M.R.O. 1—20,002—12-8-65.

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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No. 1023 Press
~~B.P.~~ No. ~~Mis.~~

Dated 14th August 1874 196 .

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
14th August 1874.

Read the following : —

No. 126. Proceedings of the Board of Revenue, dated 29th July 1874, No. 2,000.

Read the following letter from W. M. SCHARLIEB Esq., Acting Government Pleader, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Madras, 1st July 1874, No. 108 :—

WITH reference to the Proceedings of the Board of Revenue, dated 28th April 1874, No. 994, I have the honor to report that, Regular Appeal 143 of 1872 came on for re-hearing this morning before their Lordships Holloway and Kindersley, J. J, on the finding returned by the District Judge of Rajahmundry, to the issue sent down to him as to whether the Zemindar of Cottam was entitled to damages for the wrongful act of the officers of Government in removing stones from the Peddapore fort in which he had been permitted to live during the pleasure of Government.

2. It will be remembered that when the case was originally heard, viz., on the 14th March 1873, their Lordships held that the fort of Peddapore had passed to the Government with the entire Zemindari, but that inasmuch as the Government had permitted the Zemindar to live in the fort and had not revoked the license, the Zemindar was entitled to maintain an action for trespass against the wrong doers who had removed the stones without his consent, and to obtain substantial damages for such wrong doing. As the Board are also aware, the Judge returned a finding that, in his opinion, the Zemindar was not entitled to any damages at all. The High Court, however, have differed from the Judge, and have held that the Zemindar is entitled to damages, which have been assessed by them at Rupees 500 with costs.

3. There will no doubt be a written Judgment, as the Judgment appealed from has been thus set aside ; but I can now furnish a brief sketch of what passed this morning for the information of the Board. I pointed out to the Court that the Zemindar had abandoned the fort ; that he had not lived in it for years ; that the whole place was in utter decay ; that it was overrun with prickly-pear ; that it was only an extensive harbour for snakes, vermin and filth ; that it was not fit for human dwelling ; and that, under these circumstances, the Zemindar could not have suffered any injury or inconvenience by the removal of the stones. The Court, nevertheless, held that in law the Zemindar was entitled to damages for an undoubted act of trespass. Mr. Justice Holloway remarked that if I could produce an Order of Government to show that they had revoked the grant of the fort to the Zemindar, a nice question of law would arise. It was then mentioned, on the other side, that there was no such order, that the Judge was wrong in saying that the Government had withdrawn their license, and that at all events if any such order had been issued at the time, the matter was now being reconsidered by Government. Upon this point I had received no instructions and said nothing.

4. The following was much in effect what fell from Mr. Justice Holloway in orally delivering the Judgment of the Court :—"We think we must modify the Judgment of the Court below. Mr. Shepherd came here with very wide pretentions, and based his claim for 12,000 Rupees on his client's status of Zemindar and owner of the fort ; but all that passed away. However, a Mr. Hannan carried off stones both from outside and inside the fort. This was an undoubted trespass, and an indication of no regard for the feelings of the Zemindar. The Government of the day, composed of men of great experience, out of regard for the feelings of this family, allowed the Zemindar to live in the fort. The Judge thinks we are wrong, and that the Zemindar is not entitled to damages ; but we think that he is entitled to damages, because it was a trespass committed by the officers of Government. As Lord Holt pointed out in a famous case, the wrong becomes more grievous when committed under color of authority, because when a man trusts his protection to the law, and he is injured under color of the law, it is certainly an aggravation of the case. We really do not know what to do in this matter. The Zemindar has not practically suffered any injury. If he has suffered at all, it can only have been in his feelings. And yet we wish to give such damages as will mark our sense of the violation of the law We are glad to see that the Judge is wrong in saying that the Government have revoked the

grant. If they had done so, because the Zemindar had appealed to the law, I should have freely expressed my views of such an act. We think the best view we can take of the case is to give Judgment for 500 Rupees damages with cost throughout."

SUBMITTED for the information of Government, in continuation of Board's Proceedings, 28th April 1874, No. 994, recorded in G. O., dated 8th May 1874, No. 568.

2. The High Court have modified the decision of the District Judge and awarded plaintiff, Zemindar of Cottam, Rupees 500 damages with costs.

