

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT

G.O. No.	317	Press MS
<i>24-38</i> Dated	5-3-1870	N

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
5th March 1870.*

Read the following :—

No. 36. Proceedings of the Board of Revenue, dated 5th January 1870, No. 46.

Read again Board's Proceedings, dated 5th August 1869, No. 5,753.

Read also the following letter from the Sub-Collector in charge of South Arcot, to the Acting Secretary to the Board of Revenue, dated Cuddalore, 9th December 1869, No. 310.

I HAVE the honour to enclose translation of a *Plaint* and a draft answer proposed by Mr. Lister, the first defendant in Original Suit No. 26 of 1869, on the file of the Principal Sudder Ameen's Court at Cuddalore.

2. The date of the hearing of the *Suit* is 12th December 1869, but Mr. Lister has desired the Government *Vakeel* to apply for a postponement of two months.

3. The facts of the case I consider unnecessary to report here, as the Board are fully acquainted with them. This *Suit* has originated upon the Order of the Board, in their Proceedings, under date the 5th August 1869, No. 5,753.

4. I request sanction for the defence of the *Suit* at the public cost.

Enclosure No. 1.

Translation of Plaint.

<i>Plaintiffs.</i>	<i>versus</i>	<i>Defendants.</i>
Ragavachari of Padarapooloor, in Tindivanam Talook, and six others.		1. Head Assistant Collector. 2. Assistant Engineer and 17 ryots of Chendoor.

The plaintiffs own *Cawnies* 158-2-2 of *nunjah* and *punjah* land, assessed at Rs. 1,461-10-2, and cultivated with *nunjah* crops, in the village of Padarapooloor, and the source from which these are irrigated is the Padarapooloor Tank. Ever since the origin of the tank there have existed a *calingulah* in the northern bank of this tank (in the place where the present *calingulah* is situated), a sluice in the middle bank for irrigating lands on a lower level, and another sluice at the eastern end of the said tank for irrigating lands on a higher level, and for which a medium rate of assessment has been fixed in the *Pymaise*. These two sluices have long been the source of irrigating the above lands. The said tank is supplied with water by the ancient channel of the *Thondiar*. It is usual to turf over the said *calingulah* to the height of one yard, in order to preserve the water of the said tank. About 143 odd *cawnies* of land in the limits of the defendants' (1-19) village of Chendoor have, from a long time up to 12th September 1869, been usually covered with the water of the plaintiffs' tank above named, and although the defendants have cultivated a portion of the above water-spread without the consent of the authorities, they have been prohibited by the officers from time to time from carrying on such cultivation. Not only the above water-spread, but also some of the assessed lands adjoining the northern portion of the said water-spread, and situated in the limits of the defendants' village have been usually covered with water, as above stated. These assessed lands are *punjah* and not *nunjah*. The defendants 3 to 19 presented a false complaint to the Collector, stating that the cultivable lands of their village are destroyed by the water of the said tank, and that thus great loss is caused to them, that the *calingulah* had been newly built on a higher level about fifteen years ago. Thereupon the first defendant to whom the said complaint had been endorsed for inquiry, and the second defendant who was present with the former, without holding a proper inquiry and ascertaining the truth of the allegations by examination of the records, and entirely ignoring the facts that the *calingulah* in question had been in existence for a long time, and that the water of the tank had usually spread over the lands in

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1. The Board of Revenue passed an order on the 12th of September 1868, directing that the water of the tank should spread over only 75 cawnies of land in the boundary of the defendants' village of Chendoor, and that the calingulah of the plaintiffs' village should be constructed on a lower level. This order was passed by the first defendant, and soon after the calingulah was reduced a little more than a yard in height in pursuance of the order, and was constructed at the northern end of Field No. 77 in the village of Chendoor, so as to retain the water of the tank. A channel was also constructed in Field No. 136, leading from the Arungany, i.e., a hollow place (inside tank bunds where water is retained) in order to carry off the water of the said tank to the Thondiar. Owing to this all the water of the tank is carried away to the said river. As the second defendant executed these works in obedience to the first defendant's order, and in accordance to the wishes of the defendants 3 to 19, the plaintiffs' tank now in dispute contains only three-fourths of the water which it formerly used to hold.

2. Against the above order the plaintiffs preferred an Appeal, No. 41 of Fusly 1278, to the then Acting Collector Mr. Arbuthnot, and that officer reversed the whole of the original decision on the 17th October 1868, and directed that the calingulah of the plaintiffs' tank and its water-spread should be placed in the same condition as before the first order, and accordingly the newly constructed channel was filled up and the calingulah rebuilt.

