M.R.O. 14—13,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 192	Press Mis.
381 382	
Dated 28 - 1 - 19 1863	

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 28th January 1863.

No. 381. Read the following Proceedings of the Board of Revenue, dated 22nd January 1863:—

Read the following letter from the Collector of the Godavery District, dated 13th January 1863, No. 8.

(In Cons. 19th January 1863, No. 303.)

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. As it involves a very important issue, the Collector will be instructed by Telegram to move the Civil Court to call up the suit for trial before itself.

2. The Plaintiff who is the Mukhasadarni of a tract designated Turpulanka in the Government village of Mogulamuri in the Amlapur Taluk of the Godavery District, sues for exemption from the water cess imposed on her land, on the ground that the irrigation has not been improved by the construction of the works from which it now derives its supply of water, and that the former source of water supply to her lands, has been intercepted and cut off by the new works.

3. She describes the land as "containing about 40 *Putis* of *Mamul* wet lands now under "cultivation. The lands are only fit for cultivation in the rainy season with crops of fine paddy. "They are never cultivable either with sugar-cane, or any other crop, or with summer Dalwa "paddy," and elsewhere in the plaint she says, "My lands had only produced crops of fine pad- "dy in the rainy season from the irrigation of the old channel, and they produce the same from "the water of the new channel as before. My dry lands do not even produce Paddy, Sugar-cane, "Turmeric, &c., or summer Dalwa paddy."

See tracing from the Indian Atlas accompanying.

4. The Collector states that the tract designated Turpulanka (which is not an isolated island, but part of a large insulated tract containing other villages) is entered in the permanent and other accounts as consisting of 24 *Putis* of low jungle and swampy land, and that of this extent up to about 50 years ago, only about 6 *Putis* or 48 acres, bearing an assessment of Rupees 96-4-0, or 2 Rupees an acre had been brought under cultivation partly with paddy, and partly with other crops, the remainder being waste; but that subsequently reports of encroachments on the Government land adjacent had been frequently received, and that there can be no doubt that the extent now held by the Plaintiff is greatly in excess of that entered in the old accounts. The Commissioner has enfranchised the Inam, and charged on it a quit rent of Rupees 274 in commutation of the Government reversionary claims.

5. Mr. Purvis will be instructed by Telegraph to obtain and forward an extract from the Commissioner's Register, showing what has been admitted by him as the extent of the Mukhasadar's valid claim. The amount of the quit rent would seem to indicate that her right has been admitted to a larger extent than is shown in the old accounts, but Mr. Purvis cites the amount charged to show that the whole extent now cultivated could not have been classed as fully irrigated at the cost of the State when possession of it was obtained.

6. It appears that the insulated tract in which Turpulanka is included was to some extent irrigated by an old drainage channel called the "Cowseka" which was taken off one of the branches of the Godavery some little distance from the sea, but far below the point up to which the river is affected by the tide in fair weather.

7. It followed that except when the freshes were at their height, the water in the channel was utterly useless for purposes of irrigation, and thus, though some water might during the freshes have been stored by the Plaintiff in reservoirs at considerable expense for use later in the season, the important early processes of Paddy cultivation must have been dependant solely on the rain until the construction of the new channel.

8. In his draft answer, Mr. Purvis states that the Plaintiff's lands were not granted as Nunjah, or as land fully irrigated at the cost of the State, which would have entitled them to entire exemption from the charge for water from the new works, and further that they were not

Read by the Ld

"Mamul Nunjah" formerly imperfectly irrigated, and thus entitled to the benefit of the half rate, and that therefore they have been properly charged with the full water rate.

9. In 1858 the Plaintiff petitioned the Board on the subject of this charge for water, and from the Collector's report it appeared that water had been supplied from the new works to some extent in Fasli 1264, and that in accordance with the general practice, the then rate of Rupees 8 per *Puti*, or Rupee 1 per acre had been charged in Fasli 1266 on the area under Paddy which was then found to be 40 Putis. In Fasli 1267 the rate was raised to Rupees 2 per acre for Rice crop, which rate was continued till Fasli 1270, when the established rate of Rupees 3 was imposed. The demand has thus increased from Rupees 321-8-0 on 40 Putis, or 320 acres to Rupees 940, on 312 acres.

