M.R.O. 14-5,450—22-10-25.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No.	1495	Press ~~Mis.~~
653-54. Dated	28-5-1868.	

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
28th May 1868.

No. 653. Read the following Proceedings of the Madras Government in the Public Works Department:—

Passing orders regarding the suit instituted in the Principal Sudder Ameen's Court against the Executive Agent in charge of the Ahtoor Range in Salem District. } (Here enter 28th May 1868, No. 1,686.)

No. 654. ORDER THEREON, 28th May 1868, No. 1,495.

Miscellaneous.

Communicated to the Board of Revenue, with copy of G. O. No. 821, Department Public Works, dated 11th March 1868.

2. The Board will instruct the Collector to take the necessary steps for his inclusion in the suit, and to furnish the Government Pleader with the information necessary to allow of his preparing the answer to be filed in Court.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Board of Revenue, with G. O. No. 821.
„ the Government Pleader.
„ the Department Public Works.
„ the Accountant General.

Exd. S. T. Augustin.

No. 3,789.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 22nd May 1868.

Read the following letter from C. N. POCHIN, Esq., Collector of Salem, to the Acting Secretary to the Board of Revenue, dated 7th May 1868, No. 116:—

1. I have the honour to report, for the information of the Board of Revenue, the institution of a suit in the Principal Sudder Ameen's Court at Salem, against Appavu Mudali, the officer of the Department of Public Works in charge of the Ahtur Range, to prohibit the construction of two anicuts across the Vellaur river, which have been sanctioned by Government.

2. The Government in their Proceedings of the 11th March last, No 821, (copy enclosed,) have, on the representation of the Superintending Engineer, 5th Division, sanctioned the defence of the suit at the public expense. Colonel Foord sent to me a copy of the plaint and the answer prepared by the Range Officer, Appavu Mudali, and asked me to instruct the Government Vakeel to undertake the defence. I deemed it proper to prepare an answer myself in lieu of the one sent to me by Colonel Foord, as the points at issue were not answered, and I beg to submit, herewith, the same for the Board's information, together with the one received from Colonel Foord, and a copy of the plaint. I trust the Board will approve of my proceedings in the matter. Though the suit is not against any one in my Department, yet, for the interests of Government which are involved in it, I considered it proper to take the steps I have.

ENCLOSURE No. 1.

To the Court of Principal Sudder Ameen at Salem.

Plaintiffs.	*Defendants.*
1. Vyapuri Moodelly, of Gungavally.	1. T. Appavu Mudaliar, Supervisor.
2. Perumanchi Reddy, of do.	2. Mauram Reddy, of Kistnapuram.
3. Sabapathy Pillay, of do.	3. Soobbee Reddy.
4. Vencatachella Moopen, of do.	4. Chinna Thambi Odian, of Gudumallay.
5. Krishna Reddy, of do.	5. Athicari Thatham Naik, of do.
6. Tholliapadeachee, of do.	
7. Paupe Reddy, of do.	

Plaintiffs seek to establish their exclusive right to the water of Vellaur river, valued at Rupees 3,000, which irrigates the Nunjah lands of their village, paying a fysul teervah of Rupees 4,451-1-0, and to restrain the defendants from proceeding with the construction of two anicuts at Kistnapuram and Gudumallay villages across the said Vellaur river, and further to prevent the defendants from interfering with the water of that river. Value of the suit, Rupees 3,000.

I. Plaintiffs state that they themselves and the other ryots of the Gungavally village, through whom they claim as agents under a Mooktearnamah granted them, are the owners of the Nunjah lands of the said village paying a fysul teervah of Rupees 4,451-1-0, and that the cultivation of the same is dependant on the water of the Vellaur river; that since the late Nabob's time the water of the Vellaur river from below the Kundiampully anicut exclusively belonged to the plaintiffs, and they are so enjoying it.

II. That the water so supplied not being sufficient, some four hundred wells have been dug at private cost; that notwithstanding this additional source the Nunjah lands have become Shavy in some years, and remission made thereon; that further some Nunjah lands paying teervah of Rupees 500 have been made Punjah for want of sufficient water.

