

(1) Number of pages 14

(2) Date of repair 14 - 5 - 38

(3) Initials of the Referencer [Signature]

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 377	Press ~~Mis.~~
Dated 4 - 3 - 1872	

(origl)

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
4th March 1872.*

No. 32. Read the following Proceedings of the Board of Revenue, dated 13th October 1871, No. 4,377:—

Read the following letter from the Government Pleader, to the Secretary to the Board of Revenue, dated 29th August 1871, No. 137.

WITH reference to the Board's Proceedings noted in the margin, I have the honour to submit the joint opinion of the Advocate-General and myself upon the subject thereby referred to us.

8th August 1871, No. 3,348.

2. I return all the papers which accompanied the above Proceedings.

ENCLOSURE No. 1.

OPINION.

We have considered the papers relating to the claims of the Calastry and Vencatagherry Zemindars to compensation for lands taken up for public purposes within their Zemindaris, forwarded to the Government Pleader with the Proceedings of the Board of Revenue of 8th August 1871, No. 3,348, and we have the honour to submit the following opinion.

2. The questions referred to us we understand to be two, (1), whether the terms of the Sanads, or the absence of compensation heretofore, afford any ground for resisting the claims of the Zemindars, either altogether or as to waste lands; and, (2), whether the claims or any of them are barred by the Limitation Act.

3. With regard to the first question, we think that it must be answered in the negative. The Sanads are, we presume, the exact counterparts of the kabooleats, copies of which are before us; and these latter are in the ordinary form, and contain no reservation of any rights of Government in the lands of the Zemindaris, waste or otherwise, nor anything else, to qualify the absolute proprietary right in the soil thereby vested in the Zemindars. *Prima facie*, the waste lands within the area of the Zemindaris became, by the terms of the Sanads, as much the property of the Zemindars as the rest of the estates. It would have required express words to reserve to Government the right to resume possession of any part of the lands so conveyed to the Zemindars, whatever might be the purpose of such resumption, and no such words exist. In the absence of an express reservation of any right of Government to take up lands within the Zemindaris for public purposes without paying compensation, the fact that this has commonly been done could not, we think, control the express terms of the grant, even if it were any evidence of a term which custom had made an incident of the tenure. But it really is no such evidence. The increase in the value of land, the greater security of property, and many other things combine to make many rights worth asserting now, which were formerly not so. That people sleep on their rights cannot be construed into an intention to abandon them; it only exposes them to the bar of limitation.

4. We have not before us sufficiently accurate information as to the manner and date of the acquisition of the land in each case to enable us to discuss the question of limitation as it applies to each individual claim. It appears that the acquisitions range from 1818 to 1869, and that, in some cases, the dates are not known with any certainty. We can, therefore, only state our view of the general principles to be applied in considering the question.

5. The earliest Act in the Madras Presidency, empowering the Government to take land for public purposes, is Act XX. of 1852. All the lands, therefore, taken up in these Zemindaris before that Act came into operation must have been occupied with the express or implied permission of the Zemindars, or else taken possession of against their will. In either case, we think all claims in respect of lands so taken up are now in law barred by the Limitation Act. The right of action either for the price of the land if the occupation was permissive, or for trespass or

ejection if it were forcible, arose when the land was occupied, and, whether the period be six or twelve years, is now barred. At the same time, we do not think any such defence should be set up on behalf of Government under the circumstances. It does not appear that the delay in settling the claims has been the fault, at any rate altogether, of the Zemindars. The land has been used for the purposes for which it was required, and, if the Zemindars had a right to be paid a fair price for it, morally that right is not affected by the Limitation Act. Of course, it may be a very valuable means of inducing them to limit their demands to a reasonable sum, but beyond that, it would seem hardly fair to urge it.

6. We presume that such of the lands in question as were acquired after the date of Act XX. of 1852 were taken up under that Act and the succeeding Acts of the same kind. If so, we think the claims in respect of such lands are not barred. The new Limitation Act (IX. of 1871) makes the period of limitation for claims of this sort one year from the time when the amount of compensation is determined (Schedule II., Clause 19); and this we think is the proper principle to be applied also to cases coming under the old Limitation Act. Until the compensation is settled under the provisions of the Act, there is, in fact, no cause of action. The Act authorizes the taking of the lands, and provides a regular machinery for determining the amount of compensation to be paid in case the parties do not agree, and mere delay in carrying out the provisions of the Act in this respect is not a cause of action unless it amounts to a refusal. The above remarks as to the moral claims of the Zemindars, even if they are barred by the Limitation Act, apply, of course, with even greater force, to the case of lands taken up under compulsory powers.

7. If no amicable arrangement can be come to with the Zemindars as to the amount of compensation to be paid to them, the lands might be again formally taken up for public purposes under the recent Act, and the amount of compensation settled under the provisions of that Act.

