Knox acted, had complained some time previous to the Settlement. Their statements, therefore, should have been recorded, either at or before the Settlement, with any evidence that the Curnum was able to give on the point in dispute.

Vide paragraph 2 of my letter to the Board.

3. The Order recorded in the Settlement Book also shows that the objections raised by the Petitioners had not been fully considered. This Order runs as follows:—That the Petitioners might have a Putta; but that if it should appear subsequently that they encroached on the Pavady Tope; or, if any complaint were made by the Kykalars, that they were put to any inconvenience by the Plaintiffs, the Plaintiffs would be punished, and whether the land should not be taken away, would be considered. If you had fully investigated the Petitioner's case, and so satisfied yourself that the objections referred to in the Tahsildar's report were unfounded, such an order as the one above referred to would not have been recorded.

4. With regard also to the Petition subsequently referred to the Tahsildar for inquiry, the course taken by the Tahsildar shows that his previous inquiry was incomplete. The Mahzurnamah and the Curnum's Statement which he *then* took, he ought to have taken before he recorded his opinion in the Settlement Book. I send you with this letter a copy of a Takid * which Mr. Knox addressed on the above point to the Tahsildar of Namcul, and copy of a Takid, † which I have recently sent him on the same subject, calling upon him to explain his conduct on this and some other points.

Vide paragraph 4 of my letter to the Board.

* Dated 26th January last.

† Dated the 26th June 1860.

5. The Board desire to know what is the actual loss sustained by the Plaintiff in consequence of his ejectment. I have sent an order direct to the Tahsildar of Namcul on this point, a copy of which I enclose, instructing him to employ the Taluq Sheristadar in obtaining the information which the Board call for, and to forward his report to you at Salem with the least possible delay. I beg you will communicate in your letter to the Board whatever the Tahsildar may report regarding the Plaintiff's actual loss.

6. I return the record received with your Yadast, dated 30th May, and also send you the Settlement Book, received from the Tahsildar of Namcul.

The Board will await the Sub-Collector's explanation.

(True Copies and Extract.)

(Signed) J. D. SIM,
Secretary.

To H. A. Brett, Esq., Collector of Salem.

Exd. J. Wright.

1860 Departt.

Enclosure 2 in Proceedings of the Board of Revenue to the Secretary to Government Revt. Departt. dated 14th July 1860 No. 3233.

R 1439/60

Letter from the Collr. of Salem to the Secy to the Bd of Revr. dated 29: June 1860 No. 186, & the Bd's Proc. to the Collr of Salem dated 7th July 1860 No. 3132 Regd the Bd's No. 7 of 1860.

25 July 60

No. 1230

No. 2,977.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 27th June 1860.

Read the following letter from H. A. BRETT, Esq., Collector of Salem, to J. D. SIM, Esq., Secretary to the Board of Revenue, Fort Saint George; dated Oosoor, 22nd June 1860, No. 173:—

I have the honor to forward herewith the translation of a plaint filed in Original Suit No. 7 of 1860, on the file of the Subordinate Court of Salem, by Paroomanda Moodely and another, against the late Officiating Collector of Salem, and a person named Moosookoo Moodely, with draft of an answer which I propose to file in the above Suit; and to request the Board will be good enough to obtain the sanction of the Government for my defending the Suit at the public expense.

2. The facts of the case are as follow:—Plaintiffs, Paroomanda Moodely and Cooppoosamy Naiken, presented a Durkast for the land in question, on the 16th August 1858, to the Sub-Collector, who forwarded the Durkast to the Tahsildar. The Tahsildar, after some inquiry, made over the land to the Plaintiffs on the 22nd January 1859, on Cowle tenure; and at the Jumabundy of that Fasli, the Sub-Collector gave the Plaintiffs a Putta for the land. It appears from the Settlement Book, that Chinniah Moodely and other weavers of Moganoor had objected previous to the settlement to the land being made over to the Plaintiffs, but the record does not show that the complainants were examined in person on the subject.

3. Subsequently, the same parties applied by Petition to the Sub-Collector, objecting that the land given for cultivation belonged to the Pavady Tope, or the ground appropriated to the use of the weavers.

4. The Petition was sent to the Tahsildar. The Tahsildar reported to the Sub-Collector, under date the 15th November 1859, that the land in question undoubtedly formed part of the village Porumboke land, but that it was in no way connected with the tope used by the weavers in the village for weaving purposes; and that the weavers would suffer no inconvenience through the cultivation of the land. The Tahsildar sent up with his report a Mahazernamah signed by seven people, certifying to the above effect.

5. The Sub-Collector passed no orders on this report, but sent it on to the Officiating Collector, to whom the same parties had made an appeal.

6. In the January following Mr. Knox proceeded to Namkul to make the settlement for Fasli 1269. During his stay at Namkul he deputed his Assistant, Mr. Hathaway, to Moganoor to inspect the land in question, and to report on the point in dispute.

6. From Mr. Hathaway's report and the plan of the ground which accompanied his report it appeared that the land in question formed part of the public tope used by the weavers of Moganoor for weaving purposes; and that it could not be cultivated without inconvenience to that class. On those grounds Mr. Knox cancelled the Putta which the Sub-Collector had granted to the Plaintiffs in the previous Fasli.

