M.R.O. 14—10,000—21-4-22.

# MADRAS RECORD OFFICE.

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## Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1564 Press
~~Mis.~~

7.72

Dated 5. 8. 1861.

***Not to be folded or roughly handled***

No. 71. Read the following Proceedings of the Board of Revenue, dated 31st July 1861, No. 4,129 :—

Read the following letter from B. CUNLIFFE, Esq., Collector of Madras, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Chepauk, dated Madras, 27th July 1861, No. 251.

SIR,

1. I have the honor to forward copy of a plaint filed before the District Munsif of Tripássúr by Bálappah Náiak and others of Gummidipúnde in the Ponnéri Táluq against (1) Paránkusa Iyangár, a resident of the same village, (2) Perumáll Náyudu, Tahsíldár of the Ponnéri Táluq, (3) V. Vardacharri, Sarishtadár of the Collector's Office, and others, claiming the restoration of cawnies 15-11-8 of Nunja land, and the value of its produce, estimated at Rupees 238-4-2.

2. The 1st Defendant made a Darkhást on the 1st February 1859, for 36 cawnies of Nunja immemorial waste, at a reduced assessment of Rupees 1-5-0 per cawnie, and the Tahsíldár, with reference to this offer, on the 10th idem, took a deposition from the Plaintiffs, who therein declared that the land was required by them for pasturage, but that if the Circar was determined to rent it, they were prepared to take it on full teerwah.

Enclosure A.

3. On the 8th March (the Huzúr Kacheri being at Púlicat for the settlement of the Ponnéri Táluq) the 1st Defendant made an application for cawnies 15-11-8, a portion of the land previously sought for with an assessment of Rupees 61-11-10, under the Tope rules, and the Collector issued a cowle to him for the same on the 10th idem.

4. The Plaintiffs seek by the suit to gain possession of this land on the grounds that they are Mirásdárs of the village, and that the land had been taken up by them, and that they had cleared a portion of the brushwood upon it, and that the fines imposed by the Magistrate upon them for ploughing and sowing the land, without the permission of the 1st Defendant, were refunded to them by order of the Session's Court, to which they had appealed against the Magistrate's sentence.

5. The ground having been placed by the Collector in the possession of the 1st Defendant, and having been forcibly ploughed and sown by the Plaintiffs, the latter were fined for this proceeding on a complaint by the 1st Defendant, and the fines were returned by the Session's Court, because, in its judgment, the land was in the possession of the Plaintiffs, and because they were not aware of its having been made over on cowle to the 1st Defendant. No order was made regarding the land, which remained in the hands of the 1st Defendant, having been made over to him by the Magistrate.

6. The Plaintiffs state that they have included the Tahsíldár and the Sarishtadár as defendants, because the first denied having taken from them the deposition alluded to in paragraph 12, and because the second had persuaded the Collector to give the cowle.

7. Gummidipúndi is one of the villages received many years ago from the North Arcot District, and no Mirás exists in it, and no stress can be laid, in my opinion, upon the fact alleged by the Plaintiffs that the land was in their possession, and that they had begun to clear it; for the village accounts show that it was 20 years waste, and if Plaintiffs required the land for cultivation, it was their duty to apply for it to the Revenue authorities, and to receive it from them, and their entrance upon it, in any other manner, cannot be recognized.

8. The 1st Defendant was the first applicant, and the late Collector gave him the land as such, as it belonged to the Government, and as that was the course invariably followed by this Office in regard to Darkhasts in these Non-Mirási villages.

9. The 2nd Defendant (Tahsíldár) did deny in a subsequent Arzi to the Collector his having taken the deposition; but he now declares that he did so from forgetfulness as the deposition had been sent with other papers to the Huzúr Office during the settlement at Púlicat, and was, therefore, not on his records when he forwarded his denial; and it is plain that the

late Collector, from his endorsement on Board's Petition, No. 2,274, of 1859, and from his return* to the precept of the Session's Court was aware of this agreement, and treated it as of no consequence, for the village not being a Mirási one, the waste land belonged to Government, and was available to any one upon whom the Collector chose to confer it.

