M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 565	Press Mis.
196-197	
Dated 12-3-	1861.

Not to be folded or roughly handled

No. 1,053.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 26th February 1861.

Read letter from the Collector of Ganjam, dated 5th February 1861, No. 31.
(In Cons. 14th February 1861, No. 914.)
Read also letter from the same Officer, dated 12th February 1861, No. 39.
(In Cons. 20th February 1861, No. 1,075.)

1. Resolved that the above letter be submitted for the orders of Government, with reference to Government Order, 21st December 1860, Revenue Department, No. 2,473.

In Cons. 22d December 1860, No 6,731.

2. The Collector of Ganjam reports that the motion made by him in the Civil Court of Chicacole, under the Government Order above quoted, has been unsuccessful; the Judge maintaining the liability of the Collector to the costs of Suit, on the ground that the relief sought by Plaintiff might have been granted by the Collector even after the institution of the Suit.

3. The case, *as stated by Plaintiff*, is that during his minority, the Defendants (other than the Collector) induced his mother who was his guardian to make Plaintiff's lands over to them, promising to restore them on Plaintiff's attaining his majority; that they improperly obtained Puttahs for the lands from the then Collector, and refused to restore them when Plaintiff came of age (ten years afterwards) and claimed them. Plaintiff applied to the present Collector to eject Defendants, and place him in possession; but this of course the Collector could not do—having no power by law to disturb an undisputed possession of ten years, founded on a regularly issued Puttah, Plaintiff appealed to the Board of Revenue, but of necessity was referred to the Courts for redress.

4. The Plaintiff then brought a Suit in the Civil Court, whose decision was favorable to him on grounds to which the Board need not refer, as it is immaterial to Government which party holds the lands.

5. The Judge, however, went beyond this and saddled the Collector with all the costs of Suit.

6. This proceeding is directly opposed to Section 23, Regulation XXVII of 1802, which declares that "Collectors shall not be liable to prosecution for the official acts of their "predecessors." The act in this case was the official act of the then Collector Mr. Bannerman. Further the judgment proceeds on the ground that the Collector could transfer the land from Defendants, who were admitted by Plaintiff to have been in quiet possession for ten years. The Collector, however, has no such power; it is only in cases where forcible possession is taken of lands or crops, that he can eject; the adjudication of right in all other cases being beyond his province.

Special Appeal Suits
No. 13 of 1853, paragraph 9, page 48,
Sudder Udalut rulings.
No. 12 of 1853, paragraph 9, page 121.
„ 91 of 1853, paragraph 3, page 147.

7. The judgment is no less opposed to the equity than to the law of the case. Assuming the decision in favor of Plaintiff to be correct, Defendants are the only persons who gained by the possession of the land; the fraud whereby that possession was obtained was their act; and it was their refusal to give up the land which led to the Suit and its costs. Clearly, therefore, they were the parties by whom Plaintiff should have been reimbursed.

8. In their Order, dated 21st December 1860, No. 2,473, R.D., Government expressed their intention of acquiescing in the decree, if the motion ordered to be made as to the costs should prove unsuccessful; the object being to save the other parties in the Suit the expense, &c., of appeal proceedings in the Sudder Court, for the trifling sum involved.

In Cons. 22d December 1860.

9. The Collector, however, in his second letter states that the other Defendants have appealed: consequently the reason which induced Government to come to the decision above-mentioned no longer holds good. The Board, therefore, recommend that the matter be placed in the hands of the Government Pleader with a view to the Civil Judge being set right in his law, and to prevent a precedent which may prove, as the Collector points out, of much public inconvenience being established.

10. The Board are unable to concur in the Collector's view that Government should pay the costs of the other Defendants. These persons might have avoided all liability by quietly giving up the lands, to which the Court has declared they had no right. The Collector's order and Puttah were obtained by them under representations which the Court has declared erroneous, and they have profited by the possession which they endeavor to retain. Their refusal to give up the land led to the Suit, and the Board see no reason to relieve them from the consequences of that refusal.

(A true Extract.)

Secretary.

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

Copy to G. S. Forbes, Esq., Collector of Ganjam.

Exd. J. Wright.

Proceedings of the Madras Government, Revenue Department, 12th March 1861.

