M.R.O. 14—13,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1548 — Press ~~Mis.~~

229.230

Dated 22 - 8 - ~~19~~ 1863

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 22nd August 1863.

No. 229. Read the following Proceedings of the Board of Revenue, dated 19th August 1863 :—

Read the following letter from E. B. FOORD, Esq., Acting Collector of the Kistna District, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Madras, dated Masulipatam, 31st July 1863, No. 169.

SIR,

1. I have the honor to report that a Suit was filed against the late Collector, Mr. Thornhill, in No. 165 of 1861, in the District Moonsiff's Court at Masulipatam, by one Rayanipaty Seetapaty, Trustee of a Pagoda situated at Rayanipad, in the Bezwada Talook. The notice was served on me only on 4th May last.

2. The facts of the case are entered in the accompanying Memorandum,* from which the Board will observe that the Pagoda allowance, for which this Suit has been brought, was withheld under the orders of the Government. I have, therefore, the honor to request that you will be good enough to obtain the sanction of the Board to defend the Suit at public cost. A translation† of the Plaint and draft‡ answer are herewith submitted.

* Enclosure No. 1.

† Enclosure 2.

‡ Enclosure 3.

3. The time for filing answer will expire on the 20th September last.

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1. Ordered to be submitted to Government with the Board's recommendation that the defence of the Suit be sanctioned at the public cost, and that the Collector be authorized to file the answer as proposed below.

2. The facts of the case are simple. Up to Fasli 1263 the village Pagoda in Rayanipad was allowed a yearly sum of about Rupees 104 out of the village revenues. The origin of the grant is unknown, but the village accounts show that it existed in Fasli 1202, and was continued from that time more or less uniformly. From Fasli 1263 it was discontinued, and it was finally disallowed by Government in their orders, dated 30th November 1855, No. 1,308, Revenue Department, abolishing such allowances in the Masulipatam District.

3. The Board consider that the case is clearly one in which the Court have no jurisdiction whatever, and they would propose that the reply be cast in the following form, viz :—

That the assignment on the public revenue for which Petitioner sues was of the nature of an Inám, and dependent altogether on the good will and pleasure of Government.

That it was discontinued under express orders of Government, and that the Collector is not liable to be sued for maintaining those orders.

That the Civil Courts have no jurisdiction in such questions, which are matters of State policy.

That the Defendant, therefore, prays the Court to dismiss Plaintiff's Suit with all costs.

4. The 20th September is the latest date for putting in the defence.

No. 230. ORDER THEREON, 22nd August 1863, No. 1,548.

The Government sanction the defence of the Suit at the public cost, and authorize the Collector to file the answer as proposed by the Board of Revenue.

(True Extract.)

(Signed) C. G. MASTER,
Deputy Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

No. 5,176.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 19th August 1863.

Read the following letter from E. B. FOORD, Esq., Acting Collector of the Kistna District, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Masulipatam, 31st July 1863, No. 169 :—

1. I have the honor to report that a Suit was filed against the late Collector, Mr. Thornhill, in No. 105 of 1861, in the District Munsiff's Court at Masulipatam by one Rayanipaty Seetapaty, Trustee of a Pagoda, situated at Rayanipad in the Bezwada Taluk. The notice was served on me only on 4th May last.

2. The facts of the case are entered in the accompanying Memorandum,* from which the Board will observe that the Pagoda allowance, for which this Suit has been brought, was withheld under the orders of Government. I have, therefore, the honor to request that you will be good enough to obtain the sanction of the Board to defend the Suit at public cost. A translation of the Plaint† and Draft Answer‡ are herewith submitted.

* Enclosure No. 1.

† Enclosure No. 2.

‡ Do. „ 3.

3. The time for filing the answer will expire on the 20th September next.

ENCLOSURE No. 1.

From G. A. BALLARD, Esq., Special Assistant Collector of Masulipatam, to J. FRASER, Esq., Sub-Collector in charge of Masulipatam, dated 29th August 1855, No. 64.

1. I have the honor to acknowledge the receipt of a copy of the extract from the Minutes of Consultation, under date 22nd August 1855, No. 971.

