M.R.O. 14—12,000—27. 9-34

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2161 Press ~~Mis.~~

530 531

Dated 21 — 8 — 1866.

Not to be folded or roughly handled

No. 530. Read the following Proceedings of the Board of Revenue, dated 15th August 1866.

Read the following letter from the Collector of Nellore, to the Secretary to the Board of Revenue, dated Nellore, 9th August 1866, No. 243 :—

Dated 6th instant.

1. I have the honor to acknowledge the receipt of the Board's Proceedings, stating that they cannot sanction the defence, at the public expense, of the suit on the file of the Ongole Munsiff, referred to in my letter of the 27th July 1866.

2. As the suit is not one which can be compromised in deference to the Board's views, I have directed the requisite measures for the defence to be taken at my expense, and respectfully request the favor of the Board's informing me, should there be no objection, on what grounds it is considered that the official act, with reference to which this suit has been brought, is one that I must personally defend.

3. I propose to avail myself of my privilege leave from the 28th, and should be obliged by early orders on the subject.

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1. The Board have already informed the Collector why they cannot sanction the defence, at the public cost, of the suit in question, viz., because his original order (subsequently cancelled) was the right and proper one to be given. The order for reversal, of which Plaintiff sues, was, in the Board's opinion, unjustifiable. It deprived Plaintiff of what (so far as the Board are at present informed) appear to have been his clear rights in the land, which was in fact already in occupation when it was given to the third Defendant on Darkhast, and the reason assigned for the order, viz., that Plaintiff had been dispossessed for two years, so far from being any justification of the order was an additional reason why the wrong Plaintiff had sustained should be remedied without further delay.

2. If there are any facts in the case which justify the Collector's act, but which have not been laid before the Board, the Collector is at liberty to bring them forward, and the Board will re-consider their decision.

3. The Collector of course understands that unless an official act is shewn to be justifiable, its defence at the public cost cannot be sanctioned.

No. 531. ORDER THEREON, 21st August 1866, No. 2,161.

Land Revenue.

The result of the Suit should be reported in due course, and the Government will then pass orders on the subject.

(True Extract.)

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

To the Board of Revenue.

Ezd. S. T. Augustin.

No. 4,993.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 20th July 1866.

Read the following letter from J. W. B. DYKES, Esq., Collector of Nellore, to the Acting Secretary to the Board of Revenue, dated 4th July 1866, No. 205 :—

1. I have the honor to enclose the translation of a Plaint in case No. 537 of 1865, on the file of the Ongole District Munsiff's Court, as also an abstract of the Plaint and Draft Answer, and request the sanction of the Board to conduct the defence at public cost.

2. The third Defendant, &c., applied in 1862-63 for certain lands in Vulichi, in the Ongole Taluk, amongst which was land No. 112, consisting of 1¼ Gorru. The village authorities, in the usual form, reported that there was no objection to the application being accepted; and the same was accepted, and a Puttah granted that year in due course by the Sub-Collector, Mr. Elliott.

3. The complainant, Sagi Pedda Subbarazu, under the name of Sagi Subbarazu, thereon presented a petition to the said Sub-Collector, dated 22nd November 1863, No. 1,019, representing that the land in question was not No. 112, but part of No. 111, for which he held Puttah; and the issue of a Puttah to another was therefore wrong.

4. This petition was referred to the ahsildar for report, which was submitted under date 8th June 1864, No. 82.

5. From the report, No. 82, it appeared that the land entered in the A. Register as No. 111, consisted of fifty Gorrus, and was in the occupation of six separate Ryots, of whom the complainant was one; that, on measuring the lands held by these six Ryots, there was an excess of upwards of five Gorrus found; that the complainant, in whose name G. 14, V. 7, P. 8 were entered at the ordinary rates, and G. 3, V. 2, P. 0 as pasture, had G. 0 V. 2, P. 0 in excess of the recorded area; and that these measurements did not include the land in dispute.

