M.R.O. 14—18,000—27-6-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1465 Press ~~Mis.~~

60 & 62

Dated 28. 6. 1864.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 28th June 1865.

No. 601. Read the following Proceedings of the Board Revenue, dated 21st June 1865.

Read the following letter from CLEMENT DALE, Esq., Government Pleader, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated Madras, 9th June 1865, No. 94 :—

SIR,

1. With reference to the Proceedings of the Board of Revenue, under the date and number noted in the margin, I do myself the honor of reporting for the information of the Board that the R. A. No. 77 of 1864, on the file of the High Court, came on for hearing on the 15th May 1865, when their Lordships, the presiding Judges, reserved their Judgment. I have since obtained a copy of their Judgment affirming the Decree of the Court below with costs ; and do myself the honor of enclosing you a copy.

11th January 1865, No. 172.

2. In this case several papers were put in evidence by the Plaintiff which had been procured from the Collector.

3. It is a very common, but most objectionable, practice for Government officials to furnish to litigants and parties opposed to Government, copies of any of their records such litigants and opponents may think fit to ask for. The objections to such a practice are so obvious, I feel it is not necessary to enlarge upon them.

4. On the 29th of July 1862, I had the honor of submitting to Government my opinion on the course which ought to be pursued on an application being made for inspection or production of Government records, of that letter I now enclose a copy for the information of the Board ; and I am of opinion that some check should be placed on the indiscriminate production of Government records.

Letter from Government Pleader to Chief Secretary, 29th July 1862, No. 108.

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1. Submitted to Government, with reference to the Government Order, No. 50, dated 12th January 1865.

2. With reference to Mr. Dale's remarks regarding the common practice of "Government officials" furnishing officials papers to litigants and parties opposed to Government, the Board have to observe that the present Rules approved by Government in Order No. 544, dated 1st April 1864, and under which such papers may be granted to private parties, appear to provide a sufficient safe-guard against the grant of documents to which there may be any serious objection. The Collector's permission is necessary in every case in which the document applied for is merely a District record ; and in the case of documents which are communications from the Board or from the Government, the permission of those authorities must first be obtained by the Collector.

3. The Circular Order of the Sudder Adawlut, dated 17th June 1824, to which Mr. Dale alluded in paragraph 4 of his letter, dated 29th July 1862, was not overlooked in the preparation of the Rules above referred to, as may be seen from Rule XXV.

4. Should Government, however, consider it desirable that Collectors should be prohibited from furnishing parties opposed to Government with copies of any of the public records they may apply for, the Board will issue the necessary instructions.

No. 602. ORDER THEREON, 28th June 1865, No. 1,465.

Miscellaneous.

1. The Government have already passed orders on Mr. Dale's letter, and await the Board's reply.

2. It is evident that although the Rules regarding copies may be all that can be desired, it depends greatly on the judgment of the District Officers in applying them whether Government interests suffer or not.

(True Extract.)

(Signed) W. HUDLESTON,

Acting Secretary to Government.

To the Board of Revenue.
,, the Government Pleader.

Exd. S. T. Augustin.

No. 3,406.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 21st June 1865.

Read the following letter from C. DALE, Esq., Government Pleader, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated Madras, 9th June 1865, No. 94 :—

1. With reference to the Proceedings of the Board of Revenue under the date and number noted in the margin, I do myself the honor of reporting for the information of the Board that the Regular Appeal No. 77 of 1864 on the file of the High Court came on for hearing on the 15th May 1865, when their Lordships, the presiding Judges, reserved their Judgment. I have since obtained a copy of their Judgment affirming the Decree of the Court below with costs, and do myself the honor of enclosing you a copy.

11th January 1865, No. 173.

2. In this case, several papers were put in evidence by the Plaintiff which had been procured from the Collector.

3. It is a very common but most objectionable practice for Government Officials to furnish to litigants and parties opposed to Government, copies of any of their records such litigants and opponents may think fit to ask for. The objections to such a practice are so obvious, I feel it is not necessary to enlarge upon them.

4. On the 29th of July 1862, I had the honor of submitting to Government my opinion on the course which ought to be pursued on an application being made for inspection or production of Government records ; of that letter I now enclose a copy for the information of the Board, and am of opinion that some check should be placed on the indiscriminate production of Government records.

Letter from Government Pleader, to Chief Secretary, 29th July 1862, No. 108.

ENCLOSURE No. 1.

In the High Court of Judicature at Madras.

Monday, the fifteenth day of May, one thousand eight hundred and sixty-five.

Present.

The Hon'ble Sir COLLEY HARMAN SCOTLAND, Knight, Chief Justice.

and

The Hon'ble Mr. Justice FRERE.

Regular Appeal No. 77 of 1864.

Sri Uppu Lakshuri.
Bhory Ammal. } *Appellant, Plaintiff,*

and

The Collector of Godavery District, *Respondent, Defendant.*

Regular Appeal against the Decree of the Civil Court of Rajahmundry in Original Suit No. 2 of 1863 on the file of the late Moofty Sudr Ameen's Court.

