M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1087 — Press / Mis.

100 101

Dated 8-8. 1862.

Not to be folded or roughly handled

No. 100. Read the following Proceedings of the Board of Revenue, dated 19th July 1862, No. 4,685 :—

Read the following letter from C. W. READE, Esq., Collector of South Arcot, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Madras, dated Cuddalore, 18th June 1862, No. 107.

SIR,

1. Referring to the Order of Government, dated 19th July 1860, No. 1,198, I have the honor to forward copies of the Original and Appeal Decrees in the matter of the Suit of one Vira Reddy against the late Acting Collector, Mr. Ratliff and another for the recovery of certain lands from which he was ousted.

Original Suit, No. 7 of 1859, Principal Sudder Amin's Court.
Appeal Suit, No. 38 of 1861, in the Civil Court.

2. I would solicit the instruction, of the Board and Government on the subject of costs.

3. The decree in Appeal is in favor of the Plaintiff, and the Supplemental Defendants are made to bear their own costs.

4. Mr. Ellis' decision is fortunately open to Special Appeal, and I am prepared to contest the position taken by the Civil Court in opposition to the judgment of the Principal Sudder Amín. I have moved the Court for a copy of the decree, and with the Government sanction I propose to prefer a Special Appeal to the Sudder Court ; and on receipt of the Board's permission, I will at once prepare a Special Appeal Petition to be presented by the Government Pleader.

5. In no branch of the Revenue Department are frauds and rascality so rife perhaps as in the matter of Durkhasts, and the ingeniousness with which village servants and others manage to withhold lands and to confer them is at times striking. The sort of traffic that goes on in the disposal of Durkhasts for waste lands, and the gross injustice often practised under shelter of the so-called rules is beyond belief. Half the Petitions in the District are connected with this subject, and many are addressed to the Board ; but in the majority of instances matters have been so cleverly arranged that they are beyond the reach of detection and remedy. During the recent settlement I gave some little attention to the subject, preparatory to a correction of the evils of the existing system, and I have already dealt with certain cases very summarily, but I fear that if the present decree of the Civil Court be recognized as the law, many Suits of a like kind will follow.

6. I am not prepared to accept Mr. Ellis' dictum, and I unhesitatingly pronounce him to be in error in his decision, from what I know of the merits of this particular Suit. There is little doubt, I think, that the defence has not been properly conducted, or Mr. Ellis would hardly have held that Plaintiff could not be ousted by the Collector, because collusion was not proved against him, a point which although neither argued or tested was clearly inferrible from the very suspicious circumstance attending the ready success of the Plaintiff's application ; it has moreover been shown that Plaintiff had incurred no expense whatever on account of the lands subsequent to their being put in his possession ; and thus his title by the village or Táluq servants is surely not to be regarded as inviolable until ratified by the Collector or by one of his Assistants, for every proceeding of the Táluq authorities is open to appeal and in respect of Durkhast lands the title given in the Táluq is clearly not a valid one beyond recall, while an Appeal is open to those aggrieved, and while too, the acts of the Táluq Officers are necessarily subject to the supervision and interference of the Collector. But the hitherto right of appeal becomes a farce if the present decree be the law, for Mr. Ellis expressly declares that where collusion is not approved against the party put in possession by the village or Táluq servants, the Collector has no power or jurisdiction whatever to interfere with that possession, thus upholding the title conferred by the Native Officers as a legal and valid one, and that cannot under any pretext be set aside save as above, on proof of complicity in a fraud, or of other improper acts by the successful party.

7. I think the decision aims a blow at the Revenue powers of a Collector, which must prove most detrimental to the public interests in general, while the extraordinary powers it recognizes in village and Táluq servants is capable of terrible abuse, and likely, I fear, to be attended with grievous injustice, as in the present case ; so much so indeed, that I have thought it necessary at

once to issue Circular Orders throughout the District that in dealing with all future Durkhasts under the Rules, the decision in the Táluq is, in every case, to be held conditional on the confirmation by the Collector or other Officer making the ensuing settlement.

8. Pending the correction of the principle enunicated in the present judgment of the Civil Court, this proviso is, I consider, called for, and it will I think fully meet the difficulty.

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1. Ordered that the foregoing letter and its enclosures be laid before Government, with reference to their Proceedings, dated 19th July 1860, No. 1,198.

O. S. No. 7 of 1859, Principal Sudder Amín's Court, Cuddalore.

Vira Reddy of Melcondai, Villapuram Táluq.	Plaintiff.
Versus.	
1. Æ. R. McDonell, Esq., Acting Collector. 2. Para Rasen of Melcondai.	Defendants.

