M.R.O. 14—13,000—27-9-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1774 Press ~~Mis.~~

529. 550

Dated 31-7-1865

Not to be folded or roughly handled

No. 549. Read the following Proceedings of the Board of Revenue, dated 21st July 1865, No. 4,230.

Read the following letter from G. BANBURY, Esq., Acting Collector of Tinnevelly, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated Palamcottah, 29th June 1865, No. 260½ :—

SIR,

1. I have the honor to forward herewith translation of a plaint filed against me in the Principal Sudder Ameen's Court, under date the 31st May 1865, by one Vanuvalinga Thamburan, Carbar of Thiruvaduthurai Matam Authinum, praying for the cancelment of an order passed by me in the same month modifying a decision passed by the Acting Sub-Collector, Mr. Kindersley, under date the 5th December 1861, regarding certain hills in Nangunerie Talook.

2. One Subba Row, a Ryot of Purpanerie, a village in Nangunerie Talook, appealed to me by petition against the Acting Sub-Collector's decision, referred to above, producing an endorsement of the Board of Revenue, dated 12th April 1862, directing him to appeal to the Collector against the said decision, the Petitioner having stated in his Petition that he had presented a Petition to the Inám Deputy Collector, Narrain Row, opposing the claims of Thuruvaduthurai Matam to enjoy the said hills as Inám, and requested me to restrain the Matam people from cutting the trees on the hills pending the decision of the Inám Deputy Collector. I addressed Narrain Row on the subject, and he, in a letter dated 11th April 1865, copy of which is herewith forwarded, set forth the grounds upon which the claims of the respective parties were based, and solicited my opinion on the decision of the Acting Sub-Collector Mr. Kindersley as to the enjoyment and right of the Matam to the hills, adding, that he would await my reply before disposing of the case on the Inám side: he at the same time forwarded the records of the case received by him from the Nangunerie Tahsildar.

3. On perusal of the above records, I arrived at a decision entirely at variance with that of Mr. Kindersley, and copies of this decision I forwarded both to the present Acting Sub-Collector, in whose division the hills in question are situated, and to the Inám Deputy Collector, and a copy is herein enclosed for the Board's information. The Matam instead of appealing to the Board against my decision has filed the plaint in question against me in the Principal Sudder Ameen's Court. The circumstances of this most important case, which affect the interests of the villagers living near the hills, both in an agricultural and a domestic point of view, and the interests of Government in a greater degree, are shewn below, and it would clearly appear from the records that the Matam had never enjoyed the hills up to the date of Mr. Kindersley's decision, and have put forward a grossly false claim.

4. It appears that these hills have formed the subject of dispute between the villagers of Calacaud and Singumbutty Zemindars before the Revenue authorities from the year 1852 up to 1857, and in the course of the inquiry which was conducted before the Tahsildars of two Talooks, under the orders of the Collector, a number of persons have been examined who have clearly stated that these hills were rented out by Government, until the abolition of the hill rents in the year 1854. The persons examined consisted of some of the renters themselves and the neighbouring villagers; moreover there are numerous Durkhasts and Yadasts on the records of Nangunerie Talook, which shew that timber was felled within the disputed locality by obtaining the permission of the Collector.

5. It appears that in the year 1851, on the application of the renters requesting that the limits of the hills rented out to them by Government might be clearly defined, the Peshcar of Calacaud Division proceeded to the spot and defined these limits, and it appears from the plan prepared by the Peshcar at the time, viz., on the 23rd September 1851, and which forms part of the records connected with the case, that the limits therein defined include the very part of the hills now claimed.

6. Puttahs have been issued by Government for Fusly 1261 (1850-51) to 1270 (1860-61), a period of ten years, for a portion of the land admitted to be situated within the disputed locality, in the names of certain Government Ryots, and no objection was ever made by the Matam people to this proceeding; and it is singularly strange, that while the disputes were thus going on between the Calacaud people and Singambutty Zemindar, an inquiry was conducted by two Tahsildars, proceeding to the hills and examining a number of neighbouring villagers including former renters, the Matam never came forward with any claim, though it pretends to enjoy the hills from prior to the assumption of the Company's Government, and if the Matam had owned any hills at that time, the Tahsildars would doubtless have examined the Matam people as to the relative boundaries of the hills appertaining to the then two contending claimants; as the hills now claimed by the Matam are mixed up with the hills then in dispute, and are in reality the same with perhaps slight difference in extent, and the absence of such examination clearly demonstrates the non-existence of the claims now advanced by the Matam at the time. On the termination of the dispute before the Revenue authorities, by an order of the late Collector Mr. Silver, dated 10th February 1857, directing an equal division of the hills then in dispute between the Calacaud villagers and Singambutty Zemindar, according to the opinion of the two Tahsildars, the latter filed a suit* in the Bramadesam District Moonsiff's Court, representing that he was entitled to the whole of the hills, and here for the first time the Matam announced its claims to the hills, as follows, namely, that the hills situated within the boundaries mentioned in the Defendant's answer in the said suit belonged neither to the Plaintiff nor the Defendants; that the hills, &c., were the purchased property of the Matam, and had been in their enjoyment; that the hills are further included in the Cowlenamah (Purwanah) granted by the Nabob to the Matam under date the 25th Vycausy Aundoo 972 (June 1798) and in the Survey Account of Aundoo 978; and that the suit was the result of collusion between the two parties; the Moonsiff rejected† the claim of the Singambutty Zemindar to the hills, and in the concluding part of the decision the Moonsiff recorded an extra-judicial opinion favorable to the right of the Matam to the hills, founded, as the Moonsiff alleged, on the deeds of purchase Cowlenamah and Survey Accounts. This opinion was cancelled‡ by the Appellate Court as surplusage.

