

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 455-	<u>Press</u> <u>Mis.</u>
11-12	
Dated	1. 3. 1862.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
1st March 1862.*

No. 11. Read the following Proceedings of the Board of Revenue, dated 21st February 1862,
No. 1,253:—

Read the following letter from H. A. BRETT, Esq., Collector of Salem, to W. HUDLESTON,
Esq., Secretary to the Board of Revenue, Chepauk, dated Salem, 15th February 1862,
No. 28.

SIR,

1. I have the honor to forward herewith the translation of a plaint in O. S. No. 11 of 1861, on the file of the Principal Sudder Amín's Court at Salem, with the draft of an answer which I propose to file in the Suit in question, and to request the Board will obtain the sanction of the Government to my defending the Suit at the public cost.

2. This Suit has been instituted by Vencatramaniah, Mootadar of Dadavulli, in the Tripatur Tálug, to recover the sum of Rupees 9,200, as damages for alleged loss of produce sustained by the Plaintiff from 1853 to 1860, owing to the non-construction of a dam across the river Pambar, within the limits of Koraslampetty, in the same Tálug, in consequence of impediments offered by the Defendant (the Collector.)

3. The history of this case is as follows. The Plaintiff instituted in the Sub-Court at Salem, O. S. No. 49 of 1845, against the Defendants shown in the margin, to establish an exclusive right to the water of the above named dam, and to recover damages sustained by the Plaintiff through the Defendant's interference with the Plaintiff's right of irrigation.

4. The Collector in answer stated that the water of the dam in question had been divided by Colonel Reid into eight shares, of which the Plaintiff was entitled to only one and a half share; that the Anicut was the property of Government, and was then in a partially ruined state; and that it had not been repaired owing to the fact that the different parties interested in the irrigation had not agreed to defray their respective shares of the expense.

5. The Sub-Court, in a Decree dated the 23rd October 1849, decided that all the parties claiming a share had a joint right to the water. This Decree was confirmed on the 24th December 1848 by the Civil Court, in Appeal No. 4 of 1849; and eventually, by the Court of Sudder Adalat, in Special Appeal No. 37 of 1851 on the 31st December 1852.

6. In the year 1855 the Plaintiff brought O. S. No. 9 of 1855, in the Subordinate Court at Salem, against the Collector, to compel the Government to re-construct, conjointly with the Plaintiff, a breached stone dam in the Pambar river (the Anicut already referred to) or to obtain a decree "directing the Plaintiff to defray the entire costs out of his own private funds."

7. The Collector pleaded in answer that the Plaintiff had not, since the Sudder Adalat passed the above named Decree in Special Appeal No. 37 of 1851, applied to any of the authorities for permission to re-build the Anicut, or to take any share in the work; that, after Suit No. 9 of 1855 was filed in the Sub-Court, the Collector had requested the Acting Civil Engineer to frame an estimate for the restoration of the Anicut; and that the Government had since sanctioned the restoration of the Anicut, on the understanding that the costs should be borne in the proportions agreed upon by the Plaintiff.

8. The Sub-Court, in a Decree dated the 31st March 1858, decided that the Collector should issue the requisite instructions for the erection of the Anicut as prayed for, and that each party should bear his respective costs.

9. The estimate referred to in the above answer was sent to the Board of Revenue with my letter, dated the 31st December 1855, No. 156. The Board submitted the estimate to Government. The Government in Extract Minutes Consultation, dated 23rd January 1856, No. 81, consented that the Government should take a proportionate share in restoring the Anicut, but directed that the Estimate should be submitted through the usual channel. I returned the

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estimate, with my countersignature, to the District Engineer on the 20th February 1856, and requested him to forward it to the Chief Engineer, that the Government sanction might be obtained for carrying out the work.

10. On the 19th November 1858, the Government Vakîl reported that the Plaintiff had applied to the Court for execution of the Decree in No. 9 of 1855; and that the Court desired to know what steps the Collector had taken to re-build the Anicut. Mr. Hathaway, late Acting Collector, then addressed the District Engineer in a letter, dated the 25th November 1858, No. 215, requesting him to commence the work if the Government sanction had been obtained; and remarking that if the work should be delayed Government might be held responsible for any loss incurred thereby by the Mootadar.

11. The District Engineer, in his reply, dated the 7th December 1858, No. 668, informed Mr. Hathaway that he had sent to the Chief Engineer an estimate for the restoration of the Anicut with his Diary for November 1855, and that no steps had been since taken to carry out the work. He also stated in the same letter that he had submitted a revised Estimate to the Chief Engineer for sanction, and had instructed the Officer in charge of the 1st division to lose no time in commencing the work.