Ap. S. No. 38 of 1861, Civil Court of do.

Vira Reddy.....	Appellant.
Versus.	
1. Æ. R. McDonell, Esq., late Acting Collector..... 2. Para Rasen. do.	Defendant.
3. J. Ratliff, Esq, late Acting Collector.... 4. H. Wood, Esq., Collector.....	Respondent. Supl. Defts.

2. In those Proceedings Government sanctioned the defence of a Suit (O. No. 7 of 1859), which one Vira Reddi had brought against the Acting Collector, and another for the recovery of certain lands. The particulars of the Suit were explained by the Board in their Proceedings, dated 14th July 1860, No. 3,232. The disputed land was described as immemorial waste, situated in the bed of a tank in the village of Melcondai, and had been frequently applied for by the 2nd Defendant, a resident Ryot; but owing to the report of the village Officers that the land was unfit for cultivation, the 2nd Defendant's applications were never attended to. In Fasli 1267, however, the Plaintiff applied for the same land; and the village Officers having then declared that there was no objection to its being made over, a Puttah was prepared, signed by the Collector, and issued at the settlement to the Plaintiff, who accordingly took possession of the land. The 2nd Defendant appealed soon after to Mr. Ratliff, who in the interval had been appointed Acting Collector. Finding on inquiry that the 2nd Defendant had been kept out of the land by the misrepresentations of the village Officers, Mr. Ratliff cancelled the Plaintiff's Puttah, and issued a fresh one to the 2nd Defendant, whom he caused to be put in possession. It appears that at the time a Puttah was granted to the Plaintiff, there was an application from the 2nd Defendant actually under inquiry and not disposed of, while his first application for the land dated as far back as 1853.

3. Vira Reddy, the Plantiff, filed a suit in the Principal Sudder Amín's Court, to annul Mr. Ratliff's act, and to recover the land for which a Puttah had been issued to him by the former Collector. The defence proposed by the Collector was, that the Court had no jurisdiction in the matter, and that the withdrawal of the Puttah under the circumstances was correct. The Board however, were unable to concur in this view. They were of opinion that as a Puttah had been, formally issued by the Collector of the District, his successor had no legal power to cancel it, or disturb the Plaintiff's possession; and that his proper course was to have referred the 2nd Defendent to the Courts for recovery of the land. The Board therefore recommended that Government should withdraw from the suit, and leave the 2nd Defendant to uphold his possession if so disposed; but, although they concurred in the Board's views, Government thought that, as the case stood, the proper course to adopt was to leave the point at issue to be decided by the Court; and they accordingly sanctioned the defence of the suit on the usual terms, with the suggestion that the Collector's answer should be confined simply to a statement of the facts, leaving the decision of the question of law to the Court.

4. The enclosures to the Collector's letter now submitted are, the judgment of the Principal Sudder Amín's Court in the Original Suit, and the judgment of the Civil Court in Appeal. The Principal Sudder Amín reviews the facts of the case, and upholds Mr. Ratliff's act, on the grounds that the 2nd Defendant had perseveringly applied for the land for five years; that his last application for it was actually under inquiry when the land was made over to the Plaintiff; that the village Officers had falsely reported, and had evidently set up the Plaintiff to apply, in order to defeat the 2nd Defendant's rights; and that the Plaintiff had been put to no expense during his possession of the land. For these reasons, the Principal Sudder Amín dismissed the Plaintiff's suit with costs.

The Plaintiff carried his suit in appeal before the Civil Court (No. 38 of 1861). The Civil Judge admits the facts of the case, and the fraudulent conduct of the village officers; but inasmuch as there was no evidence to show that the Plaintiff was a party to their fraud, while his application for the land appears to have been made in accordance with the rules, he is of opinion that the Plaintiff's possession of the land, and the title he had received to such possession, could not be disturbed. The Judge accordingly reverses the decree of the lower Court, and decrees that the 2nd Defendant pay the costs of the Plaintiff and 1st Defendant both in Original and Appeal, while he adjudges the Supplemental Defendants (Mr. Ratliff and Mr. Wood) to bear their own costs.

5. In submitting these judgments, Mr. Reade, the present Collector, applies for permission to prefer a Special Appeal to the Sudder Adalat. He impugns the correctness of Mr. Ellis' decision; and appears to take his stand on the plea that the effect of the judgment is to destroy the power of the Collector to overrule the acts of his subordinates, and to uphold the title conferred by the native servants of the village or Táluq; quite forgetting that in the case in point, the act of the subordinates had been ratified by the Collector, who issued a Puttah to the Plaintiff.

