

*Proceedings of the Madras Government, Revenue Department,
19th April 1873.*

No. 84. Read the following Proceedings of the Board of Revenue, dated 12th April 1873, No. 573:—

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Madras, 26th March 1873, No. 56:—

With reference to the Board's Proceedings, noted in the margin, I have the honour to report that the appeal (R. A. No. 143 of 1872,) in the Peddapur Fort

case, therein referred to, was heard on the 24th instant before the Officiating Chief Justice and Mr. Justice Kindersley. The Court held that on the question of title to the fort, the plaintiff's case failed, the only possible inference from the documentary evidence being that the whole Zemindary had passed out of his hands into those of Government, and there being nothing to show that the fort, which was part of the estate, was excepted from the sale. But by the order of Government in 1847, the Zemindar and his family were permitted to occupy the whole fort during the pleasure of Government, and it did not appear that this license had ever been determined by Government. The sanction of the Collector and the Board of Revenue to the removal of the stones could not be treated as a determination by Government of the license to occupy, nor was the fact of Government having sanctioned the defence of the suit sufficient. The plaintiff, therefore, being in possession under the license of Government could maintain an action of trespass

against the officers of the Public Works Department for removing stones from the fort. The judgment of the Civil Court was, therefore, reversed on this ground, and an issue directed as to the damages caused by the removal of the stones. I shall forward a copy of the judgment as soon as the same is ready.

2. As to the further proceedings in the case, I think it may be urged before the Civil Court that the plaintiff is only entitled to nominal damages. The measure of damages is certainly not the value of the stone removed, for the stone is the property of Government, but the loss and inconvenience caused to the plaintiff as occupant, by the removal, and that is practically *nil*, as the stones were only taken from the outer wall of the fort, which is of no real use to any body. Perhaps, however, at this stage of the suit, some kind of compromise would be advisable. The fact that the decision of the High Court places the Zemindar at the mercy of Government as far as his future occupation of the fort is concerned may induce him to be satisfied with a reasonable sum as damages. Doubtless the same consideration for his feelings which induced a former Government to leave him in possession of the abode of his ancestors would influence the present Government in dealing with him in this matter, and it will probably not be difficult to make some amicable arrangement for the future by which the materials of the fort may be utilised, if that is an object of real importance.

SUBMITTED for the orders of Government, with reference to G. O., dated 20th December 1871, No. 2,153.

2. With the sanction of the Board, the Officers of the Public Works Department removed stones from the fort at Peddapur which belongs to Government.

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19th April 1873.

The Zemindar of Cottam who was permitted to occupy the fort during the pleasure of Government, sued to recover Rs. 12,000 as damages for the removal of the stones. The suit having been dismissed with costs, plaintiff appealed to the High Court who have reversed the decision of the Lower Court on the ground that, though the fort belongs to Government, as plaintiff is in possession under the permission of Government which has not been withdrawn, he can maintain an action for trespass against the officers of the Public Works Department for removing the stones. They have accordingly directed the trial of an issue as to damages.

3. The Government Pleader suggests a compromise, but the Board consider the course inadvisable. Plaintiff can only be entitled to nominal damages for the inconvenience caused by the removal of the stones, which, as observed by Mr. Handley, is practically nil.

4. The Board suggest for the consideration of Government whether the permission to occupy the fort as a whole should not be withdrawn, and the privilege be restricted to the occupation of the buildings within the fort. The Zemindar himself chiefly resides at Tuni.

No. 85.

ORDER THEREON, 19th April 1873, No. 416.

Miscellaneous.

The Government concur with the

compromise with the Zemindar or Cottam to be inadvisable at the present stage of the Proceedings.

2. Before passing orders on the suggestions made in the concluding paragraph of the Board's Proceedings, they desire to have a full report of the nature of the accommodation now available in the Fort, and the extent to which it is made use of by the ex-Zemindar or his dependants with, if easily procured, a plan of the Fort.

(True Extract.)

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

To the Board of Revenue.

Exd. W. H. French.

Revenue Department.