This Regular Appeal coming on for hearing, the Court delivered the following Judgment.

Judgment.—This was a suit instituted by a female landholder in the Godavery District against the Collector, claiming the privilege of irrigation from the Government channels free of charge ; she states that her Village Turpulanka is a Mukhasa Inam comprising about 40 putties of wet land now under cultivation ; that for a long series of years these lands were watered by an old channel bearing the name of Kauseka, but that in the year 1855, on the introduction of the new system of irrigation into the Godavery District this channel was intercepted, and that the

lands since that time have been watered from a channel connected with the new irrigation works, and deriving its supply of water from the Godavery river; she further states that the Collector has imposed on the lands under cultivation a water tax of Rupees 2 an acre, an impost which she had been compelled to pay, and from which she alleges she is exempt by reason of the nature of her estate in the lands, and under the rules for the assessment of the water-rate promulgated by the Board of Revenue, by which no such tax is allowed on lands which come under the denomination of "Mamul wet lands," or those which were fully irrigated from canals which existed prior to the construction of the anicut on the Godavery. The relief prayed is the recovery back of the amount of water-rate which the Plaintiff had been compelled to pay, and a declaration of her right to the enjoyment of the water for the future free from assessment to the water-rate.

2. The Collector in his answer denied that the Plaintiff's village was a Mukhasa Inam, as had been stated by the Plaintiff, or that the extent of cultivation was such as had been alleged in the plaint. He further denied that any part of the lands held by the Plaintiff had been granted or registered as "Nunjah Inam," in which case only they would come within the exception stated by the Plaintiff, as would appear from Rule No. X. of the Rules for water assessment sanctioned by Government, and he therefore contended that the Plaintiff had no right to claim exemption from the water-rate generally levied under those Rules upon lands irrigated as the Plaintiff's are.

3. The Acting Civil Judge has decreed against the claim of Plaintiff and dismissed the suit, and the case comes before us in Appeal from his Decree, and the substantial question for consideration is whether the Plaintiff has established such a proprietary right in the land as entitled her to use the water supplied through the channels made at the Government expense for the purposes of irrigation free of assessment to the water rate. The Appellant contends that sufficient appears to show as against the Government the existence of a valid title by grant to the lands as Inam Nunjah before the enfranchisement by the Inam Commissioner in 1862, and that by reason of such title, as well as under the terms of Rule X. of the Revenue Rules regulating the assessment of the water rate in the District she is entitled to use the water as she had done before free of charge, and upon this ground she rests her case.

4. Now we may at once observe, as respects Rule X. of the Revenue Rules that we do not think it puts the claim of the Plaintiff on any better footing than it would have stood if there had been no such Rules. Those Revenue Rules came into operation in 1860, and the exceptions in Rule X. clearly apply to "Nunjah Inams," in respect of which a legal title by grant exists and can be proved—does then the evidence in the case show, as contended on the part of the Appellant, that the lands in question were granted originally as Nunjah Inam, and were held and enjoyed under such grant before the enfranchisement by the Inam Commissioners? There is, as the Vakil of the Appellant was obliged to admit in the course of the argument, a total failure of proof of a grant of the land by the ruling power ever having been in existence. On the contrary, the evidence rather goes to show that the land was originally acquired otherwise than by grant. But an effort was made to maintain that there was sufficient evidence of the Plaintiff's Inam title by acknowledgment on the part of the Government, the evidence relied upon being a declaration of opinion in favor of the title of the Inamdar given in 1843 by Sir Henry Montgomery as Commissioner of the Northern Circars. Now, we have nothing before us as regards that opinion, except the allusions made to it in the Proceedings held in the Office of the Inam Commissioner in the years 1860 and 1862, and can certainly give no effect to it here as a conclusive acknowledgment of the Plaintiff's title on the part of the Government; but we may observe that so far as we are enabled to judge the question, which the Commissioner was called upon to consider in 1843, at the instance of an informer, was not whether the lands were held as Inam under a strictly legal and valid title, but whether they should be resumed, on the ground that their occupation by the Plaintiff's predecessor constituted a fraudulent encroachment upon the limits of the neighbouring Government village of Mogallamury.

5. Again, it was urged that the length of time during which the land had been enjoyed was sufficient of itself to make a good Inam title in the Plaintiff under the operation of the Inam Rules of 1831; but we think that argument of no avail. In deciding upon the right of the Plaintiff as Inamdar against the Government before the land was enfranchised, we must look to Regulation III. of 1802, which by Section 8 provides expressly against length of possession by holders of exempted lands being alone a bar to demands of Government. The Inam Rules of 1831 are for the Settlement on the part of the Government of the title to the lands held as Inam, and the Plaintiff sought and obtained the benefit of those Rules from the Inam Commissioners, and it is apparent from the Proceedings of the Commissioners (upon which both parties rely) that they considered the Plaintiff had no valid Inam title, and that a title was then secured to the Plaintiff, and the land enfranchised, because of the time the family had been in possession, and upon the understanding that the land was liable to be assessed at the water-rate.

