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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Rev. DEPARTMENT

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Dated	2-6-	1874 196 .

Not to be folded or roughly handled

678

*Proceedings of the Madras Government, Revenue Department,
2nd June 1874.*

No. 19. Read the following Proceedings of the Board of Revenue, dated 19th May 1874, No. 1,163:—

Read again Board's Proceedings, dated 14th December 1872, No. 2,391, and 11th April 1874, No. 828.

Read also the following letter from J. W. HANDLEY, Esq., Government Pleader, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Madras, 15th April 1874, No. 44:—

WITH reference to the Board's Proceedings noted in the margin, I have the honour to report that the appeal (Regular Appeal No. 133 of 1872) against the decree of the Cuddalore Civil Court in the suit relating to the calingula of Padarapooliyoor Tank came on for final disposal this day before Justices Holloway and Innes, on the return of the Civil Judge to the issues sent down to him. The decree of the Lower Court was confirmed and the appeal dismissed with costs.

2. Mr. Justice Holloway delivered an oral judgment dealing fully with all the questions involved in the suit, and Mr. Justice Innes concurred with the decision but upon one ground only. As the judgment of the Lower Court was affirmed, there may be no written judgment. In that case, I shall furnish the Board with the effect of the judgments of the learned Judges from my notes taken in Court, as they are important upon the much-vexed question of the right of Government to regulate the artificial supply of water in Government villages. Mr. Holloway followed the judgment reported in Volume 7 of the Madras High Court Reports, page 60, in holding that no easement in respect of use of water can be acquired by one Government ryot against another or against Government, and he further held that the only contract that could be implied from the ordinary relation between Government and its ryots would be a contract for one year not to alter the existing irrigation works during that year to the prejudice of the ryots, and that the proper remedy for a breach of such a contract would be by damages and not by an injunction.

3. I return the enclosures to the above Proceedings.

SUBMITTED for the information of Government with reference to their Order, dated 5th March 1870, No. 317.

2. The ryots of Padarapooliyoor, a Government village, by extending the bund and raising the calingula of the tank of their village, increased its water-spread so as to submerge 60 kanis of land belonging to an adjacent village, Chendoor. Upon the complaint of the ryots of the latter village, an order was passed directing the restoration of the tank to its original condition. Upon this, the ryots of Padarapooliyoor brought a suit to obtain an injunction to restrain the officers of Government from making the alterations contemplated, on the ground that plaintiffs would thereby sustain damage to the extent of Rupees 1,461 per annum, consequent on the reduced capacity of the tank.

*Proceedings of the Madras Government, Revenue Department,
2nd June 1874.*

3. In the defence on behalf of Government it was contended—(a) that the tank being a Government work they had a right to make such alterations as they pleased and to regulate the quantity of water to be stored in it; (b) that the ryots of plaintiffs' village had by unauthorized alterations increased the waterspread of their tank and thereby injured lands in Chendoor; and (c) that the restoration of the tank to its original condition would not cause damage to plaintiffs, but that in any case they had no cause of action.

4. The decision of the Lower Court in favour of Government has been confirmed by the High Court.

5. In the event of no written judgment being recorded, the Government Pleader promises to furnish from his notes a report as to the effect of the judgments in regard to the important points involved in the case.

No. 20.

ORDER THEREON, 2nd June 1874, No. 678.

Miscellaneous.

RECORDED.

(True Extract.)

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

To the Board of Revenue.

P. N. S. J. L.

Exd. W. H. French.

*1872
1873
1874*

Regular Appeal Suit No. 138 of 1872
(No. 6 of 1871, Cuddalore Civil Court).—
Records Board's Proceedings, submitting Govern-
ment Pleader's letter reporting result of—

JUNE.
Nos. 19-20.

G. O., 2nd June 1874, No. 678.

Dated June 2nd.
Recd. End.

Colt. of 1874
REVENUE.
To THE BOARD OF REVENUE.