No. 196. Read the following Proceedings of the Board of Revenue, dated 26th February 1861, No. 1,053 :—

Read letter from the Collector of Ganjam, dated 5th February 1861, No. 31.

(In Cons. 14th February 1861, No. 914.)

Read also letter from the same Officer, dated 12th February 1861, No. 39.

(In Cons. 20th February 1861, No. 1,075.)

1. Resolved that the above letter be submitted for the orders of Government, with reference to Government Order, 21st December 1860, Revenue Department, No. 2,473.

In Cons. 22nd December 1860, *No.* 6,721.

2. The Collector of Ganjam reports that the motion made by him in the Civil Court of Chicacole, under the Government Order above quoted, has been unsuccessful; the Judge maintaining the liability of the Collector to the costs of Suit, on the ground that the relief sought by Plaintiff might have been granted by the Collector even after the institution of the Suit.

3. The case, *as stated by Plaintiff*, is that during his minority, the Defendants (other than the Collector) induced his mother who was his guardian to make Plaintiff's lands over to them, promising to restore them on Plaintiff's attaining his majority; that they improperly obtained Puttahs for the lands from the then Collector, and refused to restore them when Plaintiff came of age (ten years afterwards) and claimed them. Plaintiff applied to the present Collector to eject Defendants, and place him in possession; but this of course the Collector could not do—having no power by law to disturb an undisputed possession of ten years, founded on a regularly issued Puttah, Plaintiff appealed to the Board of Revenue, but of necessity was referred to the Courts for redress.

4. The Plaintiff then brought a Suit in the Civil Court, whose decision was favorable to him on grounds to which the Board need not refer, as it is immaterial to Government which party holds the lands.

5. The Judge, however, went beyond this and saddled the Collector with all the costs of Suit.

6. This proceeding is directly opposed to Section 28, Regulation XXVII of 1802, which declares that "Collectors shall not be liable to prosecution for the official acts of their predecessors." The act in this case was the official act of the then Collector Mr. Bannerman. Further the judgment proceeds on the ground that the Collector could transfer the land from Defendants, who were admitted by Plaintiff to have been in quiet possession for ten years. The Collector, however, has no such power; it is only in cases where forcible possession is taken of lands or crops, that he can eject; the adjudication of right in all other cases being beyond his province.

Special Appeal Suits.

No. 13 *of* 1853, *paragraph* 9, *page* 48, *Sudder Udalut rulings.*

No. 12 *of* 1853, *paragraph* 9, *page* 121.

,, 91 *of* 1853, *paragraph* 3, *page* 147.

7. The judgment is no less opposed to the equity than to the law of the case. Assuming the decision in favor of Plaintiff to be correct, Defendants are the only persons who gained by the possession of the land; the fraud whereby that possession was obtained was their act; and it was their refusal to give up the land which led to the Suit and its costs. Clearly, therefore, they were the parties by whom Plaintiff should have been reimbursed.

In Cons. 22nd December 1860.

8. In their order, dated 21st December 1860, No. 2,473, Revenue Department, Government expressed their intention of acquiescing in the decree, if the motion ordered to be made as to the costs should prove unsuccessful; the object being to save the other parties in the Suit the expense, &c., of appeal proceedings in the Sudder Court, for the trifling sum involved.

9. The Collector, however, in his second letter states that the other Defendants have appealed : consequently the reason which induced Government to come to the decision abovementioned no longer holds good. The Board, therefore, recommend that the matter be placed in the hands of the Government Pleader with a view to the Civil Judge being set right in his law, and to prevent a precedent which may prove, as the Collector points out, of much public inconvenience being established.

10. The Board are unable to concur in the Collector's view that Government should pay the costs of the other Defendants. These persons might have avoided all liability by quietly giving up the lands, to which the Court has declared they had no right. The Collector's order and Puttah were obtained by them under representations which the Court has declared erroneous, and they have profited by the possession which they endeavor to retain. Their refusal to give up the land led to the Suit, and the Board see no reason to relieve them from the consequences of that refusal.

(A true Extract.)

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

No. 197. ORDER THEREON, 12th March 1861, No. 565.

1. The Government agree in the view taken of the case by the Board, and direct the adoption of the course recommended in paragraph 9 of these Proceedings.

2. The Governor in Council fully agrees also in the opinion expressed by the Board in paragraph 10, that there is no reason whatever why the Government should bear the costs of the other Defendants.