No. 126A. Proceedings of the Board of Revenue, dated 3rd August 1874, No. 2,075.

Read the following letter from W. M. SCHARLIEB, Esq., Acting Government Pleader, Madras, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 17th July 1874, No. 121:—

IN continuation of my letter, dated 1st July 1874, No. 108, I have the honor to forward certified copies of the judgment and decree of the High Court, in Regular Appeal, No. 143 of 1872, in which the Zemindar of Cottam pressed for damages for the removal of stones from the Peddapore Fort. It will be seen that the written judgment is a little different in mere language from that orally delivered, but the principle is the same. Besides damages to the extent of Rupees 500, the decree awards Rupees 940-8-0, costs to be paid by the 4th and 6th defendants in appeal, in addition to the Zemindar's costs in the Lower Court.

ENCLOSURES Nos. 1 and 2.—Certified copies of Judgment and Decree.

SUBMITTED for the information and orders of Government, in continuation of Board's Proceedings, dated 28th July 1874, No. 2,000.

No. 127. ORDER THEREON, dated 14th August 1874, No. 1,023.

Miscellaneous.

PAYMENT of the damages and costs is sanctioned. The amount of the latter in the Lower Court is not specified.

(True Extract.)

(Signed) C. G. MASTER,
Acting Secretary to Government.

To the Board of Revenue.
" the Accountant-General.

Exd. G. A. Turton.

Govt. of 1874 Madras.

REVENUE.

To

THE BOARD OF REVENUE.

&c., &c., &c.

Dated August 14th.

Read.

G. O. 14th *August* 1874, *No.* 1,023.

Encl.

AUGUST.

Nos. 120—127.

Regular Appeal No. 143, of 1872, in *High Court.*—Sanctioning payment of the damages and costs awarded to Appellant (Zemindar of Cottam) in — for removal of stones from Peddapur Fort.

No. 2,000.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 29th July 1874.

Read the following letter from W. M. SCHARLIEB, Esq., Acting Government Pleader, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Madras, 1st July 1874, No. 108 :—

WITH reference to the Proceedings of the Board of Revenue, dated 28th April 1874, No. 994, I have the honor to report that, Regular Appeal 143 of 1872 came on for re-hearing this morning before their Lordships Holloway and Kindersley, J. J, on the finding returned by the District Judge of Rajahmundry, to the issue sent down to him as to whether the Zemindar of Cottam was entitled [illegible]s for the wrongful act of the officers of Government in removing stones from the Peddapore fort in which he had been permitted to live during the pleasure of Government.

2. It will be remembered that when the case was originally heard, viz., on the 14th March 1873, their Lordships held that the fort of Peddapore had passed to the Government with the entire Zemindari, but that inasmuch as the Government had permitted the Zemindar to live in the fort and had not revoked the license, the Zemindar was entitled to maintain an action for trespass against the wrong doers who had removed the stones without his consent, and to obtain substantial damages for such wrong doing. As the Board are also aware, the Judge returned a finding that, in his opinion, the Zemindar was not entitled to any damages at all. The High Court, however, have differed from the Judge, and have held that the Zemindar is entitled to damages, which have been assessed by them at Rupees 500 with costs.

3. There will no doubt be a written Judgment, as the Judgment appealed from has been thus set aside ; but I can now furnish a brief sketch of what passed this morning for the information of the Board. I pointed out to the Court that the Zemindar had abandoned the fort ; that he had not lived in it for years ; that the whole place was in utter decay ; that it was overrun with prickly-pear ; that it was only an extensive harbour for snakes, vermin and filth ; that it was not fit for human dwelling ; and that, under these circumstances, the Zemindar could not have suffered any injury or inconvenience by the removal of the stones. The Court, nevertheless, held that in law the Zemindar was entitled to damages for an undoubted act of trespass. Mr. Justice Holloway remarked that if I could produce an Order of Government to show that they had revoked the grant of the fort to the Zemindar, a nice question of law would arise. It was then mentioned, on the other side, that there was no such order, that the Judge was wrong in saying that the Government had withdrawn their license, and that at all events if any such order had been issued at the time, the matter was now being reconsidered by Government. Upon this point I had received no instructions and said nothing.