2. There are several points in that communication on which I shall hereafter address you but am anxious to lose no time in respectfully offering some remarks on that part* of the extract which relates to religious allowances paid from the land revenue.

* Paragraphs 25 to 28 inclusive.

3. I addressed two letters† to the Collector on the subject of these allowances subsequent to the one‡ on which the present orders are passed. Except in particular cases mentioned, I expressed my opinion that Government was not called upon to recognize any of the claims in question. It appears that the Government are pleased to consider that they are, and to direct that the claims be bought in.

† 15th May 1855, No. 19.
16th July 1855, „ 33.

‡ 24th March 1855.

4. I would, with deference, observe that though the plan of purchasing in private allowances appeared to me advisable, and is, I am glad to see, approved of by Government, it is not (in my humble opinion) applicable to allowances granted in support of public ceremonies or religious institutions.

5. Where an allowance has been enjoyed by an individual for his own proper benefit, the payment of a sum of money in commutation fairly liquidates his claim for the future. But where an allowance has been paid for a public purpose, it appears to me that Government, recognizing the claim, is bound in buying it in, to see that there is some probability of the commutation money benefitting those in consideration of whose rights it is given.

6. An allowance granted for the celebration of a religious ceremony, or the maintenance of a temple, though received by one or more headmen or priests, was clearly granted for the benefit of the *village*, not for their *individual* use.

7. Whilst it was paid periodically, the villagers were always in a position to complain if the actual recipients mis-appropriated, or embezzled it. If a large sum is at once made over to a head man, trustee, or priest, there cannot be a doubt that little or none of it will be applied to public purposes.

8. It will be at once embezzled, and I see no practicable way of making the recipients responsible. To attempt it indeed would be to involve Government in that interference which they are so anxious to avoid, whilst the check the villagers had during periodical payments is lost.

9. It was with a view to the above objection, that I recommended* that temple bad claims of a less annual value than Rupees 10 should be ignored, and those of a higher value, as in the case of these allowances, where claims were admitted, met by grants of land where the allowance was below Rupees 10; there was little hardship in letting the villagers, if they wished it, make it up; whilst if lands were granted, trustees, or priests could only embezzle the produce of the year, and those injured or interested would be in a position to obtain redress by a recourse to the Courts.

* Clause 9, paragraph 22 of Special Assistant Collector's letter, 25th June 1855, No. 27.

10. I would respectfully beg particular attention to these considerations. If, however, it is determined that the claims are to be bought in, I think more definite instructions are required as to whom the payments of such considerable sums are to be made; and also as to the number of years, purchase to be allowed. Are the grants to be considered hereditary, *i. e.*, worth 20 years' purchase? or only life grants, *i. e.*, worth five years' purchase? Where a grant to a Pagoda or for the celebration of a festival is proved, the nature of the case would appear to me to point it out as hereditary, or rather as perpetual unless a limitation is specified.

(True Copy.)

(Signed) E. B. FOORD, Acting Colle

ENCLOSURE No. 1.

MEMORANDUM.

Suit No. 105 *of* 1861, *Masulipatam District Munsiff's file.*

Plaintiff	*versus*	*Defendant.*
Rayanipaty Seetapaty, Trustee of the Pagoda of Sree Vasunta Gopalaswamy-war, situated at Rayanipaud, appertaining to Bezwada Taluk.		George Thornhill, Esq., Collector of the Kistna District, on behalf of the Government.

1. Plaintiff sues for the recovery of the annual allowance in arrears, amounting to Rupees 728 for seven years, from Faslis 1264 to 1270 (during which it was withheld), at Rupees 104 per annum, with subsequent interest and costs.

2. There is nothing to show when and by whom this allowance was originated, nor are there any Sunnuds or other documents in the possession of the Plaintiff. The village Dowles from Fasli 1202 show that this allowance had been paid by deductions from the revenue of the village. The payments, however, were not made in an uniform way between Faslis 1202 and 1252. During the Government management of the Taluk, from Fasli 1253 to 1262, an annual sum of Rupees 104 was paid. In the two Faslis 1254 and 1257, an excess sum of Rupees 4 per annum was paid, there having occurred one additional month in each of those two years according to the Telugu Calendar. Since Fasli 1263 the payment was stopped.

