

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1300

~~Press~~
~~Mis.~~

Dated

11-8-1868.

Not to be folded or roughly handled

1300

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Proceedings of the Madras Government, Revenue Department.
11th May 1868.

Read the following :—

No. 243. Proceedings of the Board of Revenue, dated 7th April 1868, No. 2,593.
Read the following letter from the Collector of Madura, to the Secretary to the Board of Revenue, dated 14th March 1868, No. 72 :—

1. In reply to the Board's Proceedings, No. 8,014, dated 11th December last, I have the honor to state, that the estate of Ammia Naiknur being an unsettled Polliem, no Sunnud Istimirar was ever granted.

2. With regard to the information called for by the Advocate General as to the state of the tank, whether it is furnished with proper calingulah or not, and whether the bursting was the result of pure accident or negligence, I beg permission

to refer the Board to the enclosed copy
of a letter* from the officer in charge of
the first range, communicated by the Superintending Engineer.

* 30th January 1868, No. 92.

3. Translate of the lease executed by the Polygar to the lessee is also enclosed.

4. The lessee when called upon to pay the cost of repairing the Government works damaged by the bursting of the Iyancottah tank, denied his liability to satisfy the demand, and excused himself by saying that it is attributable to a Government tank above the Iyancottah tank having breached, and to excessive and sudden rain, and that the Government works have not suffered by the breach of his tank.

5. I accompanied the Range Officer and inspected the locality, and found the representation of the lessee to be totally false.

6. Correspondence as per accompanying list bearing on the subject, is submitted, herewith, for the Board's information.

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From the Officiating Superintending Engineer, 8th Division, to the Collector of Madura, dated 22nd January 1867, No. 1,806.

1. I have the honor to inform you, that in consequence of the bursting of the Iyancottah tank, belonging to the Ammia Naiknur Zemindar, the Todanairy tank has breached in ten places necessitating an estimate for repairs of Rupees 780, and also another of Rupees 190 for damage done to road No. 15 between the ninth and twelfth mile-stones.

2. I would, therefore, request your consideration as to the Zemindar being answerable for the loss to Government, by the neglected state of his tank, and that he may be called upon to put his tank in a proper condition of security.

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From the Collector of Madura, to the Sub-Collector, Dindigul, dated 26th January 1867, No. 128.

In forwarding herewith an original letter, (to be returned,) from the Superintending Engineer, 8th Division, dated 22nd instant, No. 1,806, I have the honor to request you will be so good as to call upon the lessee of the Ammia Naiknur Zemindary, therein referred to, to make good the loss sustained by Government by the bursting of the Iyancottah tank attached to the Zemindary, which caused ten breaches in the Government tank of Todanairy, and damaged the road No. 15. If the lessee is not willing to satisfy the demand, I request you will give me your opinion on the subject, with reference to the Board's Standing Circular, No. 4,412, dated 27th September 1860.

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From the Sub-Collector, Dindigul, to the Collector of Madura, dated 27th February 1867, No. 33.

Referring to your letter, No. 128, dated 26th January 1867, I have the honor to inform you that the renter of the Ammia Naiknur Zemindary refuses to allow the claim made against him

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on account of the breach of the Iyancottah tank. He says it is attributable to a Government tank above it having breached, and to excessive and sudden rain. He further denies that the Government works have suffered by the breach of his tank. I have the honor to enclose his letter on the subject, and to request you to take measures for having the locality inspected, and his statements reported on by the Department of Public Works. The Superintending Engineer's letter, No. 1,806, received with yours is herewith returned.

From the Collector of Madura, to the Officiating Superintending Engineer, 8th Division, dated Melur, 12th March 1867, No. 352.

In reply to your letter, dated 22nd January last, No. 1,806, I have the honor to transmit in original a letter (to be returned,) with an enclosure, dated the 27th ultimo, No. 33, from the Sub-Collector, and to request you will be good enough to favor me with your remarks on the statements of the lessee of the Ammia Naiknur Zemindary.

From the Officiating Superintending Engineer, 8th Division, to the Acting Collector of Madura, dated Shempetty, 4th April 1867, No. 16.

- * 1 Letter from Sub-Collector.
- 1 Do. from lessee of Zemindary.

1. In returning the enclosures* of your letter, No. 352, of the 12th ultimo, I have the honor to inform you that I referred to the

Rango Officer, as to whether any Government tank breached above the Iyancottah tank, and whether the damage to the road and to the Todanairy tank occurred in any other way than by the bursting of the Zemindar's tank. Mr. Colquhoun reports, in reply, that the Kattacolum tank, which is above the Iyancottah tank, weathered the monsoon safely, and that it is entirely due to the bursting of the latter tank, that damage was caused to the Government works.