3. The defendants 3 to 19 preferred a special appeal against the latter order to the Board of Revenue on the 26th of November 1868, and this authority, upon seeing that the defendants had stated that their cultivable lands were damaged, confirmed the original decision on the 1st August 1869. As this last order is in accordance with the wishes of the defendants 3 to 19, and as it is also conformable to the opinion of the second defendant upon which the first defendant based his decision, and as owing to this the tank of the plaintiffs' village has been damaged, the plaintiffs have been obliged to include them all in the list of defendants.

4. The first defendant states in his decision that the calingulah of the tank was raised to a higher level about fifteen years ago than it used to be formerly, but there is no evidence in support of this assertion. There are public documents to prove that this calingulah has, ever since the origin of the tank, been situated on the very spot where it now stands, and that it was not raised to a higher level fifteen years ago, and it is not proper to say that the tank has been enlarged simply because there is an old path in the bed of the tank. Not only in this village but in several villages paths exist in the bed of the tank.

5. Owing to the construction of the calingulah first on a lower level in pursuance of the first defendant's order of September 1868, and to the water-spread of the tank having been limited, and to the construction of a channel in the bed of the tank, no water now passes through the high sluice at the eastern end of the tank. The lands irrigated by this sluice are all closed in the Prambas Nanjah Field No. 136, which has been measured as the small tank belonging to the Chendoor village belongs to the Padarapooloor tank, and the defendants 3 to 19 have no right to enjoy it. The first defendant, who has admitted all this and the previous orders on the subject, has afterwards directed that the calingulah should be reduced to a lower level, and even this land, which he stated in the decision to be the water-spread of the tank, does not now hold any water. Further, owing to the same cause, Fields Nos. 76 and 77, which the first defendant had determined, pursuant to the Prambas Accounts to be the water-spread of the tank, do not contain the full quantity of water. The consequence of all this is that the tank in question does not hold even so much as one-fourth the quantity of water which it formerly contained.

6. This tank, which formerly supplied water for four months, now supplies water only for one month, and the plaintiffs' lands have thereby become unfit for nanjah cultivation. The loss of this water has cost the plaintiffs in the shape of nanjah assessment, double crop assessment, and Kharab amounts to Rupees 1,400 10 2.

7. Field No. 77, which is divided on 1500 extent, and which is called Paden punjah, as well as No. 77, called Paden Pombholes, together with fifteen cawnies of Kharab land have been included in the Prambas the boundary of a tank. This Kharab land has been all along filled

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with the water of the tank to the height of two yards, and about twenty cawnies, bearing nanjah assessment, situated to the north of this, have also been covered with the said water to the height of one-fourth or half a yard. The order of the first and second defendants mentioned above prohibits the spreading of water beyond Field No. 77, situated at the northern end, and owing to this, and to the calingulah having been reduced in height, no water passes through the head sluice of the tank, and only a small quantity of water flows on to the plaintiffs' nanjah land for one month through the lower sluice. The defendants 3 to 19 have been prohibited by a public order from cultivating the Fields Nos. 76 77, and 136, above mentioned, and even the small extent which they have cultivated has been cultivated without the permission of any authority. The first and second defendants therefore wish to hasten the removal of the calingulah (which had been reduced to its former state in pursuance of the appeal decision mentioned in paragraph 3) since the Board have now confirmed the order of the first defendant, and they are also eager to construct another calingulah on a lower level and to construct a channel to the depth of one yard in the Chitteri or small tank, and thus to cause damage to the plaintiffs' cultivation and eventually to lessen the Circar's revenue. The plaintiffs will lose considerably if these works are executed in pursuance of the first defendant's order. The plaintiffs have therefore brought this Suit for a decree, reversing the order of the Board, in confirmation of the first defendant's decision, and directing that the calingulah should be placed in *statu quo* and that Field No. 143 should be allowed as before for the water-spread of the tank, and, lastly, that the defendants should be prohibited from all interference therewith.

Specification of land.

Verified.

31st August 1869.

(Signed) RAGAVACHARI, and others.

Filed on the 2nd September 1869.

(Signed) F. W. WOODROFFE,

Acting Principal Sudder Ameen.

(True Translation.)

(Signed) F. L. ROBERTS,

Sub-Collector in charge.

Enclosure No. 2

Draft Answer in Suit No. 26 of 1869.

The plaintiffs pray, as they correctly state in the plaints, for a decree, cancelling an order of the Board of Revenue.

2. This defendant is in no way responsible for the order passed by the Board of Revenue, and he was improperly included in this Suit; he therefore prays that as regards himself the Suit may be dismissed with costs.

TINIVANTY,

29th November 1869.

