

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	2094	Press No.
428-30 Dated 21-12-1870 N		

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
21st December 1870.*

Read the following papers:—

No. 428. Proceedings of the Board of Revenue, dated 12th January 1870,
No. 226.

Read the following letter from the Acting Collector of Tinnevely, to the Acting
Secretary to the Board of Revenue, dated Huzur Cutcherry, 24th
November 1869, No. 455:—

In reply to paragraph 2 of the Order* of Government, Public Department,
No. 77, dated 20th January 1869, calling
* Communicated to me by the Board on the 3rd February 1869. for a report on the statement of Mr.
Kearns as to the claim preferred by
Zemindars to all trees upon their estates, I have the honour to state, for the
information of Government, that the
Manager of the Ettiapuram Zemindary
and other Zemindars,† from whom replies
have been received, report that they have
an immemorial right—

† Uttumalai.
Attangarci.
Singampatty.

1st.—To tax all bearing trees planted in their estates, no matter by whom
planted; and,

2nd.—To the sale proceeds of bearing trees and all other timber on the
ground that, as no quit-rent is paid by the ryots for the sites of their dwelling
houses, they (the Zemindars) will lose their *proprietary right* to the ground on
which the trees stand if they do not claim the trees.

2. An exception is made, however, in favour of trees planted for charitable
purposes, such as those at Pudiampathur.

This report is simply a bare statement of the claims advanced by three or
four Zemindars of the district; but what the actual practice obtaining throughout
the district is as reported by experienced officials and how far the law on the
subject has been laid down in cases decided in the Courts is not stated.

2. The Acting Collector should submit a full report on these points and
give his opinion as to whether he considers that the contrast between the north
and south of the district is so marked as stated by Mr. Kearns, and to what the
difference is traceable. So important a subject should not have been sent up after
a long delay without any opinion.

No. 429. Proceedings of the Board of Revenue, dated 16th November 1870,
No. 6,691.

Read again Board's Proceedings, dated 12th January 1870, No. 226.

Read also the following letter from the Acting Collector of Tinnevely, to the
Acting Secretary to the Board of Revenue, dated Huzur, 29th September
1870, No. 485:—

I have the honour, in reply to Board's Proceedings, dated 12th January 1870,
No. 226, to submit a further report on the points therein referred to, and at the

same time to forward reports from the Divisional Officers on the subject. From the information now before me it is indisputable that the Zemindars, as a rule, claim all trees on their estates, no matter by whom planted. The only decisions of the Courts as to this claim are—

(1.) The case mentioned in paragraph 7 of the Head Assistant's letter, when the Civil Court upheld a decree of the Sub-Collector under Act VIII. of 1865, deciding that the ryots in the Urkad Zemin were entitled to receive puttahs from the Zemindar for trees planted by themselves. This decision of the Civil Court is now in appeal before the High Court; and

(2.) The Tinnevely Civil Court, when selling the Chockampatti Estate, included in the deeds of sale given to the purchasers the trees standing in the several villages of the estate, "the same having been the property of the Zemindar." Trees planted for charitable purposes are everywhere exempted. In Ettiapuram, Melmandei, and Nagalapuram Zemindaries of North Tinnevely the Zemindars claim all the trees in road avenues, and the Melmandei Zemindar's claim to the lopping of such trees was allowed by the Board in their Proceedings, No. 6,701, dated 21st October 1865, on the ground that the Zemindar was held

Mr. Silver,
" Wedderburn,
" Banbury,
" Puckle

responsible for the avenues in his estate, and this claim has been more or less acknowledged by former Collectors named in the margin, subject to the proviso that the Zemindar must keep up the

avenues. The claim of the Zemindars to trees in backyards appears to be generally asserted throughout the district. Deputy-Collector Venkat Row, who has 25 years' official experience of Tinnevely, writes, "They claim all trees in backyards, but the Zemindar of Manarkottei exempts those in the backyards of Brahmin houses." The same officer quotes an order of Mr. Banbury, when Collector, declaring that the Zemindar of Alagapuri had a right to cut barren and blighted trees in the backyards of his tenants' houses; but that, with the permission of the Zemindar, the ryots might cut thorn trees growing on tank banks and waste land for agricultural purposes. The Deputy-Collector farther states it as his opinion that ryots in zemindaries are deterred from planting, owing to the universal claim preferred by the Zemindar to the trees.