2. Mr. Colquhoun adds, that both he and the Overseer frequently brought to the notice of the head of the village the dangerous condition of the Iyancottah tank.

From the Collector of Madura, to the Officer in charge of 1st Range, dated Pereakolum, 11th July 1867, No. 1,076.

I have the honor to observe that, with reference to a letter from the Superintending Engineer, Eighth Division, reporting that road No. 15 has suffered damages between the ninth and twelfth mile-stones by the several breaches of the Todanairy tank bund, which took place in consequence of the bursting of the Iyancottah tank, in the Ammia Naiknur estate, I called upon the renter of the estate to pay Rupees 970 for repair of the damages. The renter denies the justice of the payment of the sum demanded of him, and submits certain reasons for consideration. I propose to inspect the localities on the morning of the 15th instant, when I request you will be good enough to be present at Iyancottah.

From the Collector of Madura, to the Sub-Collector, Dindigul, dated 20th July 1867, No. 1,144.

With reference to your letter of the 27th February last, No. 33, I have the honor to observe that from the enclosed copy of a letter* from the Superintending Engineer, and from my personal inspection of the locality, I am perfectly satisfied that the damages to the road No. 15, and to the Todanairy tank, have been caused by the neglected state of the Iyancottah tank in the Ammia Naiknur estate, and to request that you will be good enough to send a notice to the lessee of the Polliem requiring him to pay Rupees 970, being the cost of the repairs of the damages within a month, and in default, to submit to me a draft plaint to be filed against him in the Dindigul Munsiff's Court.

The Arzi of the lessee is herewith returned.

From the Sub-Collector, Dindigul, to the Collector of Madura, dated 6th September 1867, No. 120.

1. Adverting to your letter of the 20th July last, No. 1,144, I have the honor to inform you that due notice was given to the renter of the Ammia Naiknur Zemindary, whose answer I enclose.

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2. As the Chetty is apparently not inclined to make good the loss sustained by Government, I herewith forward draft of a plaint to be filed against him as required by you.

From the Sub-Engineer, No. 1 Range, to the Superintending Engineer, 8th Division, dated Madura, 30th January 1868, No. 92.

1. With reference to your endorsement, No. 2,132, of 27th instant, on Collector's letter, No. 78, of 21st instant, I have the honor to

Proceedings of the Board of Revenue. report that there is an old calingulah in the Iyancottah tank, but that its crown is above the bund in places, that it has not sufficient gorge for the discharge, and that it is still in a state of disrepair.

2. The bursting of the tank is, I am of opinion, due entirely to negligence. The lessee and village officers were frequently warned to strengthen the bund, to repair the calingulah, and to remove the twigs and turfing inserted between the guard-stones. They failed to do either, and when the tank began to fill, the bund was naturally over-topped when the water was below the crown of the calingulah, causing damage to the road and tanks below.

3. I beg to return the Proceedings of the Board of Revenue, No. 8,014, of 11th December last, as requested.

No. 2,202.

Forwarded, together with copy of Revenue Board's Proceedings, No. 8,014, of the 11th December 1867, with reference to the Collector's letter, No. 78, of the 21st January 1868.

MADURA,
1st February 1868.

(Signed) H. L. PRENDERGAST, Captain, R. E.,
Officiating Superintending Engineer, 8th Division.

Translation of a Lease Bond executed on 17th September 1851 by Kamala Naick, son of Ramasamy Naick, Zemindar of Ammia Naiknur, residing in the village of Potti Chettypulli, attached to the above estate in the talook of Nellacottah, to Pichacooty Chetty, son of Venai-theethan Chetty, of Devakottai, now at Madura.

Having rented out to you the entire estate consisting of sixteen villages,* together with their hamlets, for a period of ten years commencing from Fusly 1267, and fixed the amount of lease payable by you to be Rupees 19,000 per annum, I execute this lease bond to the following effect. You are at liberty to continue, during the above ten years, to levy according to the Kistbundies,† the Fysul Teervah payable on all the arable nunjah and punjah lands,

trees, &c., with the exception of the lands allotted in the Fysul to Davadoyem, Bramadaye and Service Inams, and the Teervah on the waste lands such as hills, forests, tanks burst out, plains, &c., which you may according to your own pleasure let for cultivation on cowlo tenure; as well as 60 and odd Rupees, being the Teervah fixed at the Fysul on the tamarind trees grown in "Serangadoo," and belonging to my Punney or private property; and the Fysul Teervah on all other tamarind, &c., trees; as well as other Teervahs which may thus become payable. Out of the lease amount of 19,000 Rupees, you should cause Rupees 13,969-8-6, being the amount of Peshkush due by the estate, to be paid annually under receipts, together with my Iroosalnamah and Urzi, according to Kistbundies or instalments of payment. Although it was fixed that a sum of 2,000 Rupees should be paid annually, during the above period of ten years, for my domestic expenses, yet I agree that in case of the aggregate amount of the Teervah, which may become payable according to the Fysul rates, on my private property consisting of nunjah and punjah lands, and of the amount which