III. That whilst so, the defendants have attempted to construct two anicuts within three miles distance from the plaintiffs' village below the said Kundiampully anicut to divert water to Kistnapuram and Gudumallay villages, there to carry on Nunjah cultivation newly.

IV. That the plaintiffs petitioned about this to the Collector who passed an endorsement that the defendants can proceed with the construction of the disputed anicuts, making due provision for carrying water to the plaintiffs' village by keeping passages in the anicuts, and also directed the plaintiffs to represent to him in case of falling off of the supply.

V. That the plaintiffs' lands have no other source of supply but the river water; that the defendants have had no right to the water in question at any time, and further that they had no Nunjah irrigated by river water ever since the pymash.

The Collector's endorsement, dated 11th November 1867, is herewith filed.

(True translation.)
(Signed) T. APPAVU MUDALIAR, Supervisor,
Ex. Agent in charge of Ahtur Range.

(True Copy.)
(Signed) E. A. FOORD, Lieut.-Col., R. E.,
Superintending Engineer, Fifth Division.

ENCLOSURE No. 2.

Answer to the first paragraph.—That below the plaintiffs' Kondiampully anicut, A, there is one Gudumallay anicut, B, at a distance of two miles within the limits of Gudumallay village, &c., and below it there is another anicut within about two miles going by the name of Gudamallay Malava Naik anicut, C; that both these anicuts, B and C, were formerly erected by late Nabob's Government together with channels, all of which had been kept up in use. But subsequently these constructions, B and C, have decayed (vide plan* herewith produced.) That some years back, on the application of certain ryots to restore one of the said Gudumallay ruined anicut, B, the Government have set it up for use at an outlay of Rupees 268-0-6, which fact will be evidenced by the public records† herewith put in, that notwithstanding the repairs so done to it, the anicut has proved itself unfit for use owing to the unsuitable locality. That besides the two aforesaid anicuts lying below the plaintiffs' Kondiampully anicut, A, there is also a channel, E, opened out from Gangavally Peria anicut, F, about twenty years ago at the expense of Government to carry water to feed the Nadavalore tank, and this channel is still in use, having undergone repairs at an expense of Rupees 2,451-12-1 up to this time; that these facts also would be evidenced by record‡ and the plan above referred to; that therefore, that if the allegation of the plaintiffs, that they have secured an exclusive right to the water of the Vellaur river flowing from below the said Kondiampully anicut ever since the late Nabob's ruling were true, there would have been no necessity on the part of the Government to lay out large sums of money in order to carry water to separate villages for improving Nunjah cultivation therein, and thereby to increase the revenue.

* No. 1.

† No. 2.

‡ No 3.

Answer to the second paragraph.—That the 100 wells referred to by the plaintiffs have been sunk, as the defendant believes, for the express purpose of getting every year two crops on high level lands and threeon low level lands, and also to keep up sufficient quantity of water for cultivation during dry season when the river supply falls off; and thus this method of sinking wells in fields is always common with the ryots. That sometimes these additional resources also fail to give the sufficient supply, and this coupled with other short-comings on the part of the ryots, make the crops Shavy, and defendant, therefore, believes that on some such grounds alone the remission referred to by the plaintiffs would have been granted to them. That the plaintiffs' assertion that some Nunjah lands paying a revenue of Rupees 500 had to be converted into Punjah for want of sufficient supply of water alone, cannot be relied on, for it seems that some years back the Gangavally villagers having collected together laid a false representation that supply of water was not sufficient, and whereupon, the then authorities fully believing their statement, ordered the Nunjah lands to be converted into Punjah, the sole object of Government having been then only to encourage the ryots to carry on any sort of cultivation. That if it were in now-a-days no such indulgence would be granted, and even the assessment would not be so light.