6. Upon the whole, we are of opinion that the Plaintiff has failed to show a valid legal title to the land as Inam Nunjah before the enfranchisement in 1862, and is consequently not entitled to exemption from assessment to the water-rate in respect of the land in question; some observations were made in the course of the argument as to the unreasonableness and injustice of the amount of the rate; but with the amount of the rate we have no power to interfere. Relief in that respect must be sought at the hands of the Government.

The Decree of the Lower Court must be affirmed with costs.

(A true Copy)

(Signed) P. P. HUTCHINS,
Registrar, Appellate Side.

ENCLOSURE No. 2.

From C. DALE, Esq., Government Pleader, Sudr Adalut, to A. J. ARBUTHNOT, Esq., Acting Chief Secretary to Government, dated Madras, 29th July 1862, No. 108.

12th July 1862, No. 1,518, Revenue Department.

1. I have the honor to acknowledge the receipt of the Proceedings of Government, under the date and number noted in the margin, and to report to the Honorable the Governor in Council as my opinion, that it is not incumbent on Government to comply with applications of the nature of that referred to in the Proceedings now under acknowledgment, but that Government on such applications may refuse an inspection, or to furnish a copy of any of their records.

2. I am of opinion that all communications made by Collectors in their official capacity to Government are privileged communications the production of which cannot be enforced by any Municipal Court without the consent of Government.

3. If a Suitor considers the production in evidence of a public record to be necessary for the support of his case, he should apply to the Court in which his case is pending for a Summons to be directed to the party in whose custody the record is kept; should such party consider the production of the record to be objectionable, he should attend the Court with the document, and state his reasons for objecting to produce the document. The Judge will decide whether it should or should not be produced.

4. The subject is treated in the Circular Order of the Sudder Court, dated the 17th of June 1824, and the observations of the Board of Revenue there set out. Provision is also made in Act II of 1855, Sections 21 and 23.

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1. Submitted to Government with reference to the Government Order, No. 50, dated 12th January 1865.

2. With reference to Mr. Dale's remarks regarding the common practice of "Government Officials" furnishing official papers to litigants and parties opposed to Government, the Board have to observe that the present Rules, approved by Government in Order No. 544, dated 1st April 1864, and under which such papers may be granted to private parties, appear to provide a sufficient safe-guard against the grant of documents to which there may be any serious objection. The Collector's permission is necessary in every case in which the document applied for is merely a District Record; and in the case of documents which are communications from the Board or from the Government, the permission of those authorities must first be obtained by the Collector.

3. The Circular Order of the Sudder Adawlut, dated 17th June 1824, to which Mr. Dale alluded in paragraph 4 of his letter, dated 29th July 1862, was not overlooked in the preparation of the Rules above referred to, as may be seen from Rule XXV.

4. Should Government, however, consider it desirable that Collectors should be prohibited from furnishing parties opposed to Government with copies of any of the Public Records they may apply for, the Board will issue the necessary instructions.

(True Copies and Extract.)

(Signed) R. A. DALYELL,
Acting Secretary.

To W. Hudleston, Esq., Acting Secretary to Government, R. D.,
with two enclosures.

Copy to C. Dale, Esq., Government Pleader.

" to J. Fraser, Esq., Collector of the Godavery District.

Exd. R. H. Lee.

PROCEEDINGS OF THE BOARD OF REVENUE,

1865. Department.

No.

Dated 21st June 1865.

Despatched

Received

No. 3,406.

Submitting, with remarks, letter from the Government Pleader forwarding copy of the Decree passed in Regular Appeal No. 77 of 1864 instituted in the High Court for the recovery of water-rate collected on certain land in the Godavery District, and objecting to the practice of furnishing copies of Government Records to parties opposed to Government.

28-1465.

H. Govt. have already passed orders on Mr. Dale's letter & avoided the Bd's reply.

It is evident that all the orders regarding copies may be all that can be desired. It depends greatly on the judgement of the Dt. Officers in applying them whether Govt's intentions be carried out or not.

28th June 65.

14 To the Board of Revenue dated 29 June
9 Govt Proceedings Thursday June 30
4

Pro. 13 August/62 A 145-146
12 July ——— 183 - 184
1 April ——— 64 - 22 - 23
12 " ——— 165 — 111 - 112
19 June - 65 A 394 - 396

20-9-;65-17

N. 601 A 62.

C24 June/05 R26

Rev. 1865 Departl.
Pro:/- Govt. - June.
No. 1660.

Proceedings of the
Board of Revenue

Dated 21st
Desp. 21 } June 1865.
Rec. 22 }
£ 2. 0 & 0 Rec.

Submitting with remarks
letter from the Government
of Madras forwarding copy of
the Decree passed in O.S. A
No 77 of 1864 instituted in the
High Court for the recovery
of water-rate collected on
certain land in the Chingleput
Dt and objecting to the practice
of furnishing copies of
Government records to parties
applied to Government.

No 1465-98 June