(Signed) A. L. LISTER,

Acting Head Assistant Collector.

(True Copy.)

(Signed) F. L. ROBERTS,

Sub-Collector in charge.

The Board resolve to submit the foregoing papers for the orders of Government.

3. The circumstances of the case are briefly these: certain ryots of Chendoor village petitioned that the calingulah of the Padarapooloor Tank should be lowered in order to prevent the submersion of 30 cawnies of their land situated within the present water-spread of the tank.

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3. Mr. Lister, the Acting Head Assistant, passed a decision, determining that the calingulah should be lowered, the crest to be level with point A. on plan, which will be submitted shortly, on the ground that the extension of the water-spread was owing to unauthorized additions to the bund and calingulah made by the villagers of Padarapoolyoor.

4. These last appealed to the Collector against Mr. Lister's decision, and the Acting Collector Mr. J. R. Arbuthnot reversed it, and directed that the calingulah should remain as it was, previous to the issue of the Head Assistant's order.

5. The Chendoor ryots then appealed to the Board who, in their Proceedings of 5th August, recorded above, reversed Mr. Arbuthnot's decision and confirmed that of Mr. Lister.

6. Hence the Suit which is brought by certain of the Padarapoolyoor ryots against the Head Assistant Collector, the Assistant Engineer, and seventeen ryots of Chendoor.

7. The Board in supporting Mr. Lister's decision were influenced by the undoubted evidence* showing that the water-spread of the tank had been increased within the last twenty years, and that this had been effected by unauthorized tampering with the outlet and additions to the bund of the tank by the Padarapoolyoor ryots.

8. It will also be seen that Lieutenant Graham, the Assistant Engineer, strongly recommended that the petition of the Chendoor ryots should be granted.

9. The Padarapoolyoor ryots complain that by the lowering of the calingulah their wet crops will not get sufficient water, although Mr. Lister maintains that this is not the case. On the other hand the Chendoor ryots complain that a large extent of their land is rendered useless by submersion, so long as the bund and calingulah are allowed to remain in the condition in which they have been placed by the unauthorized tampering of the Padarapoolyoor ryots with the tank which is a Government work.

10. One more point remains to be noticed, and that is, that the existing state of things appears to have been in a manner ratified in 1867 when the tank was repaired by Government, and 5000 yards of embankment were removed, although the Padarapoolyoor ryots are stated to have added from time to time upwards of 170 yards.

11. On the whole the Board are of opinion that the Suit should be defended on behalf of Government, and would suggest that it be pleaded that the tank is a Government work, with which the plaintiffs (Padarapoolyoor ryots) had no right to interfere, the right to regulate the supply of water remaining entirely with the officers of Government.

12. The Board consider it of great importance that questions of this nature should be judicially decided, and the facts in the present case have been so carefully and fully ascertained that no better opportunity could be afforded of trying

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13. Several of the enclosures of the Collector's letter,† among others the plan of the tank and the petitions, having been returned to him, the Acting Collector is requested to forward them for submission to Government without delay.

No. 37. Proceedings of the Board of Revenue, dated 28th February 1870. From the Collector of South Arcot, to the Secretary to the Board of Revenue, Madras, dated Cuddalore, 3rd February 1870, No. 35.

As desired in paragraph 13 of the Board's Proceedings, No. 46, under date the 5th January last, I have the honour to forward herewith as per list all the records connected with the Padarapoolyoor calingulah case.

SUBMITTED to Government in continuation of Board's Proceedings, 5th January 1870, No. 46.

No. 38. ORDER THEREON, 5th March 1870, No. 317.

Miscellaneous.

THE Government observe that the record of the Suit referred to in the foregoing papers only reached them on the 1st instant, and it appears that the Suit was to come on for hearing on the 12th ultimo. They desire to have an explanation of the very unnecessary delay which seems to have occurred in the submission of these papers.

2. His Excellency the Governor in Council concurs in the view expressed by the Board in paragraphs 11 and 12 of their Proceedings, dated 5th January 1870, No. 46, and resolves accordingly to sanction the defence of the Suit at the public cost on the usual terms.

3. It is presumed that the Collector has applied for a further extension of time for filing the written statement, and it would be desirable that this document should be prepared by the Board in communication with the Government Pleader.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.
,, the Collector of South Arcot.
,, the Government Pleader.
,, the Accountant-General.

Exd. F. R. Bantleman.

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Under date the 5th March 1870.

Read the following ¹Prs.
of the Board of Revenue.
(H.E. 5: Jan'y / 90 No 46 & 28th Feb'y / 90)

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Yrs Excellency the

MA.
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JMS.

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