Dated 29th October 1858, in Board's Proceedings dated 5th December 1858, No. 4 632.

10. In his former report Mr. Purvis stated that although water might formerly now and then have been obtained from the old drainage channel or stream called "Cowseka" still the supply had been precarious and obtained with much labor; while that from the Anicut channel is plentiful and unfailing, and that he considered a water rate of Rupees 2 per acre for a rice crop was not at all too high.

11. The Board accepted his assurance and declined to interfere.

12. It appears that the assessment on the 40 *Putis** irrigated in Fasli 1266, was Rupees 1,213, which sum at least was receivable by the Inamdar even if none of the land was retained in her own lands.

* Acres. Puti. 8 = 1

13. The following comparison shows unmistakeably that the position of the Inamdar has immensely improved in recent years.

Extent from old accounts of permanent settlement, &c.	Putis. 24			
Cultivation up to 50 years ago.	6	assessed at Rupees	96	4 0
Extent as measured in Fasli 1260.	118			
Do. cultivation.	40			
Fit for do.	3			
			1,213	2 4
	3		79	6 0
			1,292	8 4

14. It does not necessarily follow that the whole of this increase is due to the anicut works, but the statement appears to prove that the Plaintiff must have encroached on land not included in the original grant, and that even after paying the present high rate of water tax, she is still left in possession of far more than she could fairly claim under her Inam tenure.

15. The Collector has placed the matter before the Board in a very crude state, but there is not time to refer to him for the information on various points which might serve to render the defence more complete.

16. The Board would recommend that the answer be cast in the following form:—

That the extent of land which Plaintiff could fairly claim as included in her Mukhasa was not granted as Nunjah, and was not Nunjah in the sense of being irrigated by artificial means; and that therefore she was not entitled to claim irrigation for it.

That it could not claim the prescriptive title of "Mamul Nunjah," inasmuch as the supply of water that might occasionally have been obtained with much labor from the "Cowseka" stream or drainage channel was most precarious and insufficient for raising wet crops, and was only useful as auxiliary to the rain that fell on the land.

That the irrigation now supplied from the anicut channels to the extent of land properly belonging to the Mukhasa is constant and sufficient, and such as is customarily and fairly elsewhere charged with a "Kusser," or water rate as being in excess of what is claimable under the original tenure.

Proceedings of the Madras Government, Revenue Department,
28th January 1863.

And that although the same arguments as to the former and present supply, apply equally to the whole extent of land in Plaintiff's enjoyment, yet as regards all beyond what is shown in the old accounts as belonging to the Mukhasa, she is not entitled to assert any claim to be relieved of any charge which is not equal to the full rate of assessment chargeable on the land in its present condition.

17. The Board presume from the Collector's letters that he can establish these assertions so far as the *onus probandi* will rest on him, and if so the Board consider that they form a sufficient defence.

(A true Extract.)

(Signed.) W. HUDLESTON, *Secretary.*

No. 382. ORDER THEREON, 28th January 1863, No. 192.

1. The Governor in Council considers it desirable that the Board of Revenue should consult Mr. Dale in this case, especially as to whether the jurisdiction of the Court cannot be demurred to, on the same grounds as were urged in the Suit referred in Note 2 at page 116 of the first Volume of the Board's Circular Order Book, and also in the one mentioned in the Board's Proceedings dated 30th September 1861, No. 5,259.

2. The Governor in Council observes that by the old accounts of the District, Plaintiff's Mocassah comprised 24 Pooties, equivalent if the rate of conversion stated be correct to 192 Acres, whereas she is in possession of 118 Pooties or 944 Acres. The Inam Commissioner under the Rules could only have allowed an excess of 10 per cent. or 19¼ Acres as Mocassah, and must have fully assessed the remainder. It is only the original area, *plus* the 19¼ Acres above mentioned, in regard to which Plaintiff can claim any special rights or privileges. As regards the rest of her holding she is in the position of an ordinary Ryot, and the Courts cannot interfere with the paramount power of the Government to fix, as an act of State, the assessment payable, in whatever shape that assessment may be imposed, or however it may be designated. This point should be clearly set forth in the answer.