12. The Government in Extract Minutes Consultation, dated the 27th January 1859, No. 252, authorized the District Engineer to proceed with the re-building of the Anicut. In paragraph 3 of the same Proceedings the Government adverted to their previous order in Extract Minutes Consultation, dated 23rd January 1856, No. 81; and, after observing that the Estimate had been forwarded by the Collector to the District Engineer on the 20th February 1856, and that the matter appeared to have been overlooked by the District Engineer until the 23rd November 1858, or for nearly three years, when the Acting Collector having recalled it to his recollection, the present estimate was the result; remarked that this delay was "discreditable" to Lieutenant Gahagan.

13. On the receipt of a notice through the Government Vakîl that the present Suit had been filed, I applied to the District Engineer to ascertain by what date the restoration of the Anicut had been completed. He informed me in reply that the work was finished in July 1860. It is also admitted by the Plaintiff in his plaint that the work was completed in 1860.

14. In framing my answer I have adhered closely to the grounds on which the Plaintiff would hold me responsible for his alleged loss. It is a matter for just regret that the work was not at once taken in hand after Government had consented to bear their share in the expense, but in respect to any loss that the Plaintiff has sustained on the ground that the work was not completed till 1860, it may be fairly urged that he is himself mainly to blame, inasmuch as he did not, between the first Suit and the second, nor at any time subsequent, apply to the Collector in the usual way, and through this, the proper channel, endeavour to get his wishes connected with the Anicut carried out.

15. The Government have already expressed their dissatisfaction at the time which the District Engineer allowed to elapse before he submitted his estimate for final sanction. On this point I feel constrained to say that the mistake was of a most exceptional character, for no one could be, as to the general rule, more zealous or careful in all that relates to the duties of his Department than Captain Gahagan.

16. The time for filing the answer will expire on the 5th proximo.

1. Ordered to be submitted to Government with the Board's recommendation, that the defence of the Suit at the public expense be sanctioned, and that the Collector be authorized to file the proposed answer which appears to the Board to constitute a good and sufficient defence.

2. Plaintiff sues for Rupees 9,200 damages said to have been incurred by him between 1853 and 1860, consequent on the non-reparation of an Anicut to a share of the irrigation from which he (Plaintiff) had been decreed entitled in 1852.

3. The Collector narrates the facts of the case in his letter, from which it appears that in March 1858, a second Decree was passed in a Suit instituted in 1855 by Plaintiff against the

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Collector, by which it was decreed that the Collector should issue the necessary instructions for the repair of the Anicut, and that each party should bear their own costs.

4. The Estimate for the work had been first submitted to Government by the Board in January 1856, who sanctioned the arrangement proposed for the distribution of the cost, but directed that the Estimate should be submitted in the usual course through the Department Public Works.

5. Delay unfortunately occurred in the District Engineer's Department, and the sanction of Government was not obtained until January 1859. The work was completed in July 1860.

6. Time was thus certainly lost between the date of the decree in 1852 and the execution of the work, but there was no excessive delay after the Decree in March 1858; and as Plaintiff himself took no steps to recall the matter to the recollection of the Revenue authorities at any time, save by the institution of the Suit, the Board do not consider that he has an equitable claim to the damages sought.

(A true Copy and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

No. 12. ORDER THEREON, 1st March 1862, No. 455.

1. The Governor in Council considers it desirable that the Board should consult the Government Pleader as to the line of defence which should be adopted in this Suit.

2. The Plaintiff claims damages for loss of produce from 1853 to 1860, caused by the Collector's omission to co-operate with him in the re-construction of an Anicut immediately on the passing of the Decree of the Sudder, dated 31st December 1852 in Special Appeal No. 37 of 1851.

3. On referring to this decision the Government cannot find the slightest ground for Plaintiff's assumption that it rendered it in any way incumbent on Government, to re-construct or join in re-constructing the Anicut. The Suit in fact had not for its object to compel Government to restore the Anicut, and no subsequent application of Plaintiff to have the work restored, could have the effect of throwing this obligation on Government. In 1855, however, Plaintiff brought a Suit (No. 9 of 1855) to compel Government to construct the Anicut conjointly with him or to allow him to do so at his own expense.

4. In answer to this the Collector with the sanction of Government pleaded that Government had sanctioned the joint restoration of the Anicut, and on this the Sub-Judge of Salem, in September 1857, decreed that the necessary instructions should be issued for the work and saddled each party with his own costs.

5. The Anicut owing to delay on the part of the District Engineer, which the Government censured, was not commenced until 1859, and was finished only in July 1860.

6. The Government consider that the plea urged by the Collector with their sanction threw on them the obligation of executing the work with all reasonable diligence, and that they cannot in justice repudiate this obligation. They think, therefore, that while all claim founded on the Sudder Decree of 1852 should be denied, the Court should be left to determine what compensation, if any, is fairly due to Plaintiff under the second Suit of 1855, for losses actually incurred by the default of the Officers of Government.