(Signed) JOHN BRUCE NORTON,
Advocate-General.

(Signed) J. W. HANDLEY,
Government Pleader.

SUBMITTED to Government, with reference to paragraph 4 of their Order No. 1,151, dated 3rd July 1871.

2. The practical result of the joint opinion is, that all claims in respect of lands taken up prior to the passing of Act XX. of 1852 (and probably many others as to which the Collectors concerned will be requested to report in detail), are barred in law; and, for the reasons given in paragraph 13 of their Proceedings dated 23rd May 1871, No. 2,120 (embodied in the Government Order under reply), the Board are of opinion that they should not be admitted as an act of grace.

3. They do not at all agree with Messrs. Norton and Handley in thinking that the Zemindars have any moral claim to compensation. As observed before, the claim is absolutely inequitable (for they have suffered no loss), and it should be resisted on any grounds.

4. The roads were made prior to the imposition of a Road Cess by State Funds, and since that by Local Funds. The persons chiefly benefited by them have been the Zemindars themselves, and their estates have been opened out, and the value of their property has been vastly increased without the outlay on their part of a single rupee. The land taken up for the roads, whether waste or cultivated, was no doubt a part of their estates; but it is extremely improbable that its occupation has, in any case, resulted in loss to the Zemindars.

5. In the case of roads passing through waste lands, it is clear that no loss can have arisen except the more or less remote prospective value of such waste when cultivated; and, even in the case of cultivated land, the loss can only have been temporary; for the occupant whose land was taken (and who it may be observed has a far stronger moral claim to compensation than the Zemindars), would have cultivated waste land in exchange, and would pay rent for it as before.

6. With reference to paragraph 6 of the opinion, the Board believe it will be found that none of the Acts for acquiring land for public purposes were brought into play, for the very obvious reason that the opposition of the Zemindars (if they made any) was not, so far as the Board are aware, sufficiently pronounced to make it necessary to apply its provisions, and their acquiescence may, therefore, fairly be inferred. It is only quite recently (as observed by the Board in paragraph 11 of their last Proceedings), that it has occurred to the Zemindars to advance these extortionate demands. It may be added that many of these roads would probably never have been made at all, if any such claim to compensation had been made at the time.

7. The Board would, therefore, inform the Zemindars that, considering the great benefits they have received from the construction of the roads, Government are not prepared to give them any compensation but what is enforceable by law.

8. In the meantime, the Collectors of Nellore and Chingleput will be good enough to ascertain which of the more recent claims are barred by the Statute of Limitation, and submit a statement of those for which compensation cannot be refused, with an estimate of the amount that can legally be claimed and allowed, the dates on which the estimates were sanctioned, and the construction of the roads in each case commenced, and of any protests that may have been forwarded by the Zemindars in each case.

No. 33. ORDER THEREON, 4th March 1872, No. 377.

Miscellaneous.

THE Government concur in opinion with the Board that the Zemindars in these cases have no equitable claim to any compensation for land occupied by roads made through their estates at the public expense, and that none should be admitted which are not sustainable in law. It might be fairly argued that a moral obligation rested on the Zemindars to provide all facilities for opening up the communications in their estates, but it is obvious to remark that if the claims, now for the first time preferred, were admissible, the Zemindars might with equal justice demand similar compensation for every road that exists in their estates, or, in other words, to be paid for their acceptance of a valuable boon that has been conferred on them. The Government consider that the proper principle which should guide the disposal of such claims is, that they must be preferred when the land is first occupied, or, at least, while the work is in progress. Otherwise, tacit consent to the appropriation of the land must be assumed. It is evident that, as remarked by the Board, probably few or

*Proceedings of the Madras Government, Revenue Department,
4th March 1872.*

none of these roads would ever have been made had compensation, as now claimed, formed an item in the estimated cost of the work.

(True Extract.)

(Signed) W. HUDLESTON,
Officiating Chief Secretary.

To the Board of Revenue.

72
No. 4,377.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 13th October 1871.

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, to the Secretary to the Board of Revenue, dated 29th August 1871, No. 137:—

With reference to the Board's Proceedings noted in the margin, I have the honour to submit the joint opinion of the Advocate-General and myself upon the subject thereby referred to us.

8th August 1871, No. 3,348.

2. I return all the papers which accompanied the above Proceedings.

ENCLOSURE No. 1.

OPINION.

We have considered the papers relating to the claims of the Calastry and Vencatagherry Zemindars to compensation for lands taken up for public purposes within their Zemindaries, forwarded to the Government Pleader with the Proceedings of the Board of Revenue of 8th August 1871, No. 3,348, and we have the honour to submit the following opinion.

