

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1352

Press
~~Mis.~~

605-456

Dated

21-7-1963

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
21st July 1863.*

No. 405. Read the following Proceedings of the Board of Revenue, dated 14th July 1863 :—
Read the following letter from the Head Assistant in charge of South Canara, dated 29th
June 1863, No. 111.

(In Cons. 8th July 1863, No. 4,292.)

1. It is evident from the decision of the High Court, to which Mr. Webster refers, that the matter before the Court was the recovery of rents and the ejectment of refractory tenants, in regard to which questions the dictum of the Court that Regulation 5 of 1822 is inapplicable to land held by a Mirasidar or any ordinary proprietor must be accepted, pending further legislation.

2. There are however, other matters than the above provided for in Regulation 5 of 1822, in which no question as to proprietary rights, and their nature is involved.

3. From Section X to Section XIV the Regulation refers solely to disputes originating in forcible dispossession of lands or crops, the decision in which turns on the proof of prior possession simply, without involving any question of right. And a reference to Regulation 32 of 1802, which was rescinded by Section X, Regulation 5 of 1822, shows that the question of right was in no way whatever involved in the decisions which under that Regulation the Courts would have passed in such cases prior to the transfer of these summary powers to Collectors. The Judge was to make restoration of possession "without enquiring into the merits of the claim of the dispossessor," and the terms both of the preamble and of Section II of that Regulation show that disputes between "proprietors and farmers of land, Poligars under farmers, Ryots, or other persons, with parties in possession of lands or crops, when forcible possession was taken or attempted, were included under the Regulation.

4. The Board, therefore, think it evident that the recent decision of the High Court could not have been intended to limit the jurisdiction of the Collector under Sections X to XIV of Regulation 5 of 1822 to cases where the land is held under the permanent settlement, although the Court have so limited the Collector's jurisdiction under the other Sections which relate to questions of rent and occupancy.

5. Sections X to XIV had no bearing on the questions in issue before the High Court, nor is there any reason apparent why Mirasidars or ordinary proprietors of land should be placed in a worse position, as regards forcible dispossession of land, or crops, than Zemindars, which must be the case if the Court's decision under remark is held to apply to these Sections.

6. The Board have thus expressed their opinion on the point referred to them, but they must observe that the question is one concerning the Collector in his Judicial capacity, and that they are not competent to give an authoritative ruling in such cases.

7. These papers will be submitted to Government in continuation of the Board's Proceedings of 10th April 1863, No. 2,066, in order that it may be considered whether, in addition to the Bills which have been already prepared for the recovery by summary process of revenue and rent, the immediate necessity for which arose from the same decision of the High Court, it may not be desirable to extend by a new legislative enactment all the other powers conveyed by Regulation 5 of 1822, to all the cases contemplated by that Regulation, without distinction as to the tenure on which the land is held.

8. The Sections 65 to 86 of the draft Revenue Code referred to these matters, and the Board would request that they may be taken into consideration in connection with the Bills now before the Legislative Council.

(A true Extract.)

(Signed) W. HUDLESTON, Secretary.

ORDER THEREON, 21st July 1863, No. 1,352.

No. 406.

Ordered to lie over.

(Signed) P. P. HUTCHINS,
Acting Deputy Secretary to Government.

✓
Collector's Kacheri
Mangalore,
29th June 1863.

No. 111.

From, A. M. C. Webster Esq^r
Head Assistant Collector in Charge
of South Canara

To, W. Hudleston Esq^r
Secretary to the Board of Revenue
Madras.

Sir,
I perceive from the Proceedings of the Board of Revenue, dated 10th April, No. 2066, that the Board have urged on Government the necessity for early legislation to determine the right of ryot-proprietary to recover their rents by summary process, the necessity having arisen from a recent ruling of the High Court in an appeal case.

2. As I am in doubt regarding the full force to be put on the construction of the High Court, I beg that the Board will be pleased to enlighten me on the subject.

3. The point which was left to be decided in appeal by the High Court appears to me to have been the right of a Meerassidar to eject

ject a tenant who had neglected to pay rent. The Regulations on which the Meerassidar would have proceeded, would have been Regulation XXVIII or XXX of 1802, and Suits under these Regulations were by Regulation V of 1822 declared cognizable by Collectors.

4. In the appeal decision in the case, the High Court ruled that Regulation V of 1822 was inapplicable to land held under a Meerassidar or any ordinary proprietor.

5. Cases however, other than those regarding disputed rents, are also summarily cognizable by Collectors under Regulation V of 1822. I allude to cases of forcible dispossession of land or crops, punishable under Section XI. The majority of the Suits that are brought before us under the Regulation fall under the latter head, indeed, from the Caverygoode Taluk alone, some 150 Suits a year have until lately been instituted.

6. Though the applicability or otherwise of this particular section was not apparently before the High Court, the terms of the decision, ruling that the Regulation is inapplicable to Meerassidars or other landholders, render I presume legislation on this point also necessary.

also necessary.

7. If the decision of the High Court affects, as it appears to me it does, the right of a person whose crops have been forcibly carried off under an alleged claim, to bring a Suit under the Regulation, all the cases now pending must be kept in abeyance until doubts are removed by legislation. Though the above is the conclusion I draw from the ruling of the High Court, I hope for the sake of the Wargadars in the District, that I may have wrongly construed the decision, for if I am right, no proprietor whether holding his land on a Shoolpatta or otherwise, will be able, until he is helped by legislation to recover his rents, or to obtain damages for his forcible dispossession, otherwise than by the tedious process of a regular suit in a Civil Court.

8. I beg that I may be favored with the instructions of the Board as to whether all Suits under Reg: V of 1822 now pending, are to be left undecided, and also whether fresh suits can be instituted.

I am,

9. I am sorry that press of business
has hitherto prevented the submission of the
Report on Moolpattas in this District, con-
nected as it is in a measure with the pres-
ent question, and hope that it will not be
much longer delayed.

I have &c.

(Signed) A. M. C. Webster.

Head of the Collector
in Charge.

(True Copy)

Wm. M. C.
Secretary.

For Order. The Board seems
true correct. The rule ruling
does not affect the whole
of Reg V of 1822 - but only
that part relating to the
question at issue in the
sent they decided.

From St. George's
21st July 1832

I am inclined to concur with the Board's view
nothing need be done immediately.

Enclosed in a Proceedings
of the Board of Revenue
to the Secretary to Government
D. D. dated 14th July 1832.

Recd 1662/33.

Collected from the Moolpattas
Collector in charge of the District
to the Secretary to the Board of Revenue
dated 29th June 1832. The Board
regarding the rights of the
Moolpattas to recover
their rents by summary
process.

Wm. M. C.

No 13 May / 63 No 170 @ 173

No. of Govt for July
No. 1684.

9.

has hither
Report o
= nected as
= sent que
much long

Proceedings of the
Board of Revenue

Dated 13
Decr. 14
Recd. 15
July 1863.
E.I.

Submitting a letter from
the Head of the Collr of South
Canada in continuation of the
Hear & Progs of 10th April last
regarding the right of the Ryot
proprietors to recover their rent
by summary process.

To be over

No 1352-21 July

With an Order

L

No 405 & 406.

917 July / 63 Recd

Letter from the Head of the
Collector in charge of South
to the Secretary to the B. of R.
dated 29th June 1863. No 111
regarding the right of the
Ryot proprietors to recover
their rent by summary
process.

No. 1352-21 July