M.R.O. 14—1

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2317 Press ~~Mis.~~

146-47

Dated 17-12-1861.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 17th December 1861.

No. 146. Read the following Proceedings of the Board of Revenue, dated 4th December 1861, No. 6,731 :—

Read the following letter from C. W. READE, Esq., Acting Collector of Madras, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Chepauk, dated Sydapet, 29th November 1861, No. 421.

SIR,

1. I have the honor to submit the translation of a plaint, filed by Subramaniya Mudali of Karnai in Sydapet, before the Mufti Sudder Amín's Court of Chingleput against the late Tahsíldár of Sydapet, "Saumi Náyudu," now Tahsíldár of Conjeveram. The object of the suit is to recover alleged losses suffered by the Plaintiff, consequent on the removal by the then Tahsíldár of certain temporary shops set up on the public road, leading to Saint Thomas' Mount, through Sydapet immediately in front of the Plaintiff's own shops. I beg to enclose the draft of the answer which I propose to file, and I request the sanction of Government to defend the suit at the public cost. The circumstances which have given rise to this action, are briefly as follows.

2. On the 27th June 1854, certain inhabitants of Sydapet presented a Petition to the then Collector Mr. Smollett, praying for the removal of the temporary shops from the south side of the bazar road in Sydapet, to the vicinity of the shop of one Thurah Sahib, because, as they represented, of the annoyance to the public from the occupation of the site objected to. The petition was referred to the then Tahsíldár, "Bujanga Rau," for enquiry and report, and that officer in a communication to the Collector, dated the 27th July 1854, supported the statement of the Petitioners. On the 7th August 1854, Mr. Smollett accordingly ordered the removal of the shops. Eleven days afterwards, or on the 18th idem, another order was, however, issued by that gentleman, apparently on the representation of "Subramaniya Mudali," to the effect that on personal inspection of the locality, there was no occasion for the removal of the shops as previously ordered, but that they were to be kept within the line of the avenue trees, and on no account to encroach beyond that line.

3. It appears from the Tahsíldár's notification, a copy of which the Plaintiff has produced, that the Engineer in charge of the road (Captain Moberly) inspected the locality in October 1857 in company with the Tahsíldár "Saumi Náyudu," and observing that temporary sheds had been erected within the line of the avenue trees, he prohibited the practice, and directed that the temporary shops should be established only in the places where the permanent bazars of Plaintiff stood; and he further directed that such temporary sheds were not to be erected, except with the previous permission of the Tahsíldár. But it would appear that this notice must for the time have been unheeded, as in the 5th paragraph of the Plaint, the Plaintiff claims compensation only from January 1858, and from a report of the Tahsíldár, dated the 25th February 1858, he states that certain residents of the neighbourhood had presented a complaint to him on the previous second of that month, pointing out the inconvenience to the public by the establishment of the shops in question. The Tahsíldár further reported, that the land occupied by the temporary shops formed a portion of the Poramboke land set apart for the public road, and that the Plaintiff had no right to the payment of rent for the said shops, that strictly speaking, the land being Poramboke the rent should be collected on Government account.

4. The late Magistrate Mr. Shubric, on this view of the matter, issued an order dated 18th March 1858, directing the removal of the shops, and this was duly enforced. The Tahsíldár, "Saumi Náyudu," has merely acted under the instructions of his immediate superior, and it is untrue that he withheld the previous orders passed by Mr. Smollett as falsely alleged by the Plaintiff.

5. The Plaintiff's assertion that he holds a Patta for this identical land is disproved by the present Tahsíldár, who reports that the Patta in Plaintiff's possession is for another spot of Poramboke land bearing No. 170, and wholly distinct from the locality over which proprietary right is now claimed by the Plaintiff; this latter site forming a portion of No. 159, is expressly

set apart for the public road, and the fact is confirmed by the Pymaish, and the annual Adangal accounts.

6. The Plaintiff states in the second last paragraph, that the ground in question was purchased by him in 1829 for Rupees 30, from certain persons whom he names, and who are described as residents of the same village. The alleged sale never seems to have been tested, while the estimated rental of the grounds is in singular disproportion to the purchased money, and sufficiently demonstrates the absurdity of the Plaintiff's claim as put forth. Many of the villagers have of late openly impugned the deed of sale, and of course its validity will be a primary point for consideration by the Court.

7. For these reasons, I am of opinion that, whatever the eventual issue of the Suit, the Tahsíldár merely acted under the orders of the Collector and Magistrate, and thus that no reponsibility rests with that officer, and therefore that the defence of the action should be at the public cost.

8. The time for filing the answer will expire on the 22nd, but I will apply for a further period of two weeks, if necessary.

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1. Ordered to be submitted to Government with the Board's recommendation that the defence of the Suit at the public expense be authorized.

2. The Plaintiff sues for damages on account of losses incurred by the removal of certain shops erected on land alleged to have been purchased by him and held on Patta.

3. The defence is that the Tahsíldár was acting under the orders of his superior, the Collector, who with full knowledge of the facts of the case ordered the removal of the shops in question and that such being the case he, the Tahsíldár, is not liable to be sued.

4. Defendant's right and title to the land in question is also contested, but the Tahsíldár's defence is rested on the former plea. The Board consider the answer sufficient, and recommend that the defence be sanctioned as requested. The 22nd instant is the date for filing the answer.

(A true Copy and Extract.)
(Signed) W. HUDLESTON, *Secretary.*

No. 147. ORDER THEREON, 17th December 1861, No. 2,317.

1. The Government sanction the defence of the suit at the public expense in the first instance, but will determine when a copy of the Decree is submitted whether the costs, if any be adjudged against the Tahsíldár, shall be borne by that officer or by the Government.

2. The Board will consider whether the validity of the alleged sale of the land ought not to be more strongly disputed by Government.

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

2. The Plaintiff sues for damages on account of losses incurred by the removal of certain Shops erected on land alleged to have been purchased by him - and held on Patta.

The defence is that the Tahsildar was acting under the orders of his superior the Collector who with full knowledge of the facts of the case ordered the removal of the Shops in question and that such being the case he the Tahsildar is not liable to be sued.

Defendants right and title to the land in question is also contested, but the Tahsildars defence is rested on the former plea. The Board consider the answer sufficient and recommend that the defence be sanctioned as requested. The 22. Instant is the date for filing the answer.

(A true Copy and Extract)

W. Hudleston
Secretary.

To J. D. Sim Esq
Secretary to Government R. D.

Rev 1861 Despatch
Pro: of Govt for December
No 4 2856

Proceedings of the
Board of Revenue

Dated 4th Dec. 1861.
Desp. 4 Do
Rec. 6th do
Encl 2 copy

No. 6731.

Recommending the defence at the public cost of a Suit for the removal of certain temporary Shops preferred against Tahsildar Sawmy Naidu by K. Subramani Mudali.

No. 2317. 17th December
Matteau Order.

No 146 & 147.

cf 4th Dec. 1861

No 2317

The Govt sanction the defence of the suit at the public expense in the first instance but will determine when the Bd will consider whether the validity of the alleged sale of the land ought not to be more strongly disputed by the Government

+ a copy of the Decree is submitted whether the costs if any be adjudged against the Tahsildar, shall be borne by that officer or by the Govt.

Encl. 6731
17th Dec 3

14 Copies
To the Board of Rev:
with 2 Encls

Desp. 17