* 20th September 1859, No. 268.

10. For the same reason, viz., the late Collector's knowledge of the details of the case, the Sarishtadár cannot be supposed to have influenced him, and therefore, these two Officers being merely the ministerial Agents of the Collector, should I think be excluded from the list of the Defendants, and my name substituted, and that I should be permitted to defend the action at the public expense.

11. In accordance with this recommendation, I have prepared three answers, which I beg to forward for approval.

12. The time for filing the answer expiring with this month, application has been made for an extension until the end of next month.

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1. Ordered to be submitted to Government with the Board's recommendation that the Collector be authorized to apply to be included as a Defendant, and to defend the suit at the public cost.

2. The Board were at first disposed to think that although the Plaintiffs might have no claim on the pretence of Mirási right, still they might have had a preferential right to the land under the orders of the Home Government that waste land sought for cultivation should as a rule be first offered to the resident villagers, and that as the Plaintiffs had expressed their willingness to take the land on assessment the Collector was not warranted in giving the lands to others.

3. But although it is not distinctly stated in the draft answers, the Board gather from the Magistrate's Takhíd of 10th March 1859, and from the Plaint, that the 1st Defendant who first sought and who obtained the land from the Collector is also a resident villager and Ryot, and that consequently his right under the order above referred to was as good as that of the Plaintiffs, while as first applicant he was entitled to the preference which he obtained.

4. Under these circumstances, the Board consider that Mr. Shubrick's Act was perfectly in order, and have no hesitation in recommending the defence of the suit: but the Collector should distinctly plead the above fact in justification, and should base the defence thereon.

(A true Copy and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

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No. 72. ORDER THEREON, 5th August 1861, No. 1,564.

1. The Governor in Council sanctions the defence of the suit as proposed by the Board of Revenue; but will determine when a copy of the decree is furnished whether the costs if any be adjudged against the officers of Government shall be borne by them or by the Government. In future any additions or alterations which the Board may deem necessary should be embodied in the draft answer submitted to Government.

2. The Board will consider whether the Collector is adopting the proper course to ensure his being made a Defendant instead of the 2nd and 3rd Defendants. The Government apprehend that a formal application should be made to the Court for his admission as a Defendant, the rights of Government being involved in the suit, and that on this being complied with the 2nd and 3rd Defendants' answers might be the simple plea that they acted under the orders of their official superior. In the event of the application being refused the Collector's pleas might be embodied in the answer of the Tahsíldár.

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

Revenue Department.

No. 1564

Proceedings of the Madras Government
Under date the 5th August 1861

Read the following
Proceedings of the Board of
Revenue

Submitting with remarks
a letter from the Collector of Madras
requesting that the suit in the
Trepassur Moonsiff's Court, relative
to the grant of land to one Varan-
-kusa Iyengar, be defended at the
public expense

Here enter 31st July 1861 No. 4129

The Governor in
Council sanctions the defence
of the Suit,
as proposed by the Board of
Revenue; but will determine
when a copy of the Decree
is furnished whether the costs
if any be adjudged against
their officers, shall be borne
by them or by the Govt.
In future any additions or
alterations which the Board
may deem necessary should
be embodied in the Draft
answer submitted to Govt.

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The Board will consider whither the Collector is adopting the proper course to ensure his being made a Defendant in stead of the 2nd & 3rd Defendants. The Govt apprehend that a formal application should be made to the Court for his admission as a Defendant, the rights of Govt being involved in the suit and that on this being complied with the 2nd & 3rd Defendants answers might be the simple plea that they acted under the orders of their official superior. In the event of the application being refused the Collectors plea might be embodied in the answer of the Tahsildar.

I. D. S

11 Copies
To the Board of Revenue.
with 7 Encls
Copies

Suit against the Collr of Madras.

23 Aug. 65.