It will thus be seen that the claim is universally asserted throughout the district, though in different ways; that, under certain provisions, the chief Revenue authorities of the province have, from time to time, allowed the claim; that up to this time no authoritative ruling of the High Court in regard to the validity of the claim has been promulgated; and, lastly, that the grounds upon which the Zemindars rest their claim are—

(1.) Their proprietary right in the soil, Section 2, Regulation XXV. of 1802; and

(2.) Immemorial custom.

3. In conclusion, I will say a few words on the contrast Mr. Kearns says is presented between North and South Tinnevely as regards trees. Everybody who has travelled in North Tinnevely remembers that there are large tracts of treeless black cotton soil extending for miles and miles. But the fact that tracts are now

bare of trees where formerly they grew must not be put down entirely to Zemindars claiming all trees planted, though I admit it has something to do with it. It must be remembered how very valuable such tracts of land have now become in consequence of the increased demand for Tinnevely cotton, and the ryot, not slow to see this, ceases to plant his shady top and fruit-yielding trees, and sows his acres with cotton, from which he derives a very much larger profit. As it has been shown that the Zemindar waives his claim in favour of trees planted for charitable purposes, I feel sure, from what the Ettiapuram Zemindar himself told me, that under this head would come trees planted for shade in village streets, provided that, previous to planting, a representation were made to the Zemindar, and I do not think Mr. Kearns is quite correct in insisting so much upon the absence of trees in the North Tinnevely villages being due to the arbitrary claims of the Zemindar, for a great deal must be set down to the apathy of the villagers themselves. I could name many villages in the south of Tinnevely—in the Radhapuram Division, for instance—the streets of which are quite as bare of trees as any village in North Tinnevely. From Mr. Kearns' own showing it has taken many years, and the constant personal supervision of the Missionary to make Pudiampatur the desirable village to reside in it now appears to be, and I think it is hardly fair to make a comparison between Pudiampatur and other villages the inhabitants of which have not had applied to them the stimulus to plant, and to cleanse which Mr. Kearns has so vigorously and so successfully brought to bear on the inhabitants of his own village.

4. I regret the delay which has taken place in forwarding this report, but I only received the information I required from the northern Zemindars early in this month.

Enclosure No. 1.

From the Acting Sub-Collector, to the Acting Collector of Tinnevely, dated Camp at Nangunery, 20th July 1870, No. 236.

With reference to your letter, No. 890, of the 16th ultimo, enclosing extract from a report submitted by the Rev. F. Kearns to Government, dated 7th January 1869, I have the honour to report as follows:—

It appears from reports* received from the Tahsildars of Tenkasi and Ambasamudram that the Zemindars do prefer a claim to all the trees in their zemindaries, whether planted by themselves or by the people. They base their claim on custom, and do not produce any document in its support. It also appears that the Courts have not laid down any ruling in respect of such claims, and that trees planted for charitable purposes, such as trees planted round temples, etc., are exempted from taxation, and the profits arising from them expended for the purposes of the charities to which they belong. It also appears that the avenue trees on public roads through zemindaries are dealt with and sold on account of Government by their officers.

2. From the above information, which I believe to be accurate, it will be seen that the Zemindars lay claim to all trees in their zemindaries, but waive their claims in the case of such as are useful for charitable purposes and those planted by Government on roadsides. The same rules seem to have been observed while those estates were under Sircar management. No exception is made in favour of trees in villages or backyards which pay tree-tax in the same way as those planted elsewhere.

