459/R 11/84

M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1944 Press ~~Mis.~~

386-387

Dated 24-10-1860.

Not to be folded or roughly handled

No. 386. Read the following Proceedings of the Board of Revenue, dated 13th October 1860, No. 4,700 :—

Read letter from the Collector of Salem, dated 24th September 1860, No. 254 :—
(In Cons., 25th September 1860, No. 4,813.)

1. Submitted for the consideration and orders of the Honorable the Governor in Council. The particulars of this suit were reported to Government in the Board's letter dated 20th May 1856, No. 1,532; and are further recapitulated in paragraphs 4 to 11 of the Collector's letter above recorded.

2. The Subordinate Judge has decided the suit in favor of the Plaintiff on the ground that he was the first applicant for the disputed lands, and as such entitled to have them (though once refused by him on account of their high assessment) on the first occasion that it was in the Collector's power to put him in possession at a reduced rate of assessment. The Court in fact denies the Collector any liberty of action in such cases.

3. The Board do not at all concur in the views of the Subordinate Court on this point, but nevertheless they cannot recommend an appeal against its decision. The Collector in the answer filed by him pleaded the merits of the case fully, and the Board do not think it would be right, therefore, for the Collector to demur now to the jurisdiction of the Court.

4. In addition to the foregoing reasons, it may be mentioned that revised rules for Durkhasts were sanctioned by Government in Extract Minutes Consultation 2nd September 1858, No. 1,200, which will govern all future cases of a similar character, so that the discretion allowed to Collectors by the new rules, will not be affected by the present decision based upon the old practice.

Vide C. O. 6th October 1858, *page* 169.

	R.	A.	P.
Plaintiff's costs.....	15	3	0
Defendant's do.	7	0	0
	22	3	0

5. Under these circumstances, the Board recommend that further proceedings in the suit be dropped, and that sanction be granted for the payment of the costs incurred in the Subordinate Court by both parties, viz., Rupees 22-3-0.

(A true Extract.)

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

No. 387. ORDER THEREON, 24th October 1860, No. 1,944.

1. The Board of Revenue report that O. S. No. 5 of 1856, instituted against the Collector of Salem and others in the Sub-Court of the District by Sama Josian to obtain possession of certain lands together with a well in the Razipur táluq has been decided in favor of the plaintiff. The Collector has applied for leave to appeal from the decree; but the Board recommend for reasons stated that further proceedings should be dropped.

2. The Government are unable to concur in this recommendation. They are of opinion that the Sub-Judge is clearly wrong; the mere presentation of a Darkast cannot give a man any right whatever to waste land. The Collector's reasons for giving the land to the 3rd defendant seem to the Government sound; but independently of this they think that an appeal should be made in order to set aside the Sub-Judge's dictum; otherwise the decree may be repeated in spite of new Darkast rules.

3. The Honorable the Governor in Council directs that an appeal shall be filed, based on the merits of the case; the main points being that the presentation of a Darkast by the petitioner gave him no right whatever to the land; and that the Collector acting under the orders of Government may choose between applicants. The appeal plaint should be drawn in the Board's office and transmitted to the Collector without delay, to be filed before the 1st proximo. It is to be regretted that more expedition was not used in sending up the case, which did not reach the Government office till the 18th instant.

4. The Appeal suit will in the first instance, be conducted at the public expense, but the Governor in Council 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 the Government.

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

No. 4,700.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 13th October 1860.

Read letter from the Collector of Salem, dated 24th September 1860, No. 254.

(In Cons., 25th September 1860, No. 4,813.)

1. Submitted for the consideration and orders of the Honorable the Governor in Council. The particulars of this suit were reported to Government in the Board's letter dated 20th May 1856, No. 1,532; and are further recapitulated in paragraphs 4 to 11 of the Collector's letter above recorded.

2. The Subordinate Judge has decided the suit in favor of the Plaintiff on the ground that he was the first applicant for the disputed lands, and as such entitled to have them (though once refused by him on account of their high assessment) on the first occasion that it was in the Collector's power to put him in possession at a reduced rate of assessment. The Court in fact denies the Collector any liberty of action in such cases.