6. The Board cannot therefore recommend the course proposed by Mr. Reade. Mr. Ellis' Judgment is in keeping with the views expressed by the Board in paragraph 5 of their Proceedings of the 14th July 1860. Mr. Reade has evidently misunderstood the Judge's decree, for the "title" to which the Judge adverts is no doubt the Collector's Puttah. In the instance in question, the Collector confirmed the preliminary proceedings of his subordinates; and if, before he granted the Puttah, he failed to make due inquiry, the blame rests with him, and not with the Plaintiff who profited by the remissness. The question moreover in this case is, not whether the Collector has the power of correcting or reversing the proceedings of his subordinates, but whether one Collector may receive an appeal from, and annul, his predecessor's decisions.

7. The Board do not at all think that the decision of the Civil Court is calculated to weaken or lessen the power of a Collector to grant waste lands, as supposed and argued by Mr. Reade, who has evidently written under a misapprehension of the subject; for it is always within the power of a Collector to interfere with, and overrule, the proceedings of his subordinates previously to ratifying them; while even in a ratified proceeding, proof of fraud on the part of the person in possession, vitiates his title. The Acting Collector, Mr. Ratliff, was not justified in setting aside his predecessor's act and dispossessing the Plaintiff. His proceeding was illegal, and cannot, in the Board's opinion, be upheld. The 2nd Defendant's case may be a hard and even a cruel one, but though he suffers, it does not appear to be from any proved wrong committed by the Plaintiff.

8. The first false step made in the matter was in the original issue of the Puttah to the Plaintiff, and had Mr. Ratliff referred the 2nd Defendant to the Board in appeal, instead of taking on himself to annul his predecessor's act, it is probable that this original fault would have been legally remedied.

9. As Mr. Ratliff's proceedings were substantially just, although unsustainable in law, the Board recommend to Government that the liability for the whole cost be accepted by them, the 2nd Defendant having originally suffered by the neglect, and subsequently been exposed to be sued through the act of their Officers.

10. In their Proceedings of the 3rd November 1860, No. 5,075, the Board, in answer to the inquiry of Government, reported that Mr. Ratliff had fined the Village Curnum 3 Rupees, and the Monigars 2 Rupees each, and that the Tahsíldár did not appear to have been directly concerned in the irregular proceedings of the village officers. The Board consider this punishment, however, to have been wholly insufficient. The delinquent village servants, if still in office, should be dismissed, and their Ináms taken from them, as it was from their wilful misrepresentation that so much evil resulted.

(A true Copy and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

Proceedings of the Madras Government, Revenue Department, 8th August 1862.

No. 101. ORDER THEREON, 8th August 1862, No. 1,687.

1. The Government agree with the Board of Revenue in thinking that there are no grounds for preferring a Special Appeal against the Decree of the Civil Judge of Cuddalore in Appeal Suit No. 38 of 1861.

2. Agreeably to the recommendation made by the Board in paragraph 9 of their Proceedings, the Government sanction the payment of the entire costs inclusive of those of the 2nd Defendant in both the Original and Appeal Suits.

(Signed) T. PYCROFT,
Chief Secretary.

The Plaintiff carried his suit in appeal before the Civil Court (No. 38 of 1861). The Civil Judge admits the facts of the case, and the fraudulent conduct of the village officers; but inasmuch as there was no evidence to show that the Plaintiff was a party to their fraud, while his application for the land appears to have been made in accordance with the rules, he is of opinion that the Plaintiff's possession of the land, and the title he had received to such possession, could not be disturbed. The Judge accordingly reverses the decree of the lower Court, and decrees that the 2nd Defendant pay the costs of the Plaintiff and 1st Defendant both in Original and Appeal, while he adjudges the Supplemental Defendants (Mr. Ratliff and Mr. Wood) to bear their own costs.

5. In submitting these judgments, Mr. Reade, the present Collector, applies for permission to prefer a Special Appeal to the Sudder Udalut. He impugns the correctness of Mr. Ellis' decision; and appears to take his stand on the plea that the effect of the judgment is to destroy the power of the Collector to overrule the acts of his subordinates, and to uphold the title conferred by the native servants of the village or Taluk; quite forgetting that in the case in point, the act of the subordinates had been ratified by the Collector, who issued a Puttah to the Plaintiff.

6. The Board cannot therefore recommend the course proposed by Mr. Reade. Mr. Ellis' judgment is in keeping with the views expressed by the Board in paragraph 5 of their Proceedings of the 14th July 1860. Mr. Reade has evidently misunderstood the Judge's decree, for the "title" to which the Judge adverts is no doubt the Collector's Puttah. In the instance in question, the Collector confirmed the preliminary proceedings of his subordinates; and if, before he granted the Puttah, he failed to make due inquiry, the blame rests with him, and not with the plaintiff who profited by the remissness. The question moreover in this case is, not whether the Collector has the power of correcting or reversing the proceedings of his subordinates, but whether one Collector may receive an appeal from, and annul, his predecessor's decisions.