3. In his letter of 24th March 1855, the Special Assistant Collector, Mr. Ballard, who inquired into these cases, recommended the discontinuance of the allowances. The Government, in Extract Minutes of Consultation 22nd August 1855, No. 971, directed these money payments to be dealt with like Bad Inams. To this course, the Special Assistant in his report* dated 29th August 1855, No. 64, took objection, as the recipients had no valid titles to these money payments which were unlike Bad Inams, originally given in *land*. The Government, in Extract Minutes of Consultation dated 30th November 1855, No. 1308, directed in modification of their original orders, the discontinuance of the allowances of this description; agreeably to which Mr. Ballard issued an order to the Tahsildar of Bezwadah Taluk under date 11th December of that year in No. 1,416, to the effect that the allowances of the seven Pagodas in the said Taluk, including that under dispute were abolished.

* Copy enclosed.

4. Thereupon Veerabhadrudu, Trustee of the said Pagoda, and the wardens, &c., petitioned to Government on 11th January 1856; and the Petitions were returned under the rules for the production of an endorsement from the local authorities. On a Petition presented to the Sub-Collector dated 24th September 1856, praying to continue the allowance according to custom, an endorsement was passed dated 31st October 1856, rejecting the prayer of the Petition, and saying that the allowance in question had been stopped by order of Government.

5. The Plaintiff addressed a Petition to the Inam Commissioner on 5th July 1860, praying to continue land in lieu of the allowance, which was also rejected by an endorsement dated 7th January 1861, to the effect that as this allowance had been abolished by order of Government, no interference could be taken in the matter; consequently this suit has been brought.

6. It does not appear from the former records that Plaintiff himself is the Trustee of the Pagoda. From the general investigation held by the Special Assistant Collector, Mr. Ballard, regarding religious allowances, it appears that one Rayanipaty Veerabhadrudu set up a claim, and argued that he was the Trustee of the said Pagoda. The said Veerabhadrudu, the villagers and the Plaintiff say that in consequence of this Pagoda having been consecrated by the Rayanipaty family, all the members of it are styled Trustees; and that Plaintiff brought this claim based on a letter written by the said Veerabhadrudu.

KISTNA DISTRICT, 31st July 1863. (Signed) E. B. FOORD, Acting Collector.

ENCLOSURE No. 2.

Original Suit No. 1,015 *of* 1861.

Translation.

To the District Munsiff's Court, Masulipatam.

Complaint preferred by the Plaintiff, Rayanipaty Seetapaty, Trustee of Sree Vasunta Gopalaswamy, situated in Rayanipadu in the Valavadam Mootah in the Bezoarah Taluk, at present residing at Godugupeta, against the Defendant George Thornhill, Esq., Collector of this District, on behalf of Government, residing at Masulipatam.

Agreeably to the Sunnuds granted to the said Swamivar (god) by the former Zemindars, it had been usual from time immemorial, to deduct annually from the Dowle of the village a sum of Rupees 124, viz., Rupees 52 for the daily offerings and lights of the Pagoda, and Rupees 72 for the celebration of Kalliyana Wootsavam (marriage ceremony); and while it had been thus enjoyed, the usage was subsequently altered in Fasli 1240, when the village came under Circar attachment. The Collector having withheld the payment from Fasli 1264, of Rupees 104, which had been annually fixed and paid on account of the said two items, I represented the subject both to the Government and the Collector in all the ways I could, but they have not disposed of the matter up to this time; consequently this suit is brought under Section 26, Act VIII of 1859.

At Rupees 104 per year, being seven years from Faslis 1264 to 1270, Rupees 728.

I pray that the Suit may be tried, and a decree passed that the Defendant should pay me the sum of seven hundred and twenty-eight Rupees, together with the subsequent interest, and the costs of Court.

Please take this into your consideration.

4th May 1861,

As per Section 26, Act VIII of 1859.

(Signed) RAYANIPATY SEETAPATY, Plaintiff.

I, Rayanipaty Seetapaty, the Plaintiff, do declare that what is stated in this complaint is true to the best of my information and belief. Section 27, Act VIII of 1859.

(Signed) RAYETNIPATY SEETAPATY, Plaintiff.

(Signed) P. V. District Moonsiff.

Filed 4th May 1861.