No. 2,391.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 14th December 1872.
Read the following telegram from the Collector of South Arcot, to the Secretary
to the Board of Revenue, dated Cuddalore, 12th December 1872:—

ABSTRACT.—Requesting that Government Pleader may be instructed to appear
on behalf of Government at hearing of appeal preferred to High Court from
decree in Suit No. 6 of 1871 in Cuddalore Civil Court regarding Calingula of
Padarapooliyoor tank.

THE papers connected with the suit will be communicated to the Government
Pleader, and he will be requested to appear on behalf of Government.

(A true Extract.)

(Signed) J. GROSE,
Secretary.

To the Government Pleader,

with copies of Board's Pro., 5th Aug. 1869, No. 5,753; G. O., 5th Mar. 1870,
No. 317; Board's Pro., 11th Mar. 1870, No. 1,072, 1st Apr. 1870, No. 2,100, and
18th Aug. 1871, No. 3,541; G. O., 25th Aug. 1871, No. 1,457; Board's Pro., 1st
Sep. 1871, Nos. 3,771 and 3,772; G. O., 6th Sep. 1871, No. 1,534; Board's Pro.,
9th Sep. 1871, No. 3,892; G. O., 21st Sep. 1871, No. 1,638, and 13th Feb. 1872,
No. 286; Board's Pro., 21st Feb. 1872, No. 349, 2nd Mar. 1872, No. 402, and 24th
Sep. 1872, No. 1,901; and copies of Judgment and Decree in Original Suit No. 6
of 1871.

Copy to the Collector of South Arcot.

End. T. Carledge.

Suit—Appeal—preferred to High Court from
Decree in Suit No. 6 of 1871 in Cuddalore Civil
Court in South Arcot District, regarding Calin-
gula of Padarapooliyoor tank.—Government
Pleader requested to appear on behalf of Gov-
ernment in—.

No. 2,391.

DECEMBER.

Received

125. 72 1874
L. B. 3. 19. 14.

Dec. 12 1874 Encl.

PROCEEDINGS, 14th DECEMBER 1872, No. 2,391.

MADRAS.

Board of Revenue,

1872.

No. 828.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 11th April 1874.

Read the following letter from J. H. GARSTIN, Esq., Collector of South Arcot,
to J. GROSE, Esq., Secretary to the Board of Revenue, dated Cuddalore,
31st March 1874, No. 160:—

The Board are aware that the High Court remanded Suit No. 6 of 1871* on
the file of the Cuddalore District Court
to the Judge for the trial of certain issues.
* Padarapooliyoor Calingulah dispute—Vide Board's Proceedings, dated 14th December 1872, No. 2,391.

I now enclose the original copy of the
finding of the Judge on those issues, and request the Board will forward the same
to Mr. Handley.

2. The Board will see that the Judge finds for the plaintiffs on the issue
“whether the effect of the changes made has been to diminish the advantages
for cultivation previously possessed by the plaintiffs jointly or severally,” and for
the defendants on the issue “whether such diminution is a violation of any
contract express or implied of the Government with them.”

3. On the two issues left undetermined by Mr. Hodgson, viz., “in what parti-
cular year the calingulah in dispute was built, and whether the plaintiffs have any
prescriptive right in respect of it,” and “whether the lands specified in the plaint
schedule as built more than twenty years before the order of
first issue that the calingulah was built more than twenty years before the order of
1868 to alter it, and on the second issue that about 90 Cs. out of 143 claimed
by plaintiffs as the water-spread of the tank belong to it.

ENCLOSURE No. 1.—Original copy of the finding of the Judge of the District Court.

COMMUNICATED to the Government Pleader with reference to Board's Proceed-
ings, dated 14th December 1872, No. 2,391.

(A true Copy and Extract.)

(Signed) J. GROSE,
Secretary.

To the Government Pleader, with one original enclosure to be returned.
„ the Collector of South Arcot.

Exd. J. Talloch.

No. 1,163.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 19th May 1874.

Read again Board's Proceedings, dated 14th December 1872, No. 2,391, and 11th April 1874, No. 828.