7. The Board do not at all think that the decision of the Civil Court is calculated to weaken or lessen the power of a Collector to grant waste lands, as supposed and argued by Mr. Reade, who has evidently written under a misapprehension of the subject; for it is always within the power of a Collector to interfere with, and overrule, the proceedings of his subordinates previously to ratifying them; while even in a ratified proceeding, proof of fraud on the part of the person in possession, vitiates his title. The Acting Collector, Mr. Ratliff, was not justified in setting aside his predecessor's act and dispossessing the Plaintiff. His proceeding was illegal, and cannot, in the Board's opinion, be upheld. The 2nd Defendant's case may be a hard and even a cruel one, but though he suffers, it does not appear to be from any proved wrong committed by the Plaintiff.

8. The first false step made in the matter was in the original issue of the Puttah to the Plaintiff, and had Mr. Ratliff referred the 2nd Defendant to the Board in appeal, instead of taking on himself to annul his predecessor's act, it is probable that this original fault would have been legally remedied.

9. As Mr. Ratliff's proceedings were substantially just, although unsustainable in law, the Board recommend to Government that the liability for the whole cost be accepted by them, the 2nd Defendant having originally suffered by the neglect, and subsequently been exposed to be sued through the act of their Officers.

10. In their Proceedings of the 3rd November 1860, No. 5,075, the Board, in answer to the inquiry of Government, reported that Mr. Ratliff had fined the Village Curnum 3 Rupees, and the Monigars 2 Rupees each, and that the Tahsildar did not appear to have been directly concerned in the irregular proceedings of the village officers. The Board consider this punishment,

however, to have been wholly insufficient. The delinquent village servants, if still in office, should be dismissed, and their Inams taken from them, as it was from their wilful misrepresentation that so much evil resulted.

(A true Copy and Extract.)

Secretary.

To A. J. Arbuthnot, Esq., Acting Chief Secretary to Government,
with 2 enclosures.

Copy to C. W. Reade, Esq., Collector of South Arcot.

Revenue Department.

Dated 19th July 1862.
Despatched. 22 Aug.
Received. 23 Aug.

No. 4,685.

Submitting a letter from the Collector of South Arcot forwarding copies of the Original Suit and Appeal Decrees in a Suit brought against the late Acting Collector Mr Ratliff by one Vira Reddy and another for the recovery of certain lands from which he was ousted, with the Board's remarks thereon.

Read Judl. Letter No. 227 - 228 dated 28th August 1862 - 481-482

Revenue Department.

Proceedings of the Board of Revenue

No. 2087.

Read Judl. Letter No. 227 - 228 dated 28th August 1862 - 481-482

Exd. J. Tulloch.

Rec. Dept.

Memo. on Rev No 2087.

These papers relate to a suit recently disposed of by the Civil Judge of Cuddalore - The Plaintiff applied for a piece of waste land in Fasly 1267 and the village officers having declared that there was no objection to making over to him, he obtained possession of it under a Puttah signed by the then Collector - The 2d Defendant whose several applications for the same land previously made were rejected preferred a complaint on the subject to Mr Ratliff the

the Acting Collector. This Officer cancelled the Pottah given to Plaintiff by the Collector and issued a fresh one to the 2d Defendant on the plea that through the misconduct of the Villagers the land had not been offered to the latter before it was given to the Plaintiff.

2. The Plaintiff sought to recover the land through the Courts. When the Collector applied for the usual permission to defend the suit the Board of Revenue held that it could not be defended as the Acting Collector had no power to make an order passed by his predecessor in the same office and recommended that

* Proc. of 14th July 1860 No 3252.

* Proc. of 19th July 1860 No 1198.

that "Govt should withdraw from the suit." The Govt though they agreed with the Board authorized the defence of the suit in the first instance pointedly remarking that "if Mr Ratliff's order is declared illegal, he will be made to pay the costs" which may be adjudged against the first Defendant. Mr Mr Darnell Atty

3. The Principal Sudder Ameen in whose Court the Original suit was instituted clearly pointed out the injustice done to the 2d Defendant by fraudulent proceedings on the part of the Village Officers and upholds Mr Ratliff's act.