Proceedings of the Board of Revenue
dated 12th April 1873.
Read the following

From J. W. Handley Esqre,
Government Pleader

To J. Grose Esqre,
Secretary to the Bd of Revenue

Sir, With reference to the Board's Pro-

ceedings noted in the margin, I have the honor to report that the appeal (R. A. No. 143 of 1872) in the Poddappur Fort case, therein referred to, was heard on the 24th instant before the Officiating Chief Justice and Mr. Justice Kindersley. The Court held that on the question of title to the fort, the plaintiff's case failed, the only possible inference from the documentary evidence being that the whole Zemindari had passed out-

out of his hands into those of Govt,
and there being nothing to show that
the fort, which was part of the estate,
was excepted from the sale. But by the
order of Govt. in 1847, the Zemindar and
his family were permitted to occupy
the whole fort during the pleasure
of Government, and it did not appear
that this license had ever been deter-
mined by Government. The sanction
of the Collector and the Board of Revenue
to the removal of the stones could not
be treated as a determination by
Government of the license to occupy,
nor was the fact of Government having
sanctioned the defence of the suit suf-
ficient. The plaintiff therefore, being
in possession under the license of
Government, could maintain an action
of trespass against the officers of the
P.W. Department for removing stones
from the fort. The judgment of the
Civil Court was therefore reversed on
this ground, and an issue directed
as to the damages caused by the removal
of the stones. I shall forward a copy
of the judgment as soon as the same
is

is ready

2 As to the further proceedings
in the case, I think it may be urged
before the Civil Court that the plaintiff
is only entitled to nominal damages.
The measure of damages is certainly not
the value of the stones removed, for the
stone is the property of Government, but
the loss and inconvenience caused to
the plaintiff as occupant by the re-
moval, and that is practically nil,
as the stones were only taken from
the outer wall of the fort, which is of
no real use to anybody. Perhaps, how-
ever, at this stage of the suit some
kind of compromise would be advisable.
The fact that the decision of the High Court
places the Zemindar at the mercy of
Government as far as his future oc-
cupation of the fort is concerned may
induce him to be satisfied with a
reasonable sum as damages. Doubt-
less the same consideration for his feelings
which induced a former Government
to leave him in possession of the
abode of his ancestors, would influ-
ence the present Government in
dealing

dealing with him in this matter, and
it will probably not be difficult
to make some amicable arrangement
for the future, by which the materials
of the fort may be utilised, if that
is an object of real importance.

I have the honor to be
Sir,

Your most obedient servant
(Signed) J. W. Handley
Government Pleader

Madras
26th March
1873

Submitted for the orders of
Government, with reference to G.O.,
dated 20th December 1871, No. 2, 153.

With the sanction of the Board,
the officers of the Public Works Dept.
removed stones from the fort at
Poddappur which belongs to Govern-
ment. The Zamindar of Cottam who
was permitted to occupy the fort
during the pleasure of Government
sued to recover Rs 12,000 as damages
for the removal of the stones. The suit
having been dismissed with costs,
plaintiff appealed to the High Court
who

who have reversed the decision of
the lower Court on the ground that,
though the fort belongs to Government,
as plaintiff is in possession under
the permission of Government which has
not been withdrawn, he can maintain
an action for trespass against the of-
ficers of the P. W. Department for
removing the stones. They have accordingly
directed the trial of an issue as to the
damages.

The Government Pleader sug-
gests a compromise, but the Board
consider the course inadvisable. Plain-
tiff can only be entitled to nominal
damages for the inconvenience caused
by the removal of the stones, which,
as observed by Mr. Handley, is practically
nil.

The Board suggest for the con-
sideration of Government whether
the permission to occupy the fort

as a whole should not be withdrawn,
and the privilege be restricted to
the occupation of the buildings with-
in the fort. The Zamindar himself
chiefly resides at Tuni

[A true copy & extract.]

G. H. G. H.
Secretary

To
The Acting Secretary to Government.
Revenue Department.

20 21 September 1842 / 12.31-33
 — 20 December 1841 — 128/39
 — 26 September 1842 — 126/39

Recd 1873 Sept 27
No 1082

Proceedings of the
Board of Revenue

Dated 12th April 173
Decept 12
Recd 14
No 416-19th April 73,
With order.

such-filed against
Jord^{ts} by the Cotton
Ginnular regarding
the Redapin part -
Report from the Jord^{ts}.
Reader of the board.
As the Ginnularly
to the Jord^{ts} and again
the decision in - but
mitted for orders.

The first concern with the Bd of Rec in determining any compromise with the Board of Esttms to be inadvisable at the present stage of the Prog.

14 To the MS of Rev Dec 19 April 73.

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