*Ambasamudram Tahsildar's Arzi, No. 837 of 1870.
Tenkasi do. " 255 of "

*Proceedings of the Madras Government, Revenue Department,
21st December 1870.*

3. I do not think that Mr. Kearns is quite correct in laying so much stress upon this, for any Zemindar will be glad to hear of the streets of his villages being planted, especially with taxable trees, and the planters will not be required to pay tax, simply because they planted the trees unless they also wish to enjoy the fruits; so that practically there is no absolute discouragement to the planting of trees in streets for shade.

4. The case is rather different as to backyards of houses, because a fruit tree planted here must be rented by the house-owner to prevent strangers intruding on his premises to collect the fruit, and I think it not improbable that most of the Zemindars would make a concession in favour of such trees newly planted in future if asked to do so by the Government.

5. As to trees planted by the tenant on the lands held by him, the tree-tax is, of course, fair, being the landlord's share of the produce, and it seems doubtful whether, if a tenant chose to contest the landlord's right to the full value of the timber of any tree cut or blown down on such lands, he would not get a decree for a share, especially if he could show that he or his predecessor planted it.

(True Copy.)

(Signed) C. T. LONGLEY,
Acting Collector.

Enclosure No. 2.

From the Acting Head Assistant Collector, to the Acting Collector of Tinnevely, dated Tuticorin,
9th September 1870, No. 381.

In reply to your letter, No. 891, dated 10th June last, I have the honour to state that with scarcely an exception the Zemindars of my division do "prefer claim to all trees on their estates," no matter by whom planted or where.

2. I have just returned from a tour in the zemindary portion of the division, and have in many villages made inquiries from the ryots and the Zemindars' servants and have received but one answer, though the Zemindars are not all on a par in enforcing their rights.

3. The Pudar Zemindar, from observation and inquiry, appears to act most liberally, the Ettiapuram to be most exacting. The consequence is manifest in the appearance of their respective villages.

4. The exceptions, or partial exceptions, to the above assertion regard the thorn trees, such as Karuvai, Udai, growing in puttah lands. In no instance have I heard of a Zemindar attempting to enforce a claim to such, but thorn trees growing upon land other than puttah or man are invariably claimed by the Zemindar. Two complaints of theft for the cutting of such have been within the last six months preferred by the Ettiapuram Manager.

5. The Ottapedaram Tahsildar does not report a single instance in which the Zemindars have waived their right in favour of charitable topes, man, or temple lands. However, I found a flourishing young topa planted by the Pallars of Gavmagiri not far from the taluk cuthah, to which the Zemindar of Ettiapuram preferred no claim. His permission, however, to plant had first been obtained.

6. The Tahsildar of Tenkare, Raghaviengar, however, reports that, from his experience in the Sattur, Ambasamudram, and Sankaranalwaroovil Taluqs, and also in Ramanad and Sivagangai, the Zemindars generally do not claim the trees in Shrothram or Dharmasamam villages; but at the same time he reports that several cases in which Zemindars have claimed such have come to his notice, but the claim has not been allowed.

7. Raghaviengar reports that some ryots of the Urkad Zemin in the sub-division demanded puttah for the trees planted on their puttah lands by themselves. Mr. Pennington gave judgment in their favour, and his order was upheld on appeal by the Civil Judge. The Zemindar then appealed to the High Court. The result he does not know.

8. On the other hand, the Ottapedaram Tahsildar reports that in decree No. 122 of 1859 the Principal Sudder Ameen found in favour of the Zemindar, on the ground of ancient custom,

*Proceedings of the Madras Government, Revenue Department,
21st December 1870.*

in a suit brought by one Viraperumal Paradesi of Mela Mudiman, in Ettiapuram Zemin, to prevent the Zemindar from levying enhanced teerwah for trees planted in his puttah land.