G.	V.	P.	
40	3	12	held on Puttah.
9	12	4	held as pasture.
50	0	0	

6. But the complainant having deposed, before the Tahsildar, that he had cultivated the land in dispute some time ago, and had left it fallow in consequence of the soil having become unproductive, and having called witnesses who deposed to the fact of the land having been cultivated by him some four or five years back, the Acting Sub-Collector, Mr. Morris, thereon reversed his predecessor's proceedings, and issued an order, dated 11th August 1864, No. 398, directing that the Puttah granted to the third Defendant should be cancelled, and the land included in the Puttah of the complainant for 1864-65. The third Defendant, &c., having cultivated the land in 1863-64, the assessment was ordered to be collected from them, while the Sub-Collector declined to pass any order as regards the demand for 1862-63, on the ground that it had already been collected.

7. The third Defendant, &c., then appealed to me; and, without reference to the propriety of the Acting Sub-Collector reversing his predecessor's proceedings, I passed the following order: "The decision of the Sub-Collector is upheld. The land is on the banks of the Gundlakamma. "The excess found on measurement may be the result of natural causes. The Appellant, it "appears, is one of those men who go about looking for such cases. He has no cultivation in the "neighbourhood. He has none in the village save one and a half Gorru to the east, which is not "cultivated as village authorities state; and to allow him, as shown in the plan, to come between "Respondent and the river would be wrong. No reliance can be placed on the old numbers, "and No. 112 may be in the bed of the river. 14-2-'65."

8. In passing this order, I, however, lost sight of an important point, viz., that the Defendants had been in possession of the land for 1862-63 and 1863-64; and the order not having been issued, though recorded, I reversed it, and finally issued the following order: "On re-consideration, the Collector considers that the order passed last month must not be issued. The "reasons quoted, as regards Chatrasi Narsimulu (third Defendant) not having land, would have "held good had it been now a question of giving him it. But when it comes to turning him

out of what has been given, the case is different; and although no reliance can be placed on the numbers, with an excess as it is in his area, more land cannot be given to Sagi Subbarazu. Sub-Collector's order reversed. 17-3-'65."

9. In the A. Register, No. 112 is entered as one and a quarter Gorrus Isukabhumi, south of No. 111; and the land in dispute agreeing with these details, under the peculiar circumstances of the case, I was unwilling to act upon the doubt as to the numbers and the intentions of the Defendant, and to the extent of depriving him of what he had obtained in due course two years previously.

10. When the Plaint was filed, I was not included as a party, and in the Notice served by the District Munsiff, it is stated that I have been included as a party, at the request of the complainant.

11. The date for filing the Answer will expire on the 17th, which will be postponed till the 31st instant.

ENCLOSURE No. 1.

No. 537 of 1865.

Plaintiff,

Sagi Pedda Subba Raz, caste Kshatriya, profession Cultivator, residence Devarampad, Ongole Taluk.

Defendants.

(1.) Vulichi Kotappa, caste Bramin, profession Kurnum.
(2.) Vulichi Kondalarayudu, caste Bramin, profession Kurnum.
(3.) Chavrasi Narsimulu, caste Salé, profession Weaver.
(4.) Chatrasi Bhadrachelam.
(5.) Candigunta Ramasami, caste Kamma, profession Cultivator.
(6.) Boddulari Chavudari, caste Beligi, profession Cultivator.
(7.) Varsem Narasimulu. The first, second, third, fourth, and fifth Defendants are residents of Vulichi, and the sixth and seventh of Boddulurivaripalem hamlet of Devarampada, in the Ongole Mutah.

Complaint preferred under Section 26 of Act VIII. of 1859.

I have every right to the G. 1 and V. 4 of land specified below included in Yeti Turpu Chenu, bearing No. 111 in my Puttah.

2. This land, along with the remaining portion of No. 111 Puttah land, is under our occupation and indisputable enjoyment from a period of 100 years.

3. The aforesaid land, situated by the side of a river, being well suited for pasturage, in consequence of its climate having become enriched by the river freshes, it is left waste for the use of my cattle, from a period of about five or six years.

4. As the village Kurnums, first and second Defendants, are on bad terms with me, they made the third, fourth, and fifth Defendants to apply for this land, got Puttahs for the same issued to them in Fusly 1272, by falsely representing to the authorities concerned that it is an unoccupied immemorial waste land and usually deducted in the accounts under "Isuka Minha," and that it bears No. 112. They also caused its boundary lines to be marked down.