Answer to the third paragraph.—That on the villagers of Kistnapuram and Gudumallay petitioning the Collector of the district to provide means for their carrying Nunjah cultivation in their villages, expressing at the same time their intention to pay Nunjah teervah, Estimates have been ordered and prepared for restoring the Gudumallay Madava Naik's anicut, C, in the room of Gudumallay anicut, and for erecting another new anicut, D, below the same in lieu of the Gudumallay ruined anicut, B, for the benefit of the Gudumallay and Kistnapuram villagers respectively. Whereupon the Gangavally villagers complained to the Collector objecting to the restoration and construction of the abovesaid anicuts, and their complaint was endorsed to the Tahsildar, who after inspecting the sites made a report that the site selected for the new anicut being far away from the plaintiffs' anicut, the plaintiffs' Nunjah lands would not at all feel the want of water (a copy of the Tahsildar's report* is filed herewith). That as the Government have a right to remedy now and then the injuries caused by the river, to repair anicuts on taking breach, and to grant remission in case of failure of the crops, the Government, the defendant presumes, is at liberty likewise to take up measures for carrying the extra water of the river to villages where it is found necessary to create Nunjah cultivation, and thereby to increase the revenue. That under the virtue of this right the then Collector of the district and the District Engineer, in compliance with the long request of the villagers of Kistnapuram and Gudumallay, framed and submitted for sanction estimates for Rupees 10,070† for the restoration and construction of the abovesaid two anicuts, and that the Government have accordingly sanctioned them in 1863. But there being no funds available, the works were put off, and in this year some funds have been allotted for the purpose (as will be seen from the accompanying Proceedings‡ of Government) and Rupees 2,333-0-7§ have already been spent in the collection of materials, &c.

* No. 4.

† Gudumallay anicut, Rupees 4,920. Kistnapuram, Rupees 5,150.

‡ No. 5

§ Gudumallay anicut, Rs. 1,075-0-2. Kistnapuram anicut, Rs. 1,258-0-5.

That the defendant begs to bring to the notice of the Court that below the plaintiffs' anicut, F, there are seven anicuts each lying within a short distance of quarter, half, three-quarter, and one mile from one another (as is shown in the plan). These anicuts supply water to some other villages where there is not a least complaint of insufficiency of water. That notwithstanding the several advantages which the plaintiffs have, namely, a jungle spring stream from the Putchamalay Hills, lying at a distance of one mile above the plaintiffs' anicut, which joins the Vellaur river, the site selected for the new anicut is at a great distance of three miles from the plaintiffs' anicut, and there are also several springs and streams all proving advantageous to the plaintiffs' anicut; the Collector and Superintending Engineer although of opinion that there would be no complaint for water, have still ordered to keep a sluice in the proposed anicut to let water through in case if there be any fall in the usual supply—(a copy‖ of the above order is also put in herewith). That while the defendant causes all the works to be executed by his subordinates, the Overseers of the talook, only under the sanction of his superior authorities, the plaintiffs are not justified in taking him as a defendant. Under these circumstances the defendant requests the Court to give the matter its full consideration and order the execution of the works which were intended for the benefit of both the Public and the State.

‖ No. 6.

(Signed) T. APPAVU MUDALIAR, Supervisor,
Ex. Agent in charge of Ahtur Range.

(True Copy.)

(Signed) E. A. FOORD, Lieut.-Col., R. E.,
Superintending Engineer, Fifth Division.

ENCLOSURE No. 3.

DRAFT ANSWER.

I. That the plaintiffs have not shown that any cause of action has arisen in the suit, and the first defendant therefore prays that the suit may summarily be dismissed with costs.

II. That the Government, to whom the river Vellaur belongs, are at liberty to appropriate the water to its best advantage, and the first defendant denies *in toto* the plaintiffs' exclusive right to the water of the Vellaur below the Kondiampully anicut.

III. That the Government have as much interest in the proper supply of water to the Gangavally anicut as the plaintiffs themselves, and the first defendant maintains that the construction of the two anicuts of Kistnapuram and Gangavally will in no way interfere with the supply for the Nunjah ayacut of Gangavally.

IV. That the plaintiffs' assertion to the effect that 500 acres of land were converted from Nunjah into Punjah *for want of sufficient water*, is altogether incorrect.

(Signed) C. N. POCHIN,
Collector.

ENCLOSURE No. 4.

ABSTRACT.—Copy of Government Order, dated 11th March 1868, No. 821, Department of Public Works.

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1. Resolved that the foregoing letter, with its enclosures, be submitted to Government, with reference to their Order, dated 10th March 1868, No. 821, (Public Works Department,) which was not communicated to the Board.

2. The Board observe that the very important question of the paramount right of the State to deal, as it deems best for the public interests, with rivers and other Government sources of irrigation, (granting compensation for injuries caused by the exercise of such rights,) is involved in this suit.

