M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1089	Press ~~Mis.~~
604-105	
Dated 8. 8. 1862.	

Not to be folded or roughly handled

C.F. 73.

Date taken out.	For what purpose.			Initials of clerk taking the paper or of attender.	Date returned.	Initials of clerk or attender.
	Department.	C. No.	Year.			

No. 104. Read the following Proceedings of the Board of Revenue, dated 4th August 1862, No. 5,074:—

Read again letters from the Collector of North Arcot, dated 12th and 27th November 1861, Nos. 274 and 287, in Board's Proceedings, dated 16th November and 10th December 1861, Nos. 6,341 and 6,894.

Read also the following letter from the Acting Collector, dated 31st July 1862, No. 159.

No. 6,894, dated 10th December 1861.

1. I have the honor, with reference to the Proceedings noted in the margin, to inform the Board that a material fact escaped Mr. Robinson's notice, viz., that the well in question is a Circar well, and that the Plaintiff interfered with it and otherwise altered its configuration without obtaining permission from competent authority.

2. During the recent Jummabundy tour at Palmanair, these facts were elicited, the party himself having personally admitted them before me.

3. On these grounds, I think the Plaintiff will be non-suited; and I trust that you will obtain sanction for defending the Suit at public cost.

4. If the Board concur with me, I propose to file the enclosed Statement in answer to the plaint under notice.

Enclosure No. 1.

Statement prepared to be filed by the Collector of North Arcot, in answer to the Plaint No. 1,170 of 1861, on the file of the District Moonsiff of Gudiattum.

1. The present Suit has been instituted with a view to procure the reversal of the order passed by the Collector of North Arcot prohibiting the Plaintiff's interference with the well stated in the plaint.

2. The said well is a Circar well, and the Plaintiff without obtaining permission from competent authority interfered with it and altered its configuration so as to prove detrimental to the interests of the neighbouring Ryots.

3. As under these grounds Mr. Robinson's decision is perfectly legal, the Acting Collector of North Arcot begs that the Court will non-suit the Plaintiff with costs.

(Signed) J. FRASER, *Acting Collector.*

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1. Ordered that the above papers be submitted to Government, with the Board's recommendation that the defence of the Suit at the public cost be sanctioned, and that Mr. Fraser be authorized to file the answer proposed by him, should there be yet time to do so, which is not stated in his letter.

2. The facts of the case are that Mr. Robinson the Collector of the District in June 1861 interdicted the Plaintiff from enlarging a well or natural pool in his enjoyment, and required him to fill up part of the excavation already made, on the ground that its extension was injurious to existing rights.

3. He did not proceed under Regulation XII of 1816 or V of 1822 or in the exercise of his magisterial powers, and the Board were at first unable to see how an order thus informal could be maintained, although they did not question its essential justice.

4. Mr. Fraser has now brought to notice that the well or pool in question is Government property beyond any doubt, and that the Plaintiff had not obtained any permission to alter or enlarge it, and under these circumstances the act of the Collector as the representative of Government can, in the Board's opinion, be successfully defended, and they accordingly submit their present recommendation, on which they request early orders, as the time for making the defence can be but brief.

(True Copies and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

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

No. 105. ORDER THEREON, 8th August 1862, No. 1,689.

Under the explanation afforded by the Board of Revenue, the Government sanction the defence at the public expense, on the usual terms, of Suit No. 1,170 of 1861 on the file of the District Moonsiff of Goodiattum, instituted by Nuttia Maistry against the Collector of North Arcot and two others.

(Signed) T. PYCROFT,
Chief Secretary.

No. 6,341.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 16th November 1861.

Read the following letter from J. D. ROBINSON, Esq., Collector of North Arcot, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Chepauk, dated Chittoor, 12th November 1861, No. 274 :—

1. I have the honor, with reference to the Circular Order of the Board of Revenue dated 27th April 1822, to forward copy of a summons issued to me by the District Munsif of Gudiatam in Original Suit No. 1,170 of 1861, filed against me and two others by one Muttia Mastri of Mothigapalle in the Palamaner Taluq who disputes my order directing him to close a portion of the well sunk by him (Plaintiff) in his Putta land.