(Signed) P. VENKATACRISTAYA, District Munsift.

(True Translation.)

(Signed) E. B. FOORD, Acting Collector.

Enclosure No. 3.

DRAFT ANSWER.

In the Munsiff's Court at Masulipatam. In Original Suit No. 1,015 *of* 1861, *wherein*

Rayanipaty Seetapaty, Trustee of Stree Vasunta Gopalaswamy, in Rayanipadu, in Bezoarah Taluk, is Plaintiff, } and { G. Thornhill, Esq, Collector of the Kistna District, is Defendant.

The Answer of E. B. Foord, Esq., Acting Collector, on behalf of the above named Defendant.

This Defendant saith that the Plaintiff has no valid title to the Pagoda allowance claimed; that he possesses no Sunnuds or other documents to establish his claim; that the cash payments, alleged to have been made formerly by renters or Zemindars of the village out of their good will and pleasure, or even by Government pending inquiry into these claims, cannot be binding on the Government who, on the recommendation of Mr. Ballard, the then Special Assistant Collector, appointed to inquire into these cases, were pleased to order the discontinuance of the payments in question; and that under these circumstances the Inam Commissioner refused to acknowledge the title of the Plaintiff to the allowance. This Defendant therefore begs that the suit may be dismissed with costs.

(Signed) E. B. FOORD, Acting Collector.

Masulipatam, 31st July 1863.

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1. Ordered to be submitted to Government, with the Board's recommendation that the defence of the Suit be sanctioned at the public cost, and that the Collector be authorized to file the answer as proposed below.

2. The facts of the case are simple.

3. Up to Fasli 1263 the Village Pagoda in Rayanipad was allowed a yearly sum of about Rupees 104 out of the village revenues. The origin of the grant is unknown, but the village accounts show that it existed in Fasli 1202, and was continued from that time more or less uniformly. From Fasli 1263, it was discontinued, and it was finally disallowed by Government in their Orders dated 30th November 1855, No. 1,308, Revenue Department, abolishing such allowances in the Masulipatam District.

4. The Board consider that the case is clearly one in which the Courts have no jurisdiction whatever, and they would propose that the reply be cast in the following form, viz.;

That the assignment on the public revenue for which Petitioner sues, was of the nature of an Inam, and dependent altogether on the good will and pleasure of Government.

That it was discontinued under express orders of Government, and that the Collector is not liable to be sued for maintaining those orders.

That the Civil Courts have no jurisdiction in such questions, which are matters of State policy.

That the Defendant, therefore, prays the Court to dismiss Plaintiff's Suit with all costs.

5. The 20th September is the latest date for putting in the defence.

(True Copies and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To J. D. Sim, Esq., Secretary to Government, R. D., with 3 enclosures.

Copy to E. B. Foord, Esq., Acting Collector of the Kistna District.

Exd. J. Tulloch.

1863. Department.

No.

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 19th *August* 1863.

Despatched

Received

No. 5,176.

Submitting, with remarks, letter from the Collector of the Kistna District, requesting the sanction of the Board to defend at public cost the Suit brought against the late Collector, Mr. Thornhill, by Rayanipaty Seetapaty, Trustee of Pagoda situated at Rayanipad.

Pro: 28 Augt 1855 Nos 1-2
30 Novr " " 19-20

Rev= 1863 Despatch
Pro: of Govt for 8 August 1855.

Proceedings of the
Board of Revenue

Dated 19
Desp. 19
Rec. 20 } August 1863.
230 & Encl

No

Fr. Board of Rev. 21 Sept 1864
No 2517.

Submitting with remarks
letter from the Collector of the
Kistna District requesting
the sanction of the Board to
defend at public cost the Suit
brought against the late Col-
lector Thornhill by Rayam-
palty Sutapaty Trustee of a
pagoda situated at Rayam-
chad.

With Order
No 1548 22 Augt

concur in the course proposed by Board

Sd

No 1548 JP

The Govt sanction the
defence of the suit at the
public cost, and authorize
the Collector to file the answer
proposed by the Board of Rev

St George
Augt 1863 }

CJW

Nos 229 & 230.

Rev with 3 enclosures Sept 22. 14 S.C. Sept 25