3. The expediency even of legislating for the assertion of these rights has been under the consideration of Government, and under these circumstances, the Board would recommend that the Collector may be directed to apply to the Court to be made a supplemental defendant, and take the further conduct of the suit under his own guidance.

4. The Board recommend further, that the draft answer be sent to the Government Pleader for his approval and amendment where necessary.

5. The first of these suggestions is made on the ground that the Collector is more competent properly to perform the duty than a Public Works Supervisor, and that the question at issue affects the rights of the State, and is not a matter within the scope of the functions of the Department of Public Works, which are purely executive.

6. The second recommendation of the Board is made in order to insure the means of appealing under the most favourable circumstances, should the decision of the Principal Sudder Ameen be adverse to Government.

(True Copies and Extract.)

(Signed) A. MacGREGOR,
Acting Secretary.

To the Secretary to Government, Revenue Department.

Copy to the Collector of Salem.

Ed. T. Cartledge, Printer, Madras.

Dated 11th May 1868.

No. 3789.

Proceedings of the Board of Revenue

Madras

Public Works Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following Papers.

Proceedings of the Board of Revenue

Here enter No 3789 of 22nd May 1868.

Revenue Department

To

Proceedings of the Board of Revenue.

dated 26th May 1868.

Read the following letter.

No 729.

From

C. N. Pochin Esqr.

Collector of Salem

To

A. MacGregor Esqr.

Secretary to the Board of Revenue.

Madras

Sir,

With reference to my letter of the 7th Instant No 116 I have the honor

honor to enclose the Copy of a letter No 19 dated the 14th Instant from the Superintending Engineer 5th Division objecting to the answer prepared by me and preferring the one prepared by his Supervisor. I have told Colonel Ford in reply that as he did not appear willing to adopt my draft, I have nothing further to say. My interference was simply for the interests of Government, as I thought the answer received from the Superintending Engineer was not the kind of one that ought to be filed, in fact, it was no answer.

I have &c.

/Signed/ C. A. Pechin
Collector

Salem Collectors Office, Salem 28th May 1868

Submitted for the consideration of Government in continuation of Board's Proceedings 22nd May 1868 No 3789. The Board adhere to the views expressed in their Proceedings quoted.

/True Copy and Extract/
/Signed/ A. MacGregor
Actg Secy

Transferred to the D.P.W.
27th May 1868.
/Signed/ W. Huddleston
Secy to Govt. P.D.

Order thereon 28th May 1868 No 1686

The Government concur with the Board of Revenue in thinking that it is very necessary that the Collector of Salem should be made a supplemental defendant in the Suit instituted in the Principal Sudder Ameens Court against the Executive Agents in charge of the Arkoor Range of that District to prevent the construction of two Anicuts across the Vellaur river, and they are of opinion that the conduct of the Suit should

should be taken under the Collectors guidance. These papers will accordingly be communicated to the Revenue Department in which Department the necessary orders will be passed.-

True Extract

Chas St. Vr. Colonel R.E
Secretary to Govt
Public Works Dept

W-1495

Comm[r] of the Bd of Rev. & the Collr of Sea. No 821. dt. 11. March 68. The Bd. direct the Collr to take the necessary steps for the inclusion in the Estt. & provision for the Pleader & the Asst. necessary & allow of the passing the Accts. thereafter. L.K. 28th May/68

In Sec's Mog. dt. 28 May 68 No 821 Dept. 28 Sec'l. Dept. 8 June
Rec'd Govt. Pleader's Sec. 3 Dept. 1 June.
8 — Govt. Sec. 21 - Dept. 1
6 — Accts. Dept. 8 June

List -

To The Revenue Department

with Govt Sec. No 821 of 68

Revenue 1868. Dep^t
R. of Govt. from May
No. 1826.

Proceedings of the
Govt. Jd. W. Dep^t

Dated 28th May
Received 28th " 1868.
No. 1686.

No 1495. 28 May

Passing orders regarding
the Suit instituted
in the Brit. Sup^r. Queen's
Court against the
Executive Agent in
charge of the Atoor
Range in Salem
Dist.
With order

No. 653-654