2. Copies of the plaint* with translation, and of the statement which I propose to file in reply are enclosed; and I beg to request that the Board will be so good as to obtain the sanction of Government to my defending the Suit in the first instance at the public expense.

* Will be forwarded hereafter.

3. The Board will observe that the 25th January 1862 is the day fixed for filing my answer.

ENCLOSURE No. 1.

ABSTRACT.—Copy of a summons issued by the District Munsif of Gudiatam in Suit No. 1,170 of 1861.

ENCLOSURE No. 2.

ABSTRACT.—Statement proposed to be filed by the Collector of North Arcot in answer to the plaint filed in Suit No. 1,170 of 1861.

1. The Board observe that the Circular Order quoted by the Collector as the authority under which he acted prohibits the excavation of the new wells in Punjah land *within ten yards of a Tank bund or within* 50 *yards of a river or channel* if the preservation of public or private rights require such prohibition.

2. There is nothing whatever in the papers submitted to show that this case came within these conditions, and without further explanation the Board are unable to recommend that the defence be sanctioned at the public cost.

3. If the Collector passed a decision formally under Regulation V of 1822, he can plead non-liability to be sued, though it may be doubted whether his act could be upheld by the Court.

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

To J. D. Robinson, Esq., Collector of North Arcot.

Exd. J. Wright.

No. 6,594.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 10th December 1861.

Read the following letter from J. D. ROBINSON, Esq., Collector of North Arcot, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Chepauk, dated Chittoor, 27th November 1861, No. 287 :—

1. I have the honor, with reference to the Board's Proceedings, dated 16th instant, No. 6,341, to submit the following explanation in support of the measures taken by me in regard to the well which forms the subject matter of Suit No. 1,170 of 1861, on the file of the District Munsiff of Gudiatam.

2. Down the middle of the ground in which the partially interdicted work is situated runs a low marshy hollow, formed by the drainage of a Dasabandam tank at the upper extremity into a Government tank at the lower end. Along this hollow, five natural pools have formed, of which the first three and the last are the property of 2nd Defendant in the Suit in which I am a party, and from which the fields sloping gently upwards on either side are irrigated by raised pickotas. The fourth pond has by recent purchase come into the joint enjoyment of the Plaintiff, and another Ryot who farms lands on the opposite slopes. During the monsoon there is abundance of water in all five pools; but in the hot months the Dasabandam tank at the upper extremity is dry, and it then becomes a matter of much importance that nothing should be done to the upper pools which can in any way weaken the springs of, or divert the downward drainage from, those situated at the lower extremity. Second Defendant having by right of property the command of the first three pools, is protected against any encroachment of this kind in respect of them; but the fourth in the series being in the hands of Plaintiff, the springs of the fifth pool which as already stated is in 2nd Defendant's enjoyment, are immediately affected by any artificial work which arrests the downward drainage. [illegible] tends to concentrate it at that particular spot. This Plaintiff has done by excavating without permission sought or obtained a deep narrow trench having as its head and feeder pool No. 4. This trench is 62 yards in length, and my order based on a very careful personal inspection, conducted in the presence of parties acquainted with the circumstances and usages in respect of these pools, instead of wholly interdicting (as perhaps it ought to have done) the new work, merely directs the filling in of fourteen yards at the further extremity of the trench.

3. No case has received more mature and impartial consideration, and to none do the instructions of the Board quoted in support of my order more emphatically apply. If in such cases I am left to fight at my own cost and risk the battle of injured vested rights, I should, I respectfully submit, speedily find myself in a position which would bring the call of duty into painful antagonism with my sense of self-protection and immunity from risk.

4. I should mention that the extent of Pattikat and Dasabandam lands solely dependant for water on the fifth pool is about two Kanies.

5. With this explanation, I trust that the Board will be pleased to obtain the sanction of Government for my defending the Suit filed against me in this matter, in the first instance, at the public expense.

6. A translation of the Plaint in the Suit is herewith forwarded.

ENCLOSURE No. 1.
No. 1,170 of 1861.

Plaintiff.