8. Mr. Knox was, I think, right in the course he took, though the Plaintiffs, inasmuch as they received a Putta, have some ground of complaint. If the Sub-Collector had taken the proper course, and fully investigated the complainant's case, either at the settlement of Fasli 1268, or before, the present action might have been avoided.

9. The time for filing the answer will expire on the 23rd July next.

The Board approve of the draft answer, but would add to it the plea that the Collector, as the chief Revenue authority of the District, had full legal power to revise and cancel the proceedings of the Subordinate Collector on good cause being shown to his satisfaction.

2. Before addressing Government, however, the Board request that the Sub-Collector may be called on to explain his omission, duly to inquire into the case, and that the Collector will endeavor to ascertain what loss Plaintiff really sustained by his ejectment. The Board request that this information may be supplied by the 10th proximo at latest, to admit of the sanction of Government being obtained in due time.

(A true Copy and Extract.)

(Signed) J. D. SIM,
Secretary.

To H. A. Brett, Esq., Collector of Salem.

Exd. J. Wright.

Reed.

This is another case in which an action is brought to recover waste land given first for cultivation to an Inhabitant & afterwards taken from him. The difference between this & the case enclosed in the morning (Office N° 1429) is that in this case the first order was given by the Sub. Coll. on the record & the Coll. on the papers before him. It seems to me & no doubt it means clear that the land was part of the weavers' Topes but the Govt will probably

Means

Decis in the case enclosed in mine appears to be reason to doubt.

The action for the recovery of the Land itself, and he insists that, if the Collector has right in suppressing it, that it belongs to the Weavers' Tope, and is to be described in Govt Surveys.

It is to be remarked that the results of these personal discussions lead to this conclusion, while the opposite one rests upon the verbal assurances of the Tahsildar, & some of the Village Elders, who probably had an interest in the matter. J.S.W.

1860. Departt.

Enclosure 1 in Proceedings of the Board of Revenue to the Secretary to Government Revt Departt. Dated 14th July 1860 N° 3233.

Encl 2. Ol. Encl

R 1439/60.

Letter from the Coll. of Salem to the Secy to the Bd of Revt dated 22d June 1860 N° 173. & the Bd's Proc. to the Coll. of Salem dated 27th June 1860 N° 2977, Regl Ol. N° 7 of 1860.

25 July 60

N° 1236

P. 301.

except the opinion of the actg. Colly. & the Coll., who advise the refusal of the applicant Coll. In that case they will authorize the defence at the cost of Government. But I think it will be fair to reimburse the Plff. for his outlay on the land, & I think a declaration of the willingness of the Govt. to do this should be included in the answer. The outlay was incurred on the authority of the Public given by the Sub. Coll.

3. I am inclined to think, however, that the fairest course would be for the Govt. not to defend

That is the course I should advise, but I leave it to the Court to decide whether the land between the two lakes - weavers' lake or not, a remedy I think it to declare the willingness of should be the Govt. to reimburse the plaintiff out of for his actual outlay on that portion of the land if the Commissioner Petah has been duly against his claim issued - parties claiming a right to take lands - as selected in these orders are requested should be refused to the County

July 16.

The Govt is clearly bound to indemnify the Plaintiffs for all bonâ fide outlay upon the Land in question, since it was incurred upon the faith of an

Rev Dept 8

No 1236

Proceedings of the Madras Government
Under date the 25th July 1850.

Read the following
Proceedings of the Board
of Revenue

Reporting the institution
of O.S. No 7 of 1850 in the Sub
Court of Salem against the
Collr and another for the
recovery of a piece of land
and recommending that the
claim be met by putting
in the Collector's reply with
the collection imposed by
the Board.

(1st Core enter 14th July 1850 No 3239)

In this case a
piece of waste land was
given to the Plaintiffs for cul
tivation, on their appli
cation, and a patta for
it was signed to them by
the Sub Collector; but
afterwards the patta
was cancelled by the
Collector, on his being
satisfied that the land
formed part of a tope
appropriated to the
use

patta

are of the weavers of the Village -

2. The propriety of the concealment of the matter depends on the question whether the land really formed part of the lope, and had been so used up to that time. The papers before Government do not contain the means of forming a clear opinion on this question, and it is one for the Courts to decide. An answer should be filed, stating the facts for the decision of the Court. If that decision is adverse to the Plaintiffs, the Government consider it fair that he should be reimbursed for his actual

actual outlay on the land, since it was incurred on the authority of the patta given by the Sub Collector; and the willingness of the Government to reimburse them should be included in the answer.

3. An answer to the foregoing appeal may be filed at the expense of Government in the first instance, but they 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.

4. Appeal should be

inserted in the answer
to the appeal proposed
by the Board in para
5 of their Proceedings

Suit against the Collector
of Salem for the recovery
of land.

12 Copies
Board of Revenue
Dis. 25
1.

Sir — Under orders
Immediate
Dr.

Revenue 1860 Dept^t.
Pro: of Govt. for July.

No. 1236.
Pro: of the Madras Govt.
Dy 25th July 1860.

Sanctioning the
defence in O.S. No. 7 of
1860 in the Sub Court
of Salem.

No. 301 & 302.