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Submitted for the information of Government, in continuation of Board's Proceedings, 28th April 1874, No. 994, recorded in G. O., dated 8th May 1874, No. 568.

2. The High Court have modified the decision of the District Judge and awarded plaintiff, Zemindar of Cottam, Rupees 500 damages with costs.

(A true Copy and Extract.)

J Gpse
Secretary.

To the Acting Secretary to Government, Revenue Department.
Copy to the Acting Government Pleader.
„ to the Collector of the Godavery District.

Exd. G. A. Turton.

Received 3 August 1874.
Read 10 Aug 1874.
No 2941

Board of Revenue
MADRAS.

Proceedings, 29th July 1874, No. 2,000.

Dept. 10 Aug 1874 Encl.

Received 3 August 1874.

JULY.
No. 2,000.

Suit Appeal—No. 143 of 1872 on file of Rajahmundry District Court, in Godavery District, regarding right of Cottam Zemindar to Peddapore fort.—Letter from Acting Government Pleader reporting that appeal was re-heard and decided by high Court by awarding Zemindar 500 Rupees damages for removal of stones from fort, submitted for information of Government.

126
Copy sent to A.G.P. 14 Aug 1874

MISCELLANEOUS No. REVENUE DEPARTMENT.

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 3rd August 1874. No. 2175

Read the following

No. 121.

From W. M. Scharlieb Esqre
Acting Government Pleader,
Madras.

To J. Grose Esqre
Secretary to the Board of Revenue.

Sir,

In continuation of my letter dated 1st July 1874 No. 108 I have the honor to forward certified copies of the Judgment and Decree of the High Court in R.A. 143 of 1873, in which the Zemindar of Cottam pressed for damages for the removal of Stones from the Peddapore fort. It will be seen that the written Judgment is a little different in mere language from that orally delivered, but the principle is the same. Besides damages to the extent of 500 Rupees, the decree awards Rs 940-8-0 costs to be paid by

by the 4th and 6th Defendants in appeal,
in addition to the Zemindar's costs in the
Lower Court.

Madras — 3 Shaw 1½
17th July 1874 } Signed } Will. Scharlieb
As Government Pleader.

Submitted for the information
and orders of Government in continuation
of Board's Proceedings dated 29th July 1874
No. 2000.

True Copy } Extract }

J. Wyle
Secretary.

To
The Hon'ble Secretary to Government
Revenue Department
with 2 original Enclosures to be
returned.

A. Stanyforth
Offg. Sec. to Board

G.O. 6 July 1874 No 62 Mis
" 2 May " " 102 "

No. 2643.

Revenue Dept. 6 Department

PROCEEDINGS OF THE BOARD
OF REVENUE.

SO 14 August 74 No 1023

Dated 3 August 1874.

Despatched 3-8

Recd 4-8
en 2

SUBJECT.

Regular Appeal 143 of 1872

Letter from Ag. Govt. Pleader forwarding certified copies of judgment & Decree of High Court reversing Zemindar of Cottaur 500 Rs. damages with costs, for removal of Stones from Pedalapore port in Godavery District — submitting for orders of Govt. in continuation of Bd's Pro: No 2,000 of 29th July 74.

126 A.

C. 10 Aug. D. 14 idem

Revenue Department.

No. 1023.

PROCEEDINGS of the MADRAS GOVERNMENT.

Dy. 14 Augt. 74

Read the following Pro 2d
of the Board of Revenue.

Submitting letters from the Ag. Govt. Pleader reporting on Regular Appeal Suit No. 143 of 1872 on file of Rajahmundry District Court in Godavery Dt. regarding right of Cottam Zemindar to Peddapore port and forwarding copies of Decree and Judgement of High Court awarding 500 Rs damages with costs to the Zemindar.

(R.E. 29 July 1874 No. 2000 &
3 August 1874 No.)

Payment of the damages and costs is sanctioned. The amount of the latter in the lower Court is not specified.

101

To Bd's Rem with 2 Encs
Audit Genl — 7/24/5

4
40

126-127

L & D.

Claim of Cotton Examined
& Reduced per Sch

Amt Ck to Com

Dft

C. to Augs. R. Whitney