2. The questions referred to us we understand to be two, (1) whether the terms of the Sunnuds or the absence of compensation heretofore, afford any ground for resisting the claims of the Zemindars, either altogether or as to waste lands, and (2) whether the claims or any of them are barred by the Limitation Act.

3. With regard to the first question, we think that it must be answered in the negative. The Sunnuds are, we presume, the exact counterparts of the kabooleats, copies of which are before us, and these latter are in the ordinary form, and contain no reservation of any rights of Government in the lands of the Zemindaries, waste or otherwise, nor anything else, to qualify the absolute proprietary right in the soil thereby vested in the Zemindars. *Prima facie* the waste lands within the area of the Zemindaries became by the terms of the Sunnuds as much the property of the Zemindars as the rest of the estates. It would have required express words to reserve to Government the right to resume possession of any part of the lands so conveyed to the Zemindars, whatever might be the purpose of such resumption, and no such words exist. In the absence of an express reservation of any right of Government to take up lands within the Zemindaries for public purposes without paying compensation, the fact that this has commonly been done, could not we think control the express terms of the grant even if it were any evidence of a term which custom had made an incident of the tenure. But it really is no such evidence. The increase in the value of land, the greater security of property, and many other things combine to make many rights worth asserting now which were formerly not so. That people sleep on their rights cannot be construed into an intention to abandon them; it only exposes them to be the bar of limitation.

4. We have not before us sufficiently accurate information as to the manner and date of the acquisition of the land in each case to enable us to discuss the question of limitation as it applies to each individual claim. It appears that the acquisitions range from 1818 to 1869, and that in some cases the dates are not known with any certainty. We can therefore only state our view of the general principles to be applied in considering the question.

5. The earliest Act in the Madras Presidency empowering the Government to take land for public purposes is Act XX. of 1852. All the lands therefore taken up in these Zemindaries before that Act came into operation must have been occupied with the express or implied permission of the Zemindars, or else taken possession of against their will. In either case, we think all claims in respect of lands so taken up are now in law barred by the Limitation Act. The right of action either for the price of the land if the occupation was permissive, or for trespass or ejectment if it were forcible, arose when the land was occupied, and, whether the period be six or twelve years is now barred. At the same time we do not think any such defence should be

17-9-71
18/6/76
13-11-11
18/10/75
To
Sd/-
REVENUE.
THE BOARD OF REVENUE.

Dated March 4th.

Recd.

Encl.

G. O., 4th March 1872, No. 377.

MAJCE.
7108. 3233.

Land occupied by roads in Calastry and Vencatagherry Zemindaries.—Proceedings Board of Revenue on the claims of the Zemindars to compensation, with orders thereon.

set up on behalf of Government under the circumstances. It does not appear that the delay in settling the claims has been the fault, at any rate altogether, of the Zemindars. The land has been used for the purposes for which it was required, and if the Zemindars had a right to be paid a fair price for it, morally that right is not affected by the Limitation Act. Of course it may be a very valuable means of inducing them to limit their demands to a reasonable sum, but beyond that, it would seem hardly fair to urge it.

6. We presume that such of the lands in question as were acquired after the date of Act XX. of 1852 were taken up under that Act and the succeeding Acts of the same kind. If so, we think the claims in respect of such lands are not barred. The new Limitation Act (IX. of 1871) makes the period of limitation for claims of this sort one year from the time when the amount of compensation is determined (Schedule II. Clause 19), and this we think is the proper principle to be applied also to cases coming under the old Limitation Act. Until the compensation is settled under the provisions of the Act, there is in fact no cause of action. The Act authorizes the taking of the lands and provides a regular machinery for determining the amount of compensation to be paid in case the parties do not agree, and mere delay in carrying out the provisions of the Act in this respect is not a cause of action unless it amounts to a refusal. The above remarks as to the moral claims of the Zemindars, even if they are barred by the Limitation Act, apply of course with even greater force to the case of lands taken up under compulsory powers.

7. If no amicable arrangement can be come to with the Zemindars as to the amount of compensation to be paid to them, the lands might be again formally taken up for public purposes under the recent Act and the amount of compensation settled under the provisions of that Act.

(Signed) JOHN BRUCE NORTON,
Advocate-General.

(Signed) J. H. HANDLEY,
Government Pleader.

(True Copy.)

(Signed) J. W. HANDLEY,
Government Pleader.

SUBMITTED to Government, with reference to paragraph 4 of their order, No. 1,151, dated 2nd July 1871.

2. The practical result of the joint opinion is, that all claims in respect of lands taken up prior to the passing of Act XX. of 1852, (and probably many others as to which the Collectors concerned will be requested to report in detail,) are barred in law; and, for the reasons given in paragraph 13 of their Proceedings, dated 23rd May 1871, No. 2,120, (embodied in the Government Order under reply,) the Board are of opinion that they should not be admitted as an act of grace.

