M.R.O. 14—13,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2043 Press ~~Mis.~~

163 - 164

Dated 13 - 11 - 1963.

Not to be folded or roughly handled

No. 163. Read the following Proceedings of the Board of Revenue, dated 3rd November 1863 :—

Read the following letter from the Honorable D. ARBUTHNOTT, Collector of Salem, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Madras, dated Salem, 30th October 1863, No. 201.

SIR,

Collector's letter, dated 15th February 1862, No. 28.
Board's Proceedings, dated the 21st May 1862, No. 3,288.
Collector's letter, dated the 4th February 1863, No. 17.
Board's Proceedings, dated the 9th February 1863.

1. With reference to the correspondence noted in the margin, I have the honor to enclose a copy of the Decree passed by the Principal Sudder Ameen in Original Suit No. 11 of 1861. Vencataramien, Mutadar of Todavelly, *versus* H. A. Brett, Esq., Collector of Salem.

2. The Board will observe that the Principal Sudder Ameen has adjudged Rupees 1,612-8-0 as damages or loss to be paid to the Plaintiff together with proportionate costs.

3. I request the Board will be pleased to let me know, or if necessary to obtain the opinion of Mr. Dale, who prepared the answer filed in this Suit, whether an appeal ought to be preferred against the Principal Sudder Ameen's Decree or not. I am of opinion that an appeal may be preferred to obtain a diminution in the amount of damages adjudged by the Principal Sudder Ameen on the following grounds :—

First.—That the Principal Sudder Ameen should have considered the assessment of the lands left waste, and not the value of the produce, which those lands would have yielded, as the loss sustained by the Plaintiff the Mutadar.

Secondly.—That the Principal Sudder Ameen should have made an allowance in favor of the Defendant for the Poonjah cultivation, which was in no way prevented by the non-construction of the Anicut, and

Thirdly.—That the re-construction of the Anicut having been completed in July 1860, the Principal Sudder Ameen should have awarded loss for two years only and not for three years as he has done.

4. A Mutadar is entitled only to the assessment on the lands and not to the produce.. In the absence of water the Ryots as a natural consequence gave up the lands and they were lying waste. The Mutadar. has therefore only lost the assessment during the time they were so lying waste and not the produce. Again, there was nothing to prevent the Mutadar from giving out the lands on Poonjah assessment pending the re-construction of the Anicut, and if he did not choose to do so, the loss arose through his own fault.

5. The re-construction of the Anicut was completed in the month of July 1860. This was just the cultivation season for Nunjah lands, and there was ample time to raise that year's Nunjah crop. The Mutadar should himself be responsible for the loss if the lands were not brought under cultivation that year. The Principal Sudder Ameen ought not therefore to have included that year's loss.

6. The extent left waste according to the Principal Sudder Ameen's Decree is Acres 34-33-0. There is only a trifling difference between this and the extent as ascertained by the Tahsildar. The annual Nunjah assessment on this extent is Rupees 149. The amount for the two years would be Rupees 298. Deducting from this Poonjah assessment, at Rupees 1-11-2 per Acre the ordinary Poonjah rate of the village, viz., Rupees 59-2-1, the net loss would be Rupees 238-13-11, and this is the amount which, under paragraph VIII of our anwser, should be paid to the Mutadar.

7. I beg to enclose for the information of the Board and Mr. Dale, the enclosed translations of the depositions given by the Mutadar (Plaintiff) and by the Government Vakeel on behalf of the Collector. The Government Vakeel was called upon by the Principal Sudder Ameen to give this deposition.

8. If the Board are of opinion that no appeal is necessary, I request they will obtain the sanction of Government for Rupees 1,885-1-2, being the amount of loss to be paid to the Plaintiff and the costs as per annexed Memorandum.

9. I request the Board will favor me with their instructions in the matter at an early date, as the time for filing an appeal will expire on the 10th proximo.

MEMORANDUM.

				Rs.	A.	P.
Amount of the Decree...				1,612	8	0
Amount of the costs incurred by Government including the Vakeel's fees...			466 8 0			
Amount of costs to be paid to Plaintiff...			185 7 7			
			651 15 7			
Deduct amount to be recovered from the Plaintiff...			379 6 5			
				272	9	2
Total amount to be sanctioned...				1,885	1	2

(Signed) D. ARBUTHNOTT, *Collector.*

1. The Board are not disposed to recommend any further appeal.

2. There is no doubt that the Plaintiff suffered considerably by the neglect on the part of the Government Officers to restore the Anicut after the arrangement for the distribution of the cost had been sanctioned by Government in January 1856, the work not having been completed till July 1860, although the Court allow only from the end of September 1857 to the beginning of 1858 as a sufficient length of time for its execution, and to this the Collector raises no objection.

3. Under these circumstances and as the loss of produce was certainly sustained by the default on the part of the Government Officers, although it may be argued that under ordinary circumstances the whole of this loss would not have fallen on the Mutadar, the Board consider that the damages awarded against Government, being three years' value of estimated produce, are not excessive.

4. They resolve, therefore, to request the sanction of Government for the payment of Rupees 1,885-1-2 damages and costs, with reference to the Government Preceedings, dated 1st March and 20th May 1862, Nos. 455 and 1,116, Revenue Department.

No. 164. ORDER THEREON, 13th November 1863, No. 2,043.

1. The Governor in Council concurs with the Board of Revenue that although the decision is open to exception in several respects, it is not desirable, under the circumstances of the case, that the litigation should be continued. Sanction is therefore granted for Rupees 1,885-1-2.

2. The Board will ascertain what the Anicut cost and whether the share of Plaintiff has been recovered from him.

(True Extract.)

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

To the Board of Revenue.
„ Accountant General.
„ Civil Paymaster.

Exd. S. T. Augustin.

I should like to know the cost of the work done
that is the cost of the Anicut

HW

For Order.

put left the Court to
adjust the damages - and
the Court has awarded Rs 1885-
damages & costs.

An appeal is certainly
sustainable as regards damages
for 1860 - when cultivation was
impossible - the Anicut having been
finished in July 1860 - and possibly
so as regards no 1st for Pongal -
I doubt whether cultivation which
could was possible throughout. I
doubt whether an appeal would lie
as to value of produce having been
awarded instead of money assessment
as the so-called produce seems to
have been the Zemindars "waram" or
share in kind -

But on the whole I think
the Board's recommendation that the de-
cree should be accepted - although
questionable in these respects - is the

Rec. 1st March 62. No. 11 – 12
20th May " " 377 - 3,

Revenue 1863 Oct.
Rec: of Govt for Mar. No. 2665

Proceedings of the
Board of Revenue
dt. 20 & 21 Septr/64 C.N. 2545

Dated 3d Nov. 1863
Despd. — 3d — "
Rec. — 4th — "
P. 4-gk
Returned 4 Dec. 17-11-63

Submitting
with remarks letter
from the Collector of Salem
forwarding the Decree
passed by the Principal
Sudder Ameen in O.S.
No. 11 of 1861

No. 2043 - 8th Nov.
Rec. Rs. 1-8 Rec. 1st 30th March 64
L. No. 834 - Sis Rs. L

No. 2043.
13th Novr. 1863.

The final Concurs
with the Bd. of Rev
that although
the decision is
open to Exceptions
in several respects
it is not desirable
under the circum-
stances of the
case, that the liti-
gation should be
continued. Sanction
is therefore granted
for Rs 1885-1-2

The Bd will ascer-
tain what the
amount Cost to the
State of Mdy has been
& Govt/63 & report
thereon J B-S

much obliged -
J B-S