act by which he placed that Defendant in poss-
-ession of the land in dispute as a just one-
He dismissed the Plaintiff's claim with costs. The Civil Judge in appeal reversed this decree being of opinion that "the can-
-cellation of the Pattahs held by the Plaintiff by the Revenue authos-
-rities (Mr Ratcliff) is invalid." While he admits that the Village servants have wronged the 2nd Defendant he argues that the tender of the Plaintiff having been made, accepted and pattahs given, the "title" which he then and due course obtained cannot be taken away unless it can be shewn

shewn that he used fraud-
-ulent means for which there is no evidence. The Civil Judge adjudged the 2d Defendant to pay the costs of both the Plaintiff and the 1st Defendant (Mr McDonnell acting Collector) The supplemental Defend-
-ants Mr Ratliff and Mr Wood to bear their own costs-

4. On this latter Decree Mr Reade the present Collector pro-
-poses to prefer a spe-
-cial appeal to the Sudder Mr Reade in his letter of 18th June 1862 N 107 expresses himself strongly on the subject but he has fallen into

a

a pervious error - He says that Mr. Ellis decree declares that where collusion is not proved against the party put in possession "by the Village or Taluq servants" the Collector has no power or jurisdiction whatever to interfere with that possession, "thus upholding the title conferred by the native officers as a legal and valid one". The Decree cannot bear any such construction, it nowhere says that possession was given to the Plaintiff by the Village or Taluq authorities and that that should not be disturbed. On the contrary it lays stress on the Puttah

Puttahs which were given to the Plaintiff. The Board are not in favor of the special Appeal proposed by Mr. Reade as he has misunderstood the decree. This is one point on which orders are requested.

5. The next point is if the Govt. should defray any portion of the costs of the suits. The Board propose that the whole of the costs be paid by Govt though they have in 1860 suggested that "Govt. should withdraw from the suit" and the Govt. declared that "if Mr. Pattiffs order is declared illegal he will be made to pay the costs". The order has been declared by the Civil Judge

to

to be illegal and the
Board concur with him
though on some what
different grounds. They
state "Mr Pattiff" was
not justified in setting
aside his predecessor's
act and dispossessing
the Plaintiff" and that
"his proceeding was il-
-legal and cannot be
upheld." The only argu-
-ment they use to relieve
Mr Pattiff from the pay-
-ment of costs is that
his proceedings were
"substantially just." Such
was the case in 1860-
6 The Board pro-
-pose to relieve the
2d Defendant from
the payment of any
of the costs in this suit
having originally suffered
by

by the neglect, and sub-
-sequently been exposed
to be sued through the
act of the Officers of
Government.

Orders are requested.

There are clearly no
grounds for a
Special Appeal
and under all the
circumstances it
seems best for
the Parties that
the costs of the
2d Defendant. but
it is questionable whether
the Pattiffs costs should
also be borne by Govt;
this order should not
if the suit being so mani-
-festly illegal. I presume
the Village Officers should
be disqualified, as recommended
by the Board.

20/7/62

Mr Reed best see
done by the Govt as
the P's case do seem if they
see fit. W.H.

I concur in the Order
now - With respect to
Mr Pattiff I would relieve
him from the costs in the first
instance, as he only
came into office in order
himself instead of getting
the Petitioner to do so
at his own cost.

E.L.

W.H.

Yes E.L.

Memo

For order—

In Pro: 8 Augt 62 No 1687.

Revenue Department

No 1687.

Proceedings of the Madras Government 8th August 1862.

Read the following Pro:

:ceedings of the Board of

Revenue.

Submitting a letter from the Collector of South Arcot forwarding copies of the Original and Appeal Decrees in a Suit brought against the late Acting Collector Mr Ratcliff by one Viraa Reddy and another for the recovery of certain lands from which he was ousted, with the Board's remarks thereon.

(Here enter 19th July 1862 No 2485.)

The Government agree with the Board of Revenue, in thinking that there are no grounds for preferring a special Appeal against the Decree of the Civil Judge of Cuddalore in Appeal Suit No 38 of 1861.

2. Agreeably to the recommendation made by the Board in para 9 of their Proceedings the Government sanction the payment of the entire costs

incurred

inclusive of those of the 2d Defendant in both the Original and Appeal Suits.

6/5/02

14 Copies Lodged D. of Rec'd Dep'ty Reg'r with 28 Enclosures

3 " " Civil Paymasters

3 " " Asst Genl

W 15
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No 1687 of 1862

Revenue 1862 Depth
Pro: of Govt for Augt

No. 1687.

Pro: of the Madras Govt.
Dated 8th August 1862.

Sanctioning payment of certain Costs in both O. & C. Suits instituted against Mr. Ratliff late Acting Collector of South Arcot by one Vera Reddy and another.

No 100 & 101.