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|------------------------|------------------------|
| * 1. Cusba Orathattoo. | 9. Sithanathom. |
| 2. Aimboothorakottay. | 10. Yethaloothoo. |
| 3. Pachamalienkottay. | 11. Mattaparay. |
| 4. Vellodoo. | 12. Pallaputty. |
| 5. Thanichiem. | 13. Poolalagoondoo. |
| 6. Kolasaigarencottay. | 14. Maleakoundenputty. |
| 7. Thathengolom. | 15. Ammiaputty. |
| 8. Maitteopatty. | 16. Siroomalayoor. |

† Instalment of payment.

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may become payable to my Sibbundies according to the lists which I will furnish annually, exceeding the said sum of 2,000 Rupees, I will repay the excessive amount every year. If the above aggregate sum falls short of 2,000 Rupees, you should pay me the remainder. Out of the above lease amount, you should appropriate 500 Rupees every year towards the repair of the tanks of the estate, as well as the paddy, which may be paid by the villagers for that purpose, and conduct the repairs in company with my people, and furnish me with the accounts of repairs. After deducting the sum of Rupees 16,469-8-6, being the total of the above three items, there remains a balance of Rupees 2,530-7-6 per year. Before you take charge of the lease of the estate in Fusly 1267, if circumstances permit me to repay you the sum of 3,000 Rupees which I have borrowed of you up to the present date by executing debt-bonds, together with the interest thereon, you should receive it. I further agree to repay you the sum in question in case of your demanding it. Although the above debt becomes thus discharged, yet, I have leased the estate, in order that you may enjoy it during the above period of ten years, in consideration of the assistance afforded by you. In consequence of your having complied with my request to lend me 18,000 Rupees in order to discharge my debts, &c., you should, on assuming charge of the estate, pay me 15,000 Rupees in Fusly 1267, and the subsequent two Fuslies at the rate of 5,000 Rupees a year, by taking bonds from me now and then. In case of the present debt of 3,000 Rupees and its interest not being discharged before the above period, the total amount of debt comes to 18,000 Rupees. You should, during the course of the above ten years, credit the balance of Rupees 2,530-7-6 which remains out of the lease amount as stated above, towards the liquidation of the above debt and its interest. If the amount so repaid do not cover the debt of 18,000 Rupees and its interest, I will pay the remainder, but in case of there being any surplus amount, you should pay it to me. In case of my finding it unnecessary to borrow of you the said sum, you should continue to pay me annually, the above sum of Rupees 2,530-7-6 after the liquidation of the present debt of 3,000 Rupees and its interest. As the lease amount of 19,000 Rupees becomes thus discharged, you may unquestionably enjoy all the other proceeds of the estate without any concern on my part from Fusly 1267 to Fusly 1276. At the expiration of the above period, you should restore me the estate with this bond. As regards the "Varathanays" (presents), &c., respects which are due to me, as well as those due in Narasingaperoomal Kovil of Kadiri, you should, in company with me, effect their collection according to usage. If you fail in any of the conditions mentioned above, you should be amenable to any loss resulting therefrom. If any irregularities on my part happen to your enjoying the estate, I and my heirs shall be bound to be answerable for the loss you may sustain thereby. In case of the suit which I am about to institute being disposed of in my favor, you may enjoy the lease from Fusly 1266 on the above conditions. During the time of the lease you may employ the necessary Sibbundies.

(Signed) KAMALA NAICK,
Zemindar.

Witnesses.

(Signed) MOOTTIA PILLAY,
Carbar of the Estate.

(") SORNAKALAY PILLAY, son of THANDA-
VAROYA PILLAY, of Kaliar Covil, now at Madura.

Drawn out by SOORAMANEA PILLAY, son of MARCOODANOIGOM PILLAY, and ROYASOM under the above Zemindar.

(True translation.)

(Signed) P. SESHAGHERRY,
For Collector.

1. Communicated to the Officiating Government Pleader, with reference to the Board's Proceedings, dated 11th December 1867, No. 8,014, and for the information of the Advocate General.

