

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1072	Press Mis.
Dated	4-5-	1866

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
4th May 1866.*

No. 104. Read the following Proceedings of the Board of Revenue, dated 24th March 1866,
No. 2,102.

Read the following letter from the Government Pleader, to the Secretary to the Board of Revenue,
dated Madras, 9th March 1866, No. 42.

With reference to the Order of Government under the date and number noted in the margin,
24th January 1866, No. 110, Revenue Department. I have the honor to report, for the information
of the Board, that the Special Appeal Suit
No. 481 of 1864, came on for hearing on the 23rd March 1865; the Decree, however, was not pro-
nounced till the 5th February 1866, a copy whereof was furnished to me yesterday, which I now
do myself the honor of enclosing

In the High Court of Judicature at Madras.

Monday, the fifth day of February, One thousand Eight hundred and Sixty-six.
Present.

The Honorable Sir C. H. SCOTLAND, Knight, Chief Justice, and
The Honorable Mr. Justice INNES.

Special Appeal No. 481 of 1864.

Ellaiya, *Special Appellant, Plaintiff*, and

H. A. Brett, Esq., late Collector of Salem, *Special Respondent, Defendant.*

Special appeal against the decree of the Civil Court of Chittoor in Regular Appeal No. 108
of 1861, on the file of the Civil Court of Salem, confirming the Decree of the late Sub-Court of
Salem in Original Suit No. 31 of 1856.

DECREE.—This special appeal coming on for hearing upon perusing the grounds of special
appeal, the Judgments and Decrees of the lower Appellate Court and Court of first instance,
and the material papers in the suit; and upon hearing the arguments of Mr. Mayne, Counsel for
the Special Appellant, and of Mr. Government Pleader, Counsel for the Special Respondent;
this Court doth order and decree that the decree of the lower Appellate Court be, and the same
hereby is reversed, and this Court doth declare that the Plaintiff's right to enjoy his share of the
village lands under the original Puttah was not legally determined by resumption, and that, con-
tinuing liable only to the fixed rent, the Plaintiff is entitled to the return of the amount paid
under compulsion in excess of such rent, at the date of the Suit; and this Court doth further
order and decree that the Special Respondent do pay to the Special Appellant Rupees 78-15-0
for his costs into this Special Appeal together with his costs in the lower Appellate Court and
Court of first instance.

(Signed) C. H. SCOTLAND, Chief Justice.

(„) L. C. INNES, Judge.

MEMORANDUM OF COSTS.

Special Appellant's (Plaintiff's) costs.

	Rs.	A.	P.
1 Stamp for Vakalatnama	2	0	0
1 Do. for Special Appeal Memorandum	32	0	0
12 Do. for copy of original Decree and Judgment	12	0	0
5 Do. for copy of Appeal Decree	3	0	0
1 Do. for copy of Appeal Judgment	0	8	0
3 Do. for copy of revised Appeal Decree	2	0	0
1 Do. for copy of revised Appeal Judgment	0	8	0
Vakeel's fee on Rupees 335-9-2	16	12	0
Printing charges	10	0	0
Postage	0	3	0

To be paid to the Special Appellant (Plaintiff) by the

Special Respondent (Defendant) 78 15 0

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

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Submitted for the information of Government, with reference to their Proceedings, 24th January 1865, No. 110.

No. 105. Proceedings of the Board of Revenue, dated 3rd May 1866.

Read again letter from the Government Pleader, dated 9th March 1866, No. 42.

Read also letter from the same Officer, dated 23rd March 1866, No. 50, enclosing for the information of the Board a copy of the judgment delivered by the High Court in Special Appeal Suit No. 451 of 1864.

1. The foregoing Proceedings will be submitted for the orders of Government, with the Board's opinion that the Government Pleader should be directed to apply to the High Court for a review of the Judgment passed in the Special Appeal, on the ground, first, that the Court was under a misapprehension as to the fact that the Defendant (the Collector) was not acting under the direct orders of Government when he resumed the Agraharum; and secondly, that in any case the Government having, as stated in the Judgment, adopted the Defendant's acts, the Court was bound to consider such subsequent sanction on the part of Government as equivalent to the Government having given the Collector a previous authority, as ruled in the case of the Secretary of State *versus* Kamachee Boyce Sahiba, Volume VII. of Moore's Indian Appeal Cases, page 539.

2. The Board observe that the main point in issue was whether the State had a right to resume the Inam, or, in other words, to charge the Plaintiff's lands with their Faisal or survey rates of assessment, and that the High Court, by leaving this question undecided, though not untouched, has failed to decide the main point in issue between the respective parties to the suit.