E. M. C. 2nd July 1858.

7. The Government do not wish the general question of the legal obligation of Government to construct or repair works of irrigation to be mooted on this occasion, nor in fact is it involved.

(Signed) J. D. SIM,

Secretary to Government.

Rev. Dept

N. 455

Proceedings of the Madras Government
Under date the 1st March
1862.

Read the following
letter from the Board of Revenue.

Submitting a letter
from the Collector of Salem and
recommending that he be
authorized to defend at the public
expense suit N. 11 of 1861 regarding
the damages incurred through the
non-reparation of an Anicut.

Here enter 21st February 1862
N. 1253

The Governor in Council
considers it desirable that
the Board should consult
the Government Pleader as
to the line of defence which
should be adopted in the
suit.

The Plaintiff claims
damages for loss of
produce from 1853 to 1860,
caused by the Collector's
refusal to cooperate
with him in the re-
construction of an Anicut
immediately on the passing
of the decrees of the Sudder
of 31st December 1852 in
Special

Several awkward questions are
raised by this litigation -
however I think the course
suggested is the best to adopt -
if the Plaintiff however who is
only entitled to 1/2 out of 3 shares
in the water of this tank ~~will~~
~~cannot~~ succeed in establishing
his claim - we shall have the
other holder of 2/3 shares also
suing us - should he be
known who paid for the repair
of this Anicut.

Wm
Wm
Wm

Special appeal N. 37
of 1857.

On referring to this
decision the Government
cannot find the slightest
ground for Plaintiff's
assumption that it rendered
it in any way in-
debent on Government
to reconstruct or join
in reconstructing the
Annicut. The suit
in fact had not
for its object to com-
pel Government to
restore the Annicut.
no subsequent appli-
cation of Plaintiff to
have the work restored
could have the effect

of throwing this objection
on Government. In 1855
however Plaintiff brought
a suit / N. 9 of 1855 / to
compel Government
to construct the Annicut
conjointly with him
or to allow him to do
so at his own expense.

In answer
to this the Collector
with the sanction
of Government
pleaded that Govern-
ment ^{had} sanctioned
the joint
restoration of the
Annicut and
on

on this the sub.
Judge of Salem,
in September
1857, decreed that
the necessary in-
structions should
be issued for
the work and
saddled each
party with
his own costs.

The

Note. The B. &
Coler. maintain
that as Plff. did
not repeat his ap-
plication to the
Coler. he has no
equitable claim
to damages. But
if Jot compromised
an action by
saying they would
do the thing sought
surely they are
bound to make
good their promise.

The Amnicut owing
to delay on the part of the
District Eng^s which the
Gov^t censured, was not com-
menced until 1859 and was
finished in July 1860.

The Government consi-
der that the plea urged
by the Col^{rs} with their ex-
ecution threat on them
the obligation of executing
the work with all reasonable
diligence and that they
cannot in justice repudiate
this obligation. They think
therefore that while all claims
founded on the Ludlow
decree of 1852 should be
denied, the Court should be
left to ^{determine what} ~~ascertain~~ the compen-
sation, ^{if any, is} fairly due to Plaintiff
under the Second Act of
1855, ^{for losses actually} ~~after allowing~~ ^{incurred by them}

departure of their officers if for
~~a reasonable time for~~
~~preparing the work.~~

The Government do
not wish the general ques-
tion of the legal obligation
of Government to construct
or repair works of irrigation
to be mooted on this occasion
nor in fact is it involved.

E. M. C. 2nd July 18.

J. D.

Copy to the Hon. Mr. C. P. C. 1st 18th July 18.
J. D. P. C. 1st 18th July 18.

for P. C. 1st 18th July 18.

30/10

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Suit against the Coll. of
Salem -

Special:
For Roubly orders
25/2

R.D 7.8 9.10
 23.1.56 28.4.58 36.37
 27.7.58

64.65 13.14
 3.5.58 19.5.58

70.1 77.28
 14.6.58 2.7.58

P.W 18.7 Feb 59 No 37-38

Revenue 1862 Deparlt.
 Pro: of Govt for March

V: 455.

Pro: of the Madras Govt.
 1st March 1862.

Pro: of the Board of Rev. 28 April
 1862 C. N. 1230 in. 20 May 62 M. 116.
 Pro: B. of Rev. of 3 November 63
 N. 2685. in Pro

Passing orders on Board's
 proceedings recommending that
 Salem Collector be authorized
 to defend at the public expense
 suit No 11 of 1861, regarding
 the damages incurred thro'
 non-reparation of an
 ancient.

No 11 + 12.