Read also the following letter from J. W. HANDLEY, Esq., Government Pleader, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Madras, 15th April 1874, No. 44:—

With reference to the Board's Proceedings noted in the margin, I have the honour to report that the appeal (Regular Appeal No. 133 of 1872) against the decree of the Cuddalore Civil Court in the suit relating to the calingula of Padarapooliyoor Tank came on for final disposal this day before Justices Holloway and Innes, on the return of the Civil Judge to the issues sent down to him. The decree of the Lower Court was confirmed and the appeal dismissed with costs.

2. Mr. Justice Holloway delivered an oral judgment dealing fully with all the questions involved in the suit, and Mr. Justice Innes concurred with the decision but upon one ground only. As the judgment of the Lower Court was affirmed, there may be no written judgment. In that case, I shall furnish the Board with the effect of the judgments of the learned Judges from my notes taken in Court, as they are important upon the much-vexed question of the right of Government to regulate the artificial supply of water in Government villages. Mr. Holloway followed the judgment reported in Volume 7 of the Madras High Court Reports, page 60, in holding that no easement in respect of use of water can be acquired by one Government ryot against another or against Government, and he further held that the only contract that could be implied from the ordinary relation between Government and its ryots would be a contract for one year not to alter the existing irrigation works during that year to the prejudice of the ryots, and that the proper remedy for a breach of such a contract would be by damages and not by an injunction.

3. I return the enclosures to the above Proceedings.

SUBMITTED for the information of Government with reference to their Order, dated 5th March 1870, No. 317.

2. The ryots of Padarapooliyoor, a Government village, by extending the bund and raising the calingula of the tank of their village, increased its water-spread so as to submerge 60 kanis of land belonging to an adjacent village, Chendoor. Upon the complaint of the ryots of the latter village, an order was passed directing the restoration of the tank to its original condition. Upon this, the ryots of Padarapooliyoor brought a suit to obtain an injunction to restrain the officers of Government from making the alterations contemplated, on the ground that plaintiffs would thereby sustain damage to the extent of Rupees 1,461 per annum, consequent on the reduced capacity of the tank.

1874.
BOARD of REVENUE
MADRAS.

PROCEEDINGS, 11TH APRIL 1874, No. 828.

Recd. 12/5/74. Encl.

Received

APRIL

No. 828.

Suit—No. 6 of 1871, in Cuddalore Civil Court, in South Arcot District, regarding calingula of Padarapooliyoor tank.—Collector's letter forwarding original copy of finding of Judge on certain issues in—referred by High Court for trial by Lower Court, communicated to Government Pleader.

3. In the defence on behalf of Government it was contended—(a) that the tank being a Government work they had a right to make such alterations as they pleased and to regulate the quantity of water to be stored in it; (b) that the ryots of plaintiffs' village had by unauthorized alterations increased the waterspread of their tank and thereby injured lands in Chendoor; and (c) that the restoration of the tank to its original condition would not cause damage to plaintiffs, but that in any case they had no cause of action.

4. The decision of the Lower Court in favour of Government has been confirmed by the High Court.

5. In the event of no written judgment being recorded, the Government Pleader promises to furnish from his notes a report as to the effect of the judgments in regard to the important points involved in the case.

(A true Copy and Extract.)

J. G. Gole
Secretary.

To the Acting Secretary to Government, Revenue Department, with
Board's Proceedings, dated 14th December 1872, No. 2,391,
and 11th April 1874, No. 828, with its original enclosures.

„ the Collector of South Arcot.

„ the Government Pleader.

Ed. W. H. French.

Received 1874. Sept 17.
BOARD of Revenue,
MADRAS.

PROCEEDINGS, 19TH MAY 1874, No. 1,163.

24/12/74

Encl 3

Received

MAY.
No. 1,163.

Suit, Regular Appeal—No. 133 of 1872, preferred to High Court from decree in Suit No. 6 of 1871 in Cuddalore Civil Court in South Arcot District, regarding cullingula of Padana-pooliyoor Tank.—Letter from Government Pleader, reporting result of —, submitted to Government.

5-12-74

20/12/74

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19-20

2 June 74