5. Thereupon, a complaint having been preferred by us in the matter to the Sub-Collector, he got the case inquired into by the Tahsildar of our Taluk, and on perusing the records, decided the case on our behalf, and issued a Takid, dated 11th August 1864, directing that the land should be included in our Puttah in Fusly 1274, and that as the third, fourth, and fifth Defendants had cultivated it during Fuslies 1272 and 1273, when it was under dispute, the sist due thereon should be collected from them. I was, accordingly, placed in possession of my land including the same in my Puttah.

6. The land was placed under my enjoyment in Fusly 1274.

7. After this, the third Defendant preferred an appeal before the Collector of this District. He, the Collector, considering our right over the land and enjoyment although in the first instance confirmed the Sub-Collector's decision, and issued verbal orders to the effect, on a further consideration reversed it, stating that the grounds which appear to go against the Appellant's (third Defendant's) interest would only be of use in newly granting the land to me, but not in cancelling the Puttahs which were already issued to the Appellant, who paid the sist due on the land for two years. The Collector at the same time also issued Takid, dated 12th April 1865, to the effect, to the Tahsildar, and placed the third, fourth, and fifth Defendants in possession of the land.

8. The third, fourth, and fifth Defendants caused the land to be cultivated by the sixth and seventh Defendants. The land is fit to be sown. It is now in the occupation of the third, fourth, fifth, sixth, and seventh Defendants.

9. The third, fourth, fifth, sixth, and seventh Defendants have no right to the land under dispute.

10. If any excess is to be found in my land, I am prepared to take it up. Others have no right to it.

11. Considering the rich climate of the land which had been left waste for a long time, my profits would have been immense if I had cultivated it myself in Fuslies 1272, 1273, and 1275. By this Defendant I lost these profits.

12. And I request, under these circumstances, that I may be put in possession of my land, which measures G. 1, V. 4, P. 0. The annual income derivable from this land is Rupees 40, inclusive of Government sist, Rupees 8-8-0.

And I further request that the Court will be pleased to recover and give me the loss, Rupees 94-8-0, as detailed below, sustained by me in produce.

The boundaries of the portion of No. 111 under dispute, belonging to my Puttah, are as follow:—

(No. 1.) East Part of No. 111 of my Puttah and Nellore Venkayya and my uncle Sani Rana Chendra Razu's lands.
South. Nunam Ankayya's field.
West. The river.
North. My waste land.

Annual income derivable from the produce of the land situated within these boundaries inclusive of Government sist, is Rupees 40...	40	0	0
(No. 2.) The value of Puttis 3 and T. 15 of Jonnala, being the produce of the land during the said three Fuslies, at the current selling price, viz., Rupees 40 per Putti, is Rupees 150. And deducting from this Rupees 30, being expenses for cultivation, cost of seeds and hire for harvesting the crop, and also Government sist for the three Fuslies Rupees 25-8-0, the net profit is	94	8	0
Rupees...	134	8	0

I beg to request, under these circumstances, that decision may be passed in my favor to enable me to recover from the said amount of Rupees 134-8-0 (No. 1) my land, and (No. 2) the loss referred to. I further request that the costs of suit may be made good, causing at the same time the Puttahs in the names of the third, fourth, and fifth Defendants to be cancelled, and the same included in my Puttah.

12th September 1865. (Signed) PEDDA SUBBA RAZU.

I hereby certify that the matters referred to in the Plaint are, to the best of my knowledge and belief, correct and true.

14th September 1865.

(Signed) FEDDA SUBBA RAZU.

(Signed) DHIMARZU RAMAKISTNAYA,
Pleader.

(Signed) Y. GOPALAKISTNAYYA,
Munsiff.

(True translation.)

(Signed) J. W. B. DYKES,
Collector.

Enclosure No. 2.

Abstract.—Abstract of the Plaint, &c.

Enclosure No. 3.

Abstract.—Answer proposed to be filed by the eighth Defendant in No. 537 of 1865.

The Board desire to know whether the Plaintiff did actually hold the land in dispute for some years for agricultural purposes, and afterwards as pasture land, and whether he paid the tax upon it during both periods, the land being included in his Puttah as part of No. 111. If so, the Board fear that the acts of the Revenue authorities cannot be defended with any prospect of success.