3. The chief facts of the case may be briefly stated as follow: The Agraharum of Neyakarpatti, in the District of Salem, was enjoyed by the shareholders on Inam tenure, the original

* The term Agraharum implying a maintenance allowed to Brahmins.

shareholders of the Agraharum village (Brahmins) being allowed by Government, from motives of charity,* to hold the lands belonging

thereto at an annual favorable quit-rent, the amount of which was fixed considerably below the full survey rates to which the lands were liable, on the condition that the whole body of shareholders should be jointly responsible for the due payment of the fixed amount. If the shareholders failed to pay this favorable rent, the Government reserved to itself the power to re-impose on each field its full rate of assessment, and by that measure to place the lands belonging to the village on the same footing, as regards the land revenue, as any other portion of the District charged with a Ryotwar or field assessment. As the shareholders of Neyakarpatti Agraharum neglected in the years 1852-53 to pay the quit-rent charged on the village, the Collector, acting under the rules laid down by Government for his guidance on such occasions, attached the village, and after having held it under attachment for one year, (this period being allowed to the shareholders as a time of grace, in which they were permitted to pay off the quit-rent in arrears, and to recover possession of their Inam interest in the village,) he charged the lands with full assessment, (or, as it is usually said, incorporated them with the other District lands held under a field settlement,) and in due course reported his having done so to the Revenue Board. The Board, on receipt of the Collector's report, submitted the case to Government for orders, with the recommendation that the arrears of quit-rent should be struck off the accounts, and the Collector's proceedings resuming the Inam tenure confirmed; the Board observing that the Neyakarpatti Agraharum had been attached for arrears every year for many years past, and that there was no ground for departing from the usual rules as to its resumption. The Government, in Extract from Minutes of Consultation, dated 6th September 1854, No. 1,043, sanctioned the writing off of all arrears, and thereby confirmed the steps taken by the Collector. The Government also, at a subsequent date (Extract from Minutes of Consultation, dated 3rd November 1854, No. 1,420), on an appeal from the shareholders, refused to entertain certain objections made by the Petitioners "to the resumption of their Agraharum."

4. The Plaintiff's suit was filed in December 1856, three years after the Inams had been resumed, and had for its object to recover the difference paid by him for three years (Ru-

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pees 335-9-2) between his portion of the original quit-rent and the full survey rates charged on his lands from the year the lands were brought to account as fully assessed lands. The Plaintiff did not plead that his "interests as tenant" had been in effect forfeited, nor did the Collector, by attaching the Inam tenure, thereby assume to himself the right of ousting the

* *Vide* High Court's Judgment, paragraph 10.

Plaintiff and granting his land to a stranger.*

The High Court have, the Board believe, misunderstood the merits of the case as it regards these important points, having, as it would seem, overlooked the fact that the land assessment is not a rent payable by the landholder for the use of his land, but a tax representing a certain proportion of the produce, and that in this case the question in issue was, whether the Government had a right to cancel a certain remission of this revenue in favor of the persons to whom the Agraharum lands belonged, as a charitable allowance. The Plaintiff continued in possession of his lands after they had been charged with full rates, and it was only in the event of his failing to pay such rates that the Collector could claim any lien on the lands. If the Plaintiff had failed to pay the full rates, the lands would have been liable for the arrears, in common with his other property; but, even in that case, the Collector must, as the plaint indicated, have taken fresh action, and proceeded to enforce payment under sanction of the law investing the Collector with summary powers to enforce payment when the revenue due on Ryotwar assessed lands falls into arrears. In this case the Plaintiff paid the full assessment (for three years), and then brought his action to try the Collector's right to discontinue the favorable rate and charge full rates of assessment.

5. With regard to the attachment of the Inam during the year of grace, this attachment had for its object to prevent the actual occupants of the soil from paying their rents direct to the defaulting shareholders instead of to Government, to whom these latter were indebted. It did not interfere with the Plaintiff's, or with any other landowner's rights of occupancy in the land, though, no doubt, the actual resumption of the Inam destroyed, as the High Court have stated, "the Inam character of the holding."

6. The High Court have also held that the Collector, when he attached the Inam, did in fact attach the lands under the provisions of Regulation XXVII. of 1802. That such, however, was the actual case is not to be gathered from any part of the record. On the contrary the Plaintiff's claim has from the first been opposed by the Defendant, on the ground that the Government had full authority to deal with charitable grants on the revenue in such manner as they might think fit. The Collector's proceedings were based entirely on the orders prescribed for his guidance in such cases, and it was on this fact that the Collector rested his defence to the suit.

7. The "Hookoonamah," to which the Collector referred in the pleadings, when explaining the authority under which he acted, is the body of standing rules laid down for a Collector's guidance in the revenue management of his District; and all such standing rules before a Collector can act on them have the sanction of higher authority. Such rules are modified, from time to time, as circumstances render necessary, and the modification duly promulgated; therefore the rules produced before the High Court bore date so late as 1843; it should not be assumed that the rule in regard to Inams and Agraharums had not been in operation from the earliest times, or from the time when the Agraharum Inams were continued and confirmed to the holder by the British Government. On the present occasion, if the Collector had been required to produce further evidence, to prove that he was acting under the authority of Government, he could have referred to orders passed by Government so recently as the year 1851, (Extract from Minutes of Consultation, dated 13th September 1851, No. 929,) in which the Government was pleased to direct, on a report made to them in the case of other similar Agraharums in arrears in the Salem District, that the course of proceeding prescribed by the District Hookoonamah, (the course followed in the Neyakarpatti case,) should be enforced on all future occasions. The practice existing previous to the passing of this order required that the Collector should apply, in the case of each Agraharum in arrears, for leave to enforce the District rules. The orders now referred to superseded this practice, and required

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the Collector to proceed at once as the rules prescribed, &c., to attach and resume such Inams, and afterwards to report his having taken these steps.