9. From the inquiries I made I am of opinion that no ryot would venture to plant a tree without the permission of the Zemindar or of his servants. Even their backyards are not sacred. Many said, on my asking why their village and backyards were so bare and treeless. "What is the use of planting when the Zemindar's people may come and cut down the tree whenever it meets their need or convenience." I do not agree with Mr. Kearns in holding this the only reason why the villages of North Tinnevely are sparsely planted, for no doubt, if they asked, they would generally obtain permission to plant, and probably a promise of immunity. It is custom. Their villages have been without trees from the days of their fathers, and, though a tree is "grateful to God and man," yet why should they bestir themselves and innovate? So the blame must, in a measure, be laid to their own doors; but it is hopeless to expect to bring about a better state of things until the nightmare dread of zemindary interference is removed.

10. It is, however, but fair to the Zemindars to say that the state of Government villages in Ottapedaram is not very much better than their own; in fact, the villages of the Pudar Zemin and some other villages north of the Vypar more especially are far from treeless, and I was very pleased to observe that there is a fine sprinkling of young margosa trees, seldom more than five or six years' growth, in many parts over the cotton plains. This is a quick-growing tree, and luxuriates in the black cotton soil. I attribute this more to the improvement of the ryots in wealth than to any change in the conduct of Zemindars. Moreover, few villages in the north are without a tamarind topa. In all cases I learnt they were the exclusive property of the Zemindar.

11. When a ryot obtains permission to plant a fruit-bearing tree, it is always subject to the condition of a share in the produce going to the Zemindar. This is sometimes commuted to a money rent. All such trees when withered are claimed exclusively by the Zemindar.

12. I must refer to the Zemindars' claims to avenue trees. Such is uniformly the case with all the avenues in the Zemins of my division, let the roads be trunk or bye, if the trees have not been planted by Government.

13. This claim has apparently been more or less fully acknowledged by the Collectors, subject, however, to the proviso that the Zemindar must keep up the avenues. I regret to say that, though their servants invariably take the trees, in not one instance during my recent tour did I observe, except in the village of Ettiapuram, a single young tree planted to fill gaps made by age and storm, though I saw several instances of avenues injured and disfigured by wanton clippings. If the Zemindars be permitted the usufruct of avenues, we must have some guarantee that they do not ruin them.

14. I find that in 1865 the Board sanctioned, on a reference by Mr. Wedderburn, the refund of a small sum credited to Government for clippings in the Melmandri Zemin in accordance with Standing Order No. 86 of 1863, the Zemindar being held responsible for the preservation of the avenues.

15. This estate has now, excepting the Home farm, been sold to Nattukottai Chetties. I was at Melmandri last month. I found a great tree lying half across the road. I asked why it had not been removed, and was told that the Zemindar (now nobody), was disputing with the ryots of adjoining land whose it should be. It had been there since November last apparently, and there seemed no prospect of the dispute being terminated. This was the high road to Ramanad. I issued orders to make over the tree to the ryots, provided they consent to fill up the gaps.

16. I find that on 7th September 1861 Mr. Silver ordered the Tahsildar of Ottapedaram not to interfere with the Zemindar's clipping bye-road avenues on condition of his repairing damages. In 1865 Mr. Banbury permitted the Ettiapuram Zemindar to lop the branches on the Ettiapuram and Cogipatti road on condition of his re-planting such as should die, seeing that the trees had been planted by his ryots. I find, however, that Mr. Puckle in 1866 refused to allow a Kattigutta gaidar to take the avenue clippings of an old road until he was satisfied that he had planted a new road, which had been opened previously.

17. The Zemindars base their claims to trees generally on the ground that they are lords of the soil. It is unfitting here to discuss the validity of that claim. I would merely remark that the right is not mirassi, and has not been confirmed to them by sanad. If it is valid, it rests on custom.

ENCLOSURE No. 3.

From T. VENKAT ROW, General charge Deputy-Collector, to the Acting Collector of Tinnevely, dated Sankaranainarcovil, 4th July 1870.

With reference to your letter, dated 16th ultimo, No. 892, giving cover to an extract from a report submitted by Rev. F. Kearns to Government in 1869, I have the honour to submit my replies to the questions proposed.