(True Copies and Extract.)

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

To the Collector of Nellore.

Ed. J. Wright.

No. 4,903.

Proceedings of the Board of Revenue, dated 7th July 1866.

Department.

Read the following letter from the Collector of Nellore, forwarding, [illegible] forming subject of suit in the Sudr Court, No. 537 of 1865, on the file of Ongole Moonsiff's Court.

No. 5,410.

Proceedings of the Board of Revenue, dated 6th August 1866.

Read the following letter from J. W. B. DYKES, Esq., Collector of Nellore, to the Secretary to the Board of Revenue, dated 27th July 1866, No. 223:—

1. I have the honor to acknowledge the receipt of the Board's Proceedings, dated 20th instant, calling upon me to report whether the Plaintiff did actually hold the land in dispute for some years for agricultural purposes, and afterwards as pasture land; and whether he paid tax upon it during both those periods, the land being included in his Puttah as part of No. 111.

2. In reply, I have the honor to state that there is nothing in the accounts to show that the land was ever held by him, or that he ever paid for it.

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1. As at present informed, this Board cannot sanction the defence of the Suit at the public cost.

2. The Collector has not replied to the Board's question, as his answer refers only to the information to be obtained from the accounts, while he has himself stated in paragraph 7 of his first letter that no reliance can be placed on the [illegible] entries of field numbers, and consequently the accounts cannot be held to establish the point of occupation either way, and he has also stated in paragraph 6 of his second letter that Plaintiff had adduced evidence to establish the fact of previous occupancy.

3. The Collector's original decision (subsequently cancelled) appears to the Board to have been the correct one.

(A true Copy and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To the Collector of Nellore.

Ed. J. Wright.

Rev - 1866. Oct. 21st
Pro. of 6th Aug. Rec'd Nov. 2594.

Proceedings of the Board of Revenue

Dated 15 August 1866
Recd 15th Do
Exd. Smith 23/10/66
Accepting fee
Sanctioning the defence at the public cost of O.S. No 537 of 1865 on the file of the Ongole Munsiff's Court Nellore Dt.

C No 2161. 21 Augt
With order

No. 2161.
A. 530 & 531

The result of the suit should be reported in the Cuddr and the Govt will then pass orders on the subject

J D S
21st August 66.

The Bd. view i. J
that K. Guestan Mc-
ean Pliff has more land
than he ought to have
& never paid for this land.
But the suit is in progress
and Govt may, as well,
await the result.
21 Aug 1866 JD

I therefore think the Bd. ought to have assumed a public defence; but the case is not clear. When we see the reasons which Mr. Boyton assigns for declining

J Thornhill
Secretary.

To
The Secretary to Government M. D.

Under Rule 10 of Standing Orders of Board, dated 15th July 1862, Assistant

Referred to Mr. Secretary Thornhill
for Sanction
J Boyton
15/8/66

Mr. Secretary Thornhill
Please Copy Extract
for Mr. Boyton
J Boyton
15/8/66

Mr. Secretary Boyton
Please see remarks
of Mr. Secretary Thornhill
dated 15th Inst.
J Boyton
15/8/66

Sanction the Resolution of the Board to the Levy to Govt. A. D. dated 15th Augt. 1866 - JB

1866. Department.

Rev - 2594/66

No.

Rec'd 21st Aug 1866 No 1530

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 6th August 1866.

Received

No. 5,410.

Declining to sanction defence at public cost of Original Suit No. 537 of 1865, on file of Ongole District Munsiff's Court in Nellore, regarding certain land.

are at present informed) appear to have been his clear rights in the land which was in fact already in occupation when it was given to the 3rd Defendant on Darkheart and the reason assigned for the order viz that Plaintiff had been dispossessed for two years so far from being any justification of the order was additional reason why the wrong Plaintiff had sustained should be remedied without further delay—

If there are any facts in the case which justify the Collectors act, both which have not been laid before the Board, the Collector is at liberty to bring them forward and the Board will re-consider their decision

The Collector of course understands that unless an official act is shewn to be justifiable it