Muthia Maistri, residing in Goldinghampet in the Palmaner Taluk.

Defendants.

1. Curnam Jallipett Chengia, residing in the old Petta in the Palmaner Taluk.
2. Subbia, his undivided brother.
3. J. D. Robinson, Esq., Collector of North Arcot.

The Plaintiff's object in instituting this Suit is to obtain a reversal of the order of the 3rd Defendant (Collector of North Arcot), dated 13th June 1861, directing him (Plaintiff) to close a portion of his well within the limits of the villages of Mathiyepalle and Guvalavaripalle, in the Palmaner Taluk, within 30 days from date of notice. The Plaintiff solicits that the Court will decree that his costs in the Suit should be borne by the two first Defendants.

(Signed) MUTHIA MAISTRI.

(True Translation.)

(Signed) J. D. ROBINSON, Collector.

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1. The Board do not question the care exercised by the Collector in the case or the substantial equity of his decision, but it must be shown that he had jurisdiction to allow of that decision being maintained.

2. Regulations XII of 1816, and V of 1822, vest Collectors with certain powers in dispute between Ryots regarding irrigation, but it does not appear that the Collector acted under these powers, and if he did so, the answer would need to be differently drawn. The Collector has not stated that the supply to the Government tank was lessened by the work which he interrupted, nor would such reason seem to have been assigned for his original decision.

3. He did not as Magistrate interfere to [illegible] an injury to the party who complained to him, resulting from the act of the present Plaintiff, and in fact the Board are altogether unable to determine on what authority, or under what enactment the Collector proceeded in this matter, and it is evident that if he had no jurisdiction in the matter, his interference cannot be justified.

4. They will be glad to afford him any support in their power and will carefully weigh any representation he may address to them, but at present they see no grounds on which they could recommend to Government that the defence of the Suit be maintained at the public cost.

5. As the time for filing the defence does not expire before 25th January, there is still ample time to do all that is necessary if the Collector can show reason why Government should defend the Suit.

(True Copies and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To J. D. Robinson, Esq., Collector of North Arcot.

Exd. J. Tulloch.

rights.

3. He did not proceed under Regulation XII of 1816 or V of 1822 or in the exercise of his Magisterial powers and the Board were at first unable to see how an order thus informal could be maintained, altho' they did not question its essential justice.

4. Mr Fraser has now brought to notice that the Well or pool in question is Government property beyond any doubt. and that the Plaintiff had not obtained any permission to alter or enlarge it. and under these circumstances the act of the Collector as the representative of Government can, in the Board's opinion, be successfully defended, and they accordingly submit their present recommendation on which they request early orders, as the time for making the defence can be but brief.

(A true Copy & Extract)

L. Ruthven

Secretary.

To

A. J. Arbuthnot Esq.

Ag Chief Secretary to Government.

W.R.
12 to C. Govindoo

Enclosure No 2 in Proceedings of the Board of Revenue dated 4th August 1862 No 205

Secretary to Government

4th August 1862 No

1861. Department.

No.

Proceedings of the Board of Revenue.

Rev-2205/62

Dated 10th December 1861.

Despatched.

Received.

No. 6,894.

Stating that the Board see no grounds on which to recommend to Government that the defence of Suit No. 1,170 of 1861, about a well be maintained at the public expense, and requesting further explanation.

Rev.e 1302 Despatch
Pro: of Govt for Augt
N. 2205.

Proceedings of the
Board of Revenue

Dated 4th
Desp.h 4
Rec.d 5th } August 1302
Encl.s Returns
No.

Recommending the
defence at the Public
cost of certain Suit
against the Collector of
North Arcot regarding a
Government Well.

No. 1689. 8 Augt

No. 104 & 105.

No. 1689.

Under the explanation afforded
by the Board of Revenue the Govt.
sanction the defence at the public expence,
on the usual terms, of Suit No. 1170 of 1861
on the file of the District Moonsiff
of Goodiatham instituted by Muttia Naicky
against the Collector of North Arcot and
two others.

From 4th Secr. Govt
8th August 1862

14 Board of Revenue with 3 Enclosures 3 Despatch 8th Augt