2. Q.—“Do the Zemindars in your division prefer a claim to all trees in the estates,” no matter by whom planted?

A.—Yes, with the exception of the trees in the backyards of Brahmins' houses and compounds of pagodas. The pagodas appear to enjoy the produce only, and the trees, when dead, are taken by the Zemindar. This appears to be the case in respect of the villages in the Chockampatty Zemindary. In the Mannarkottai Zemindary, in Sattur Taluq, the Zemindar having rented out the tamarind trees situated in the backyards of the Brahmins' houses, the Brahmins opposed it. An investigation followed, and an arzi was lately received by me from the taluq, from which it appears that the Curman has deposed that the trees situated in Brahmins' houses and in an “Amman” Pagoda there had always been excluded from the rent given out by the Zemindar. It also appears that, in respect of trees situated in the backyards of the houses of other castes, the Zemindar sells the trees when dead and takes the whole of the sale proceeds. In the Sivagerri Zemindary the Zemindar is stated to rent out the trees situated in the backyards of houses of all classes, while in Chockampatty the owners of the houses were allowed merely the usufruct of such trees. The ryots, however, are allowed to take the karuvil or thorn trees situated in their puttah punch lands to the extent required by them for implements of husbandry. The orders issued by the late Acting Collector, Mr. Hambury, to the Tahsildar of Sankaranainarcovil Taluq, on the 1st March 1869, shows that, when the ryots of the Alagapuri Zemindary put forward a claim to the karuvil, tamarind, and margosa trees situated in the backyards of their houses and on the banks of wells and punch fields, it was decided that the Zemindar had the right to take the barren and top-blighted trees out of them, and that the ryots could only take karuvil trees situated on the banks of tanks, wastes, and cultivated lands, to the extent required for ploughing purposes with the permission of the Zemindar.

3. Q. 2.—“If so, on what do they rest their claim?”

A.—On the ground that the proprietary right in the whole zemindary is vested in them. Even in some Ayan Panguvali villages under Government I find that the Panguvies enjoy the usufruct of the trees situated in the backyards of Sudras' houses. The trees are sold when dead, and the sale proceeds shared between the Panguvies (Brahmin shareholders) and the Government. This was admitted before me to be still the custom in Karivalamvandallore, in Sankaranainarcovil Taluq, when I had been lately there. The custom appears to have had its origin in the principle that the proprietary right in all lands had been originally vested in the sovereign, except where the right had been parted with as in Panguvali villages, which appear to have been granted away to the Brahmins by the former ruling power; consequently the Zemindars in this district who consider they possess the same rights as Government in respect of the lands situated in their respective zemindaries claim a right to all the trees by whomsoever planted.

4. Q. 3.—“Have the Courts ever laid down the law in the case of any such claims?”

A.—As far as I have inquired, no decree appears to have been passed by Courts regarding the trees situated in zemindaries in this dis-

trict; but the Civil Court of Tinnevely, in selling the Chockampatty Zemindary in satisfaction of the private debts of the Zemindar, has, it appears, included in the sale deeds issued to the purchasers of the several villages the trees situated in the respective villages, the same having been the property of the Zemindar at the time of attachment.

5. Q. 4.—Is the Zemindar's claim ever waived in favour of trees planted for charitable purposes? A.—Instances of charitable topes have not come under my notice, as there are apparently none.

6. Here I beg leave to state what has fallen under my own observation. On one noon in July or August 1868 I had been to a village called Ramalingapuram, belonging to the Ettiapuram Zemindar, in Sattur Taluq, for the purpose of inspecting a disputed well. After inspection I returned to the village. The sun was very powerful, but I found little or no shade, the villagers (Reddies) informing me, when questioned, that they do not rear trees because the Zemindar cuts them for his own use, they being allowed only the thorn trees required for ploughing purposes.