* No. 747 of 1858.

† By Decree, dated 24th December 1859.

‡ Appeal Decree, dated 3rd August 1860.

7. With regard to the Cowlenamah it is to be noted here, that though the Matam pretends to hold the hills on Survamaniem tenure in virtue of the above Cowlenamah (or Purwanah), it is strange that this most important document had never been before registered in the Collector's Office, or before any public authority, at appropriate times, like all similar instruments; and this at once stamps the document as a recent fabrication. There is one important circumstance to notice with regard to this strange document, that although it authorizes the Matam to hold the Punjah, Palmyras, topes, together with the *Hill Pattam* attached to the village on payment of 25 Pons rent per annum to Government, this payment had never been made from the period of the assumption of the country by the British Government up to this time, hence it is to be presumed that if the grant had been a genuine one its terms would have been acted up to. The observation in my decision, paragraph 3, that the Matam enjoy the Nunjah lands according to the terms of the Purwanah, has been made with reference to the remark of the Acting Sub-Collector in his decision, the correctness of which, however, is questioned by the said Subba Row, the Appellant. This Purwanah, it would appear, has reference only to one village, viz., Vadakarai. A moiety of the hills now claimed is stated to appertain to Arasaput village, of which the Matam is the part proprietor, and there is no document whatever to support the claims of the Matam to this part of the hill.

8. The Survey Accounts of Vadakarai and Arasaput do not in any way satisfactorily shew that the hills claimed appertain to those villages. The measurement in the Ayacut Accounts of these villages does not include the hills at all, which, according to the admission of the Matam, cover an area of 15 miles east to west, and 12 miles north to south, but only the lands below the hills.

9. The late Collector, Mr. Thomas, circulated in the year 1848 (10th July) certain rules for the guidance of all the Tahsildars in the District in respect of the cutting of timber on the several hills in the District, and enumerating the paths through which the timber should be conveyed; but in this document neither Vadakarai nor Arasaput hill is mentioned as existing in the Nangunerie Talook.

10. It is to be observed further, that on the circulation of the rules in 1861 for the levy of fees on charcoal and fuel, &c., the Curnum and Mirasidars of Pudmanary village, to which the Appellant belongs, collected the fees upon the fuel, &c., brought from the above hill from May up to the 13th December of that year, after which they were directed, upon the decision of Mr. Kindersley, not to interfere with the collection by the Matam.

11. The disputed hills, I am given to understand, contain valuable timber in which the interests of Government are considerably involved, and the value of the several description of trees on the hills, covering so large an area as 15 miles, must, in my opinion, amount to some lacs, and on this score and other grounds the present suit is beyond the cognizance of the Principal Sudder Ameen, in whose Court it has been filed, and this preliminary objection to jurisdiction has been taken in the written statement. The Tahsildar has been required to ascertain and report, as correctly as possible, the estimated value of the trees, &c. The neighbouring villagers interested in the hills, including the Appellant Subba Row, will have to be made as Defendants in this Suit.

12. Under these circumstances, I respectfully beg the Board will cause the suit to be defended by Government Vakeel on behalf of the Government.

13. I might it is true, have allowed the Inám Deputy Collector to dispose of the matter; but as long as Mr. Kindersley's decision, so summarily making away with this valuable extent of Government property stood good, it would have been difficult for the Inám Deputy to get over this apparently final decision of the Revenue authorities. It was, therefore, at his request I took up the appeal, in order that the whole Inám investigations in the District might be speedily concluded. I may add, that the suit comes on for hearing on the 22nd August next, and that my private appellation, first entered in the plaint, has been changed to that of my official designation.

ENCLOSURE No. 1.

Translation of Plaint.

To the Court of Principal Sudder Ameen of Tinnevelly.