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

IN CONS. 14TH FEBRUARY 1861, No. 914.

From G. S. FORBES, Esq., Collector of GANJAM,

dated Chetterpore, 5th February 1861, No. 31.

I have the honor to forward for the information of the Board and Government, copy of the order passed by the Civil Judge at Chicacole on an application, presented to that Court by order of Government for review of Judgment in two suits decided against the Collector as 1st Defendant and certain Ryots who were placed by the late Mr. Bannerman in possession of lands vacated by a deceased Ryot.

2. The Government conceived the grounds on which the decision threw the costs upon the Collector to be mistaken, but stated their unwillingness to continue litigation for so small a sum.

3. The matter has now terminated in leaving undisturbed a decree which makes a Collector liable for the acts of his predecessor, and which assumes that it is in his immediate power to reverse those acts and to dispossess holders of land after an occupation of many years.

4. The Board will perceive that though the amount of the costs may be trifling, the question at issue was a question of law and not of facts and that the consequence of this decision may entail much inconvenience in the district when it is announced as law, for there are many other cases in which lands formerly thrown up during the period when prices were low have passed to other occupants under the orders of former Collectors. I trust therefore that the Board will be induced to take steps to obtain an order from the Sudder Court, directing a review of Judgment in the decrees in question.

5. If this course is no longer open, it seems advisable that an authoritative ruling should be procured from the Sudder Court, declaring what is the law in such cases.

—

ENC. 1.

ABSTRACT.—Copy of order passed by the Civil Judge of Chicacole.

Exd. J. Tulloch.

Enclosure No 1 in the
Proceedings of the Board
of Revenue to the Secretary
to Government Revenue Dept.
dated 25th February 1861
No 1053.

Exd. J. Tulloch

Copy

Letter from the
Collector of Ganjam to the
Secretary to the Board of
Revenue dated 5th February
1861 No 31. regarding Ditt.

In Cons. 20th February 1861, No. 1,075.

From G. S. FORBES, Esq., Collector of GANJAM,
dated Chetterpore, 12th February 1861, No. 39.

Adverting to my letter of 5th instant, in which I have already stated to the Board the result of my application for a review of Judgment in two Suits decreed against the Collector by the Chicacole Court, I have now the honor to inform the Board that the Ryots who were joined with me as defendants in those Suits have appealed to the Sudder Court against Mr. Knox's decision, so that the matter is still under adjudication in case the Board think it right to move in it.

2. I would further call the attention of the Board to the circumstance, that in these cases Ryots acting under the orders of the Revenue officers of Government have been subjected to the costs of law proceedings, and that it seems fairly a question whether the Govern ment should not sustain those costs,* as they have already approved the proceedings of their officers in the matter.

* If ultimately adjudged against the Ryots.

Exd. J. Tulloch.

Enclosure No 2 in the
Proceedings of the Board
of Revenue to the Secretary
to Government Revl Deptt
dated 26th February 1861
No 1053.—

R 578/67

Letter from the
Collector of Ganjam to the
Secretary to the Board of
Revenue dated 12th February
1861 No 39 regarding Suit.

R 29th April 1809 No 34-35
" 21 December 1860 No 373-374

Proceedings of the Board of Revenue

Dated 26th February 1861

Desp. 2d March

Rec. 4th "

Encs. 2 with 1 Ol. Encl.

No 1053.

No 565. 12th March

William Order

Submitting for orders correspondence with the Collector of Ganjam forwarding copy of the order passed by the Civil Judge of Chicacole on his application for review of Judgment in two Suits decided against him and certain Ryots and recommending that the matter be placed in the hands of the Govt Pleader with a view to the Civil Judge being set right in his law and to prevent a precedent which may prove of

No 196 & 197.

C. 7 March R.P.

Reference 1861 Depart. Pros: of Govt for March.

No 578

much public inconvenience being established.

No 565.

The Government agree in the view taken of the case by the Board, and direct the adoption of the course recommended in Para 9 of these Proceedings.

2 The Governor in Council fully agrees also in the opinion expressed by the Board in Para 8 that there is no reason whatever why the Govt should bear the costs of the other Defendants.

Fort St George,
12th March 1861.

13 Copies. Board of Revenue in the Ceded Dist. Pl. 13
1 " Government Pleader with Bills Pro. & Proceedings.