3. They do not at all agree with Messrs. Norton and Handley in thinking that the Zemindars have any moral claim to compensation. As observed before, the claim is absolutely inequitable, (for they have suffered no loss,) and it should be resisted on any grounds.

4. The roads were made prior to the imposition of a Road Cess, by State funds, and since that by Local Funds. The persons chiefly benefited by them have been the Zemindars themselves, and their estates have been opened out and the value of their property has been vastly increased without the outlay on their part of a single Rupee. The land taken up for the roads, whether waste or cultivated, was no doubt a part of their estates; but it is extremely improbable that its occupation has in any case resulted in loss to the Zemindars.

5. In the case of roads passing through waste lands it is clear that no loss can have arisen except the more or less remote prospective value of such waste when cultivated; and even in the case of cultivated land, the loss can only have been temporary; for the occupant whose land was taken, (and who it may be observed has a far stronger moral claim to compensation than the Zemindars), would have cultivated waste land in exchange, and would pay rent for it as before.

6. With reference to paragraph 6 of the opinion the Board believe it will be found that none of the Acts for acquiring land for public purposes were brought into play, for the very obvious reason that the opposition of the Zemindars (if they made any) was not, so far as the Board are aware, sufficiently pronounced to make it necessary to apply its provisions, and their acquiescence may therefore fairly be inferred. It is only quite recently, (as observed by the Board in paragraph 11 of their last Proceedings,) that it has occurred to the Zemindars to advance these extortionate demands. It may be added that many of these roads would probably never have been made at all, if any such claim to compensation had been made *at the time*.

7. The Board would therefore inform the Zemindars that considering the great benefits they have received from the construction of the roads, Government are not prepared to give them any compensation but what is enforceable by law.

8. In the meantime the Collectors of Nellore and Chingleput will be good enough to ascertain which of the more recent claims are barred by the Statute of Limitation, and submit a statement of those for which compensation cannot be refused with an estimate of the amount that can legally be claimed and allowed, the dates on which the estimates were sanctioned, and the construction of the roads in each case commenced, and of any protests that may have been forwarded by the Zemindars in each case.

(True Copies and Extract.)

J. H. Handley
Acting Secretary.

To the Secretary to Government, Revenue Department.
„ the Collector of Nellore.
„ the Collector of North Arcot.
„ the Collector of Chingleput.

Copy to the Government Pleader.

Exd. T. Cartledge.

Revenue Department.

No. 377

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 14th March 1872

Read the following Proceedings of
the Board of Revenue

Submitting to Govt. with remarks,
joint opinion of Advocate Genl. and
Govt. Pleader on claims of Zemindars
to compensation for lands in Zemindaries
of Calcutty & Venkatagerry taken up
by Govt. for public purposes —

14.8.13th Oct: 1871 No. 1277

The Government
concur in opinion with the
Board that the Zemindars
in these cases have no
equitable claim to any
compensation for land
occupied by roads made
tho' their estates at the
public expense, and that
none should be admitted
which are not sustainable
in law. It might be
fairly

103-8-5/11 No. 10-21
18/10/72

13-11-11

1871. 1871.
Board of Revenue,

MADRAS.

PROCEEDINGS, 13TH OCTOBER 1871, No. 4,377.

Date 23 Oct 1871

Encl.

Received.

1871

804-377-4-Board Rev

OCTOBER.
No. 4,377.

Compensation—for lands in Zemindaries of
Calcutty and Venkatagerry, taken up by Go-
vernment for public purposes.—Joint opinion of
Advocate General and Government Pleader on
claims of Zemindars to, submitted to Govern-
ment with remarks.—Collectors of Nellore and
Chingleput requested to ascertain which of the
more recent claims are barred by Statute of Li-
mitation, and to submit a statement of those for
which compensation cannot be refused, &c.

103-8-5/11 No. 10-21

1032

17. Item 12. fairly argued that a moral obligation rested on the Lemmings to provide all facilities for opening up the communications in their Estates, but it is obvious to remark that if the claims, now for the first time preferred, were admissible, then the Lemmings might with great justice demand similar compensation for every road that exists in their Estates, or in other words, to be paid for their acceptance of a valuable boon that has been conferred on them. The Govt consider that the proper principle which should guide the disposal of such claims is, that they must be preferred when the land is first occupied, or, at least, while the work is in progress. Otherwise, tacit consent to the

18. the appropriation of the land must be assumed. It is evident that, as remarked by the Board, probably few or none of these roads would ever have been made had compensation, as now claimed, formed an item in the estimated cost of the work.

L.B.

11. To the O. & A. of New Co., 5 Mar 1872

L.B.

C 17 Feb 1722

Confirmation for
Land in Zimbalan
of Calcutta & Moulton
by letter from
the Court

C 17 Feb 1722 R 28. Case to be heard on the 28th of Feb. 1722.