Plaintiff,	*versus*	*Defendant.*
Venuvalinga Thambiran, Pleader, for Plaintiff Mahalingamier.		G. Banbury, Esq., Acting Collector of Tinnevelly. Reply of the Collector.
1. The hills described in the boundaries specified at the foot of the Plaint and the trees thereon have belonged to the Thiruvaduthurai Matam from a long time.		The Defendant denies this Statement and puts Plaintiff to the proof.
2. Prior to the assumption of the country by the British Government up to the 18th May 1865, the Matam people enjoyed the produce of the trees on the hills and all the other products.		The Matam had no enjoyment of the nature claimed prior to December 1861, and is put to the proof; on the contrary, the Government have exercised all the proprietary rights over the hills in question; they rented out the

3. One Parpanery Subbien having presented a petition to the Defendant in the present year, falsely representing that the hills, &c., belong to Government; that the Ryots have been in the habit of cutting the branches of the trees for agricultural implements; collecting fuel and cowdung, and grazing cattle on the hills, the Defendant without making any investigation passed an order on the 1st May 1865 declaring the hills, &c., to belong to Government, and rejecting the claims of the Matam to the hills, in consequence of which decision the Matam have been prevented from interfering with the hills.

4. On the strength of the above order, the Sub-Collector issued an order to the Nangunerie Tahsildar on the 16th May 1865, and the Tahsildar issued orders to the Curnum, &c., of Vadagarai Village, prohibiting the Matam from interfering with the hills in question. From that time, enjoyment is exercised by Government, who have no right nor ever had any enjoyment. The Plaintiff therefore prays for the cancelment of the above decision, and to award to the Matam the proprietary right to the hills and the trees thereon valued at Rupees 3,000, together with the produce thereof. The hills claimed comprise an area of 15 miles east to west, and 12 miles north to south. Boundaries given in the original Plaint are omitted.

said hills year by year to different individuals, and on the abolition of the hill rents, in the year 1854, the several products on the hills have been enjoyed by the neighbouring villagers; these products being, the honey wax, cardamoms, dammer, ginger, nutgall, &c. The tree felling tax has, however, all along been levied by Government up to December 1861. The seigniorage on fuel, charcoal, &c., was also levied by Government from May to 12th December 1861. The Acting Sub-Collector, Mr. Kindersley, issued an order on the 5th December 1861 declaring the Matam had a right to the hills, on the strength of which order the Matam have been enjoying the hills from the said month of December 1861.

The party here referred to having made an appeal to the Board against the decision of the Acting Sub-Collector was told to appeal to the Collector and produce his Endorsement if dissatisfied, the said individual having accordingly made an appeal, the Defendant, in his appellate capacity as Collector, reviewed the proceedings upon which the Acting Sub-Collector based his decision, and after hearing the parties on both sides cancelled it by restoring the rights of all parties concerned to their original state, *i. e.*, to the state in which they stood before the Acting Sub-Collector's decision was passed.

The proprietary right to the hills vests in Government and in them alone; and such right has never been alienated to the institution in question. The Sunnud on which the Plaintiff rests his claim is a forgery, as can be clearly seen: it has never been registered, nor has it ever been heard of till quite lately; nor has the Plaintiff ever paid the sums alleged in the document to be due on the trees said to be in his possession. The trees on the hills being claimed on a rent free tenure, the value thereof should be assumed at eighteen times the value given in the Plaint, and as such, the Suit is beyond the jurisdiction of the Principal Sudder Ameen's Court; the trees themselves are worth some lacs of Rupees. Moreover, the suit is defective, as it does not include Subba Row, &c., the parties interested in the hills. It is requested that the suit may be rejected on a consideration of the preliminary objection here stated.

ENCLOSURE No. 2.

ABSTRACT.—Copy of the decision referred to in paragraph 3 of the above letter.

ENCLOSURE No. 3.

ABSTRACT.—Copy of the letter referred to in the above letter.

Submitted to Government with the Board's recommendation that the defence of the suit be sanctioned on the usual terms, and that the answer be approved with the few verbal amendments made by the Board.

No. 550.

Miscellaneous.

ORDER THEREON, 31st July 1865, No. 1,774.

1. The defence of the suit is sanctioned on the usual terms, and the Collector is authorized to file the proposed answer.

2. The result will be reported in due course for the information of Government.

(True Extract.)

(Signed) W. HUDLESTON,

Acting Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

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Submitted to Government with the Board's recommendation that the defence of the suit be sanctioned on the usual terms, and that the answer be approved with the few verbal amendments made by the Board.

(True Copies and Extract.)

Secretary.

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

Copy to A. Wedderburn, Esq., Collector of Tinnevelly.

Ext. R. H. Lee.

Rev. 1865. Department.

Proc. of Govt. for July

No. 2057.

PROCEEDINGS OF THE BOARD OF REVENUE.

Rec. of the Board of Revenue 165-C of 33-51.

Dated 21st July 1865.

Despatched 26

Received 27.

L. 3. 4 RP

No. 4,230.

With order.

Submitting with recommendation that the defence of the suit filed by V. Thamburam in the Principal Sudder Ameen's Court for cancellation of an order passed by the Collector regarding certain hills in Nangunerie Taluk be sanctioned on the usual terms, and that the answer be approved with the proposed amendments.

8th 1774. 31 July

M 549 & 550.

8th 1774.

The defence of the suit is sanctioned on the usual terms - and the Collr is authorised to file the proposed answer. -

The result will be reported in due course for the information of Govt. -

31st July 65.

In C Letter Pet Dept Copy 31 July
V.C. 14 with Cabinet Despr 3 Copys