3. The Board do not at all concur in the views of the Subordinate Court on this point, but nevertheless they cannot recommend an appeal against its decision. The Collector in the answer filed by him pleaded the merits of the case fully, and the Board do not think it would be right, therefore, for the Collector to demur now to the jurisdiction of the Court.

4. In addition to the foregoing reasons, it may be mentioned that revised rules for Durkhasts were sanctioned by Government in Extract Minutes Consultation 2nd September 1858, No. 1,209, which will govern all future cases of a similar character, so that the discretion allowed to Collectors by the new rules, will not be affected by the present decision based upon the old practice.

Vide C. O. 6th October 1858, page 169.

	R.	A.	P.
Plaintiff's costs.....	15	3	0
Defendant's „	7	0	0
	22	3	0

5. Under these circumstances, the Board recommend that further proceedings in the suit be dropped, and that sanction be granted for the payment of the costs incurred in the Subordinate Court by both parties, viz. Rupees 22-3-0.

(A true Extract.)

Secretary.

To J. D. Bourdillon, Esq., Secretary to Government, R. D.

Copy to H. A. Brett, Esq., Collector of Salem.

Exd. J. Wright.

Rec. Dept.

No. 1944.

Proceedings of the Madras Government
Under date the 24th October 1860.

Read the following Proceedings of the Board of Revenue.

Submitting for orders a letter from the Collector of Salem forwarding copy of the Decree of the Sub Court of Salem on original Suit No. 5 of 1856 and recommending that further proceedings be stayed and sanction granted for the payment of the costs incurred by both parties.

(Here enter 13th October 1860 No. 4700)

The Board of Revenue report that O.S. No. 5 of 1856, instituted against the Collector of Salem and others in the Sub Court of the district by Sama Josiar to obtain possession of certain lands together with a well in the Razipur taluq has been decided in favor of the plaintiff. The Collector has applied for leave to appeal from the decree, but the Board recommend for reasons-

Rec'd 27th May 1861 the 30th &
Pro. Sept. 185 the 12th.

Read 18th October 1860 the Proceedings of the Board of Revenue No. 2295

Dated 13th October 1860

Despatched 18

Encl. 3 Papers

Ordered as Letter from the Collector of Salem forwarding Copy of the Decree of the Sub Court of Salem on Original Suit No. 5 of 1856 & recommending that Sanction be granted for the payment of the Costs incurred by both the parties

Rec. 22-3-61

Pro. 1944-24 Oct.

No. 386.

Rec'd 22 Oct. No. 23

asides the subjoined opinion - Observe the decree may be reported in this of new Instant

I should certainly abstain
the decree is certainly wrong
yrs. [illegible]

reasons stated that further proceedings should be dropped.

2- The Government are unable to concur in this recommendation. They are of opinion that the Sub Judge's decree is clearly wrong, the mere presentation of a darkast cannot give a man any right whatever to waste land. The Collector's reasons for giving the land to the 3rd deft. seem to the Govt. sound, but independently of this they think that an appeal should be made in order to set aside the Sub Judge's dictum; otherwise the decree may be repeated in spite of new darkast rules.

3.- The Honorable the Governor in Council directs that an appeal shall be filed, based on the merits of the case, the main points being that the Collector of Salem is empowered to file an appeal as proposed, the presentation of a darkhast by the Petitioner gave him no right whatever to the land, and that the Collr. acting under the orders of Govt. may choose between applicants.

4- The appeal Plaint should be drawn in the Board's office and transmitted to the Collector without delay, to be filed before the 1st. Proximo. It is to be expected that more expedition will be used in sending up the case which did not reach the Govt. office till the 18th instant.

but the Governor in Council 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 the Government.

R. L. Copy to Bd. of Rev. with 30 Encls. Disp. 24 12 Stated Copies to do. 26

The Coll. of Salem th
appeal from the decree
in O.S. Nos 4 & 1856 of
the Sub Court.—

Revenue 1860 Oct 4th.
Rec'd Copy for Collector.

10/1944.

Rec'd Letter Hadrian Lord
Sept 4th Collector 1860.

Rec'd Copy of Pet. of Appeal
Dec 22.35. in Pet

Decree in O.S. Nos
of 1856 on the file of the said
Court of Salem to be affixed.
Ed. Farm

No 1886 438/

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