7. The ryots are undoubtedly deterred by the above causes from planting trees.

These papers will be submitted to Government with reference to their Order, No. 77, of the 20th January 1869, paragraph 2.

2. The facts of the case are clearly stated by the Collector in his last letter recorded above, and it seems that “Zemindars do, as a rule, lay claim to all trees on their estates, no matter by whom planted,” except in so far as they allow their tenants to cut trees for agricultural implements and (it is presumed) for firewood, and except where a special exemption has been allowed in favour of religious institutions and Brahmins.

3. It is scarcely necessary for the Board to point out the serious evils that must be caused by pretensions of such an offensively inquisitorial character, and they have no doubt that these pretensions are wholly without foundation, except such as may unfortunately have been acquired by long undisputed usurpation in consequence of the ryots' ignorance of their rights. It would even appear that the claim has actually been successfully disputed in the District Courts; but as the Collector does not forward copies of the decrees he refers to, it is impossible to say with certainty whether the issue was fairly raised in them. He will be requested to forward copies now, and in the meantime the Board would recommend his being directed not to concede anything which could be construed into a recognition of the Zemindar's claims.

TRANSFERRED to the Revenue Department for disposal, with G. O., 20th January 1869, No. 77, Public Department.

FORT SAINT GEORGE,
5th December 1870.

(Signed) H. E. STOKES,
Under-Secretary.

No. 430. ORDER THEREON, 21st December 1870, No. 2,094.

Miscellaneous.

The Board will request the Collector, Mr. Puckle, (who has now resumed charge), to use his best endeavours to promote the planting of trees in Government villages throughout his district, especially on channel and river banks.

*Proceedings of the Madras Government, Revenue Department,
21st December 1870.*

2. The Government, however, desire that Mr. Puckle will lose no opportunity of impressing on the Zemindars the shortsightedness of their policy, which is practically suicidal, as no one will plant when he is not to enjoy the fruit of his labours.

3. The Government, concur in opinion with the Board that nothing should be done by the local officers which can be construed into a recognition of the Zemindar's claim to all trees planted by the ryots in their holdings.

(True Extract.)

(Signed)

W. HUDLESTON,

Secretary to Government.

To the Board of Revenue.

Edw. B. S. Rodgers.

Proceedings of the Madras Government
Under date the 21st Decr 1870.

Read the following

Proc. of the Board of Revenue.

Submitting reports from
Colrs. regarding claims preferred
by Zamindars to trees in Zamindary
Estates in Tanjore District.

M.C. 16th Novr 1870 to 669

The Board will request
the Colr. Mr. Puthu (who has
now resumed charge) to use his
best endeavours to promote the
planting of trees in Government
Villages throughout his district,
especially ~~in~~ ^{near} ~~the~~ ^{the} ~~banks~~ ^{banks} and
in channel and rivers banks.

I believe it is now
well that trees are
planted. Trees do not act as
levers in windy weather
& weaken the Banks.
Village Trees have been
wanting which

3. The Govt. possess in
opinion with the Board that
nothing should be done by the
Locals

Cont. of 1870: 3140ms.

REVENUE.

THE BOARD OF REVENUE.

Dated December 21st

Recd.

File.

G. O. 514 December 1870. No. 2,050

DECEMBER

Nos. 428-430

Trees in Tanjore District
Proceedings. Board of Revenue, regarding the
claim preferred by the Zamindars in connection
with them, with orders thereon.

Local Officers which can be
construed into a recognition
of the remainder claim to all
trees planted by the State in
their holdings. ~~The property~~
~~in which the remainder~~
~~claim is based~~ ~~is the right~~
~~is the right to the~~
~~of the land~~

2. The Court, however,
deems that Mr. Buckle will
lose an opportunity of impress-
ing on the remainder the
straightness of their policy
which is practically suicidal,
as no one will plant, if he
is not to enjoy the fruit of
his labor.

1875

Remission of his present
claim which is
endangered by any
the present of people

14 Feb. 1875

1875