3. As regards the Mocassah itself, the Governor in Council observes, that the accounts show that it was not granted as "Nunjah" Inam. The Mocassadar therefore cannot be entitled to water, and if she takes water from any Government source, as the old channel referred to evidently is, she subjects herself to a liability to be charged for the same. This point also should be plainly set forth in the answer.

4. The Government would not in any shape admit the plea of "Mamool Nunjah," as the accounts show that the land was not originally Nunjah, for any intermediate enjoyment of water could at the best have been permissive only, and Plaintiff after such excessive encroachment on Government lands has no title to any concession.

5. The unsatisfactory manner in which the Collector has submitted the subject, and his omission to state what course the Inam Commissioner pursued in the case, render it difficult for Government to do more than, as above, indicate the course which, so far as the papers before them afford them the means of judging, should be adopted. Mr. Dale will however be able to advise the Board how they should act, and the Board will be guided by him.

6. The Government authorize the Board to defend the Suit.

(Signed) J. D. SIM,
Secretary to Government.

No 1921.

(In accordance of the Madras Government
under date the 28th January 1863

Read the following
Pro: of the Board of Revenue
(Here enter 22nd Jany 63)

The Secy C. considers
it desirable that
the Bd. of Rev. should
consult the Dale
in this case, especially
as Govt be then the
juris. Return of the
Court cannot be
determined on the
same grounds as
here urged in the
Suit referred in
Note 2 at page 116
of the first Vol: of
the Bds C. O. Book.
& also, in the one
mentioned in the Bds
Pers: of 30 Sept 1861
No 5259.

The principle here
stated by the Bd

they special attention
to this - I do not
think the Court can inter-
fere as to the liability
of lands to a water
cess any more than
to a land-assessment
remissions or the
like - J Bd.

accounts of the
District Plaintiffs
Newcastle comprises
24 Portions - equivalent
if the Rate of Survey
were stated to consist
of 192 Acres - whereas
the is in possession
of 110 Portions or 944
~~192~~ Acres - The
Lucan Court under
the rules could only
have allowed an
Excess of 10 per Cent
or 19/5 Acres as
Newcastle and
must have fully
assessed the Re-
mainder - It is
only the original area
which the 19/5 Acres
above mentioned in
regard to which
Plaintiff can

claim any special
rights or privileges -
as regards the exit
of her Holding she
is in the position of
an ordinary Settler
and the Courts can
not interfere with
the paramount
power of the first to
fix - as an Act
of State - the assess-
ment pro tanto - as
whatever Share
that assessment
may be imposed or
however it may be
designated - This
point should be
clearly set forth
in the plea: answer.

As regards the
Newcastle itself
the first Reserves
that the accounts

show that it was not painted as "Mancock" Swamp. The Recordation therefore cannot be entitled to rates and if the take water from any pt. source - as the old channel referred to Evidently it is, the subject himself to a liability to be charged for the same - This ground also should be plainly set forth in the answer.

The pt. should not set in any shape a bind the plea of "Mancock Swamp" as the &c. comes to show that the land was not originally Mancock Swamp any intermediate enjoyment of water could at the best have been permissive only - and after such excessive encroachments in the pt. landd has no title to any concession -

The unsatisfactory manner in which the subject has been omitted by his predecessor in title to state how the Swamp came to be reclaimed in the case renders it difficult for

I, for the Reasons
& therein set forth,
"It indicate the Course
It which - so far as
It the Papers before
Us them afford them
a the Means of judging
It should be adopted.
O Give Date with Power
f to act & advise
t the Bd how they
h should act and
d the Bd with the
f guided by him.
f The first Section
h the Bd & defend
1 the suit

J D S

Ass. 23.

In the Bay of Rivers with my Enclosures Ch. to 28th Dec. 31st
3 — Govt Pleaders

19-9-06

Revenue 1863 Despatch
Rec: of Govt for January

VI

c. 1. 1 & 2.

22-4-14

Rec: of the Madras Govt
dy 28 Jany 1863.

Transd Board of Revenue 4 Feby 1863 No 356
to Rec: 20 February 1863 No 366

This instituted by an
Act to enable Commissioners of Sewers
to be appointed for the Purposes of
Drainage & Protection from Water Cases
ordered to be defended at
the public expence.

No 381 & 382.

c 21 Jany 63 Rec'd 26 @ 28.