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2. It will be seen from the Collector's letter and its enclosures, that the Ammia Naiknur estate is an unsettled Polliem for which a sunnud has not been granted; but that in the copy* of the translation forwarded by the Collector of the lease granted by the Polygar to the lessee the following stipulation appears:—

* Vide Enclosure No. 10.
"You should appropriate 500 Rupees every year towards the repair of the tanks of the estate as well as the paddy which may be paid by the villagers for that purpose, and conduct the repairs in company with my people, and furnish me with the accounts of repairs."

3. As regards Mr. Norton's queries, whether or not the tank was furnished with a proper calingulah, and whether the bursting was the result of pure accident or negligence, the Range Officer upon whose report* the Officiating Superintending Engineer appears to rely, states, "There is an old calingulah in the

"Iyancottah tank, but its crown is above the bund in places it has not sufficient gorge for the discharge, and is still in a state of disrepair. The bursting of the tank is, in my opinion, due entirely to negligence. The lessee and village officers were frequently warned to strengthen the bund, repair the calingulah, and remove the twigs, and turfing inserted between the guard-stones. They failed to do either, and when the tank began to fill, the bund was naturally overtopped when the water was below the crown of the calingulah causing damage to the roads and tanks below."

4. Under all the circumstances of the case, the Board consider that a suit should be instituted for the recovery of the damages sustained by Government, and that both the Polygar and lessee should be made defendants, as it might be urged that the lease bond provides for only ordinary repairs, under which those required by the tank in question do not fall, and that the Polygar is liable for any extraordinary expenditure that may be required to keep his tanks in such a state of repair as not to be dangerous to person or property.

No. 244. Proceedings of the Board of Revenue, dated 24th April 1868, No. 3,033.

Read the following letter from the Officiating Government Pleader, to the Acting Secretary to the Board of Revenue, dated Madras, 18th April 1868, No. 84.

1. I have the honor to acknowledge the Proceedings of the Board of Revenue, dated 7th April 1868, No. 2,593, noted in the margin, relative to the suit, proposed to be instituted by the Collector of Madura, for the recovery of damages caused to Government property by the bursting of the Iyancottah tank.

2. I submitted those Proceedings, together with the Board's Proceedings under date the 2nd of November last, for the consideration of the Advocate General with whom I have also conferred on the subject, and I now forward a copy of his opinion.

3. The Advocate General's proper fee for the advice is, Pagodas 15, or Rupees 52-8-0, which I request may be remitted to me for the purpose of being paid to him.

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Opinion.

1. It now appears that no sunnud has been granted to the Zemindar. He is, however, bound by the Common Law, independent of any covenant in his sunnud, to preserve his neighbour's lands safe from any injury by the bursting of his tanks. The law on this point has recently been settled in England on a wider base than was formerly thought to be the case; and it would seem that a man who stores a dangerous element on his own land does so at his peril, and cannot excuse himself from consequential damages even on the plea of *vis major*.

2. But the facts here shew that the breaches were occasioned, not as asserted by the lessee, by the bursting of a Government tank above, or by excessive or sudden floods, but simply from the lessee's neglect to repair and provide a proper and sufficient calingulah, though often warned and requested to see to it by the Government officials.

3. The lease, copy of which is furnished, shews that the lessee is bound to expend 500 Rupees per annum on the repairs of the tanks in the estate.

4. I do not think that the Zemindar can free himself from his liability to the Government, by letting his property; nor do I think that the lessee can escape the responsibility of not keeping the tanks in sufficient repair.

5. I agree with the Board of Revenue in thinking that a suit should be brought against both.

(Signed) JOHN BRUCE NORTON,

Advocate General.

17th April 1868.

1. Ordered to be communicated to the Collector of Madura, who will include the Polygar also as a defendant in the suit, and amend the plaint accordingly.

2. The Collector is also requested to forward to the Advocate General, through the Government Pleader, a transfer-receipt for Rupees 52-8-0, being the amount of the fee due to the former gentleman.

3. A copy of these Proceedings, together with a copy of those, dated 7th April 1868, No. 2,593, will be submitted for the information of Government, with reference to their Order, dated 25th October 1867, No. 2,516.

No. 245.

ORDER THEREON, 11th May 1868, No. 1,300.

Irrigation, No. 8.

The Board's Proceedings are approved. They will in due course report the result of the suit.

(True Extract.)

(Signed) W. HUDLESTON,

Secretary to Government.

To the Board of Revenue.
,, the Department Public Works.
,, the Accountant General.

Exd. S. T. [illegible]

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J. B. L. [illegible]

approved. I agree with the result of the suit.

11th May 1868.

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