8. With reference to the last paragraph of the Government Pleader's letter, the Board observe that the principle involved in the present suit is one of no slight importance, being no less than the right of the State to resume such grants or alienations of land revenue as are described in Regulation IV. of 1831. It is also obvious that the present decision would serve to show that in all the several cases in which similar Inams have been resumed by Government, owing to the default of the persons enjoying them, the Government have acted in excess of its powers. The Board are, therefore, of opinion that an appeal ought, if possible, to be made to Her Majesty in Council, should the High Court refuse to comply with the proposed application for a review of its Judgment.

9. The quit-rent formerly charged on the Neyakurapatti village was Rupees 771-8-3. The revenue collected from the Neyakurapatti lands, since the revenue was resumed, has, on the average, amounted to about Rupees 2,000 per annum. The present suit involved only a small portion (Rupees 335) of the annual revenue, but if a single shareholder in the Agraharam has a legal right to hold his lands, subject to the payment of only his portion of the original quit-rent, every other shareholder in the same village may successfully maintain, in the Courts of law, the same kind of claim so far as their lands are severally considered. The present suit, therefore, involved the right of Government to the whole of the revenue assessed on the village, less the quit-rent, in addition to the rights of Government generally to resume such Inams.

10. It should be explained that, in defending the original suit, the Collector took exception to the jurisdiction of the Court, on the ground that the suit was barred by the provisions of Regulation IV. of 1831. The Sub-Judge of Salem disallowed the plea. The Civil Court in appeal from that decision held, that under the provisions of "Regulation IV. of 1831, as construed by the Sudder Adawlut, Extract, dated July 29th, 1852, and Circular Order 136, 12th July 1855, the Sub-Court had no jurisdiction over this suit, the object of which is, as the Plaintiff admits, to settle whether the Inam or grant of land revenue (which has emanated from Government) can be sequestered by the Collector, who in this District represents Government." The Plaintiff having appealed from this last decision to the Court of Sudder Adawlut, the Sudder Court, in an extract under date the 27th October 1860, overruled the order of the Civil Court, on the ground that the suit did "not raise any question as to the right to the Agraharam, a village held on a favorable permanent quit-rent, but intends simply to test the propriety of an act of the Collector by which the Petitioner has suffered," (this act being, as elsewhere stated in the same Order, the act of having attached certain of the Plaintiff's property for revenue arrears). The suit was accordingly proceeded with, but the Board of Revenue, with due deference to the Higher Court of Appeal, continue of opinion that the Plaintiff's suit did really impugn the right of Government to resume the Inam, and that the Sudder Court exceeded its jurisdiction when it admitted a suit of this nature for adjudication by the ordinary Courts of Law. Early orders are requested with instructions direct to the Government Pleader, as the time allowed for seeking a review of Judgment will, it is understood, expire on 6th May.

No. 106.

ORDER THEREON, 4th May 1866, No. 1,072.

Miscellaneous.

The Government authorize the Government Pleader to apply to the High Court for a review of its Judgment in Special Appeal Suit No. 481 of 1864.

(True Extract.)

(Signed) J. D. SIM,

Secretary to Government.

To the Government Pleader (in duplicate).

Trd. S. T. Augustin.

87-1072.

The Govt. authorize the Govt. Pleader to apply to the High Court for a review of its judgment in Special Appeal Suit No. 481 of 1864.

W.D.M.

14-7-1866. Next Session 4 May

3-11-1866. Govt. Pleader (in duplicate) J. D. S.

Note.

The High Court have made a pretty mess of the case - but nothing seems necessary beyond what the Govt. have done.

True & correct. one of the two judges in the case had a personal interest in the case. The Salem case for more than a year! W.D.M.

Rev. 1866. Depart.
Pro of Govt for May
No. 1285.
9/3

Reported to England
W 27th March No. 235. 1867
No. 2

Proceedings of the
Board of Revenue

Pro of the Board of
Rev. 2480. July/66
A. 2336.

Dated 3
Desp 3 } May 1866.
Rec^d - 3^d

E. &
3. Sent to Govt Pleader

No. 227 No. 2401. 65

Submitting the
Board's opinion that
the Govt Pleader be
directed to apply to the
High Court for a re-
view of Judgment pas-
sed in the L. A. Suit
No. 451 of 1864.

No. 104. @ 106

(at 1072. 8 May)
W. W. W. W.

C. P. W. 1866