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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

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Not to be folded or roughly handled

M.K.

2482

*Proceedings of the Madras Government, Revenue Department,
26th June 1874.*

No. 232. Read the following Proceedings of the Board of Revenue, dated 10th June 1874, No. 1,411.

Read the following letter from G. D. LEMAN, Esq., Collector of the Kistna District, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Masulipatam, 11th May 1874, No. 803 :—

I HAVE the honour to forward copies of the judgment and decree, in Original Suit No. 65 of 1873, on the file of the District Munsif's Court at Bapatla, against myself and ten others.

2. Plaintiff sued to establish his right to, and to recover possession of, Acres 4.22 of Government land, situate in the bed of a tank at Marripudi.

3. The facts of the case are fully detailed in Board's Proceedings, dated 9th June 1873, No. 963.

4. Briefly they are : that in June 1867, plaintiff (with others) darkasted for Acres 4.22 of this tank bed ; in September 1867, the Sub-Collector gave an order that agreements were to be taken from them and they were to be put in possession, no mention of a putta being made. This permission was not subsequently made permanent by gift of a putta ; and in June 1868 this, and the rest of the tank, was sold by auction by order of the Collector. Plaintiff appealed, and the sale was cancelled by G. O. 19th October, and in April 1870, he received a putta ; on July 11th, 1870, the Government passed Order No. 1,025, directing that this latter order was cancelled and that plaintiff was to be ousted, and the auction purchaser put in possession.

5. The decision entirely depends on the question whether a grant of land made by a Sub-Collector is final or not. The Munsif finds it so : he says (paragraph 29) that according to the letter of the rules for the disposal of assessed land, it was only a Tahsildar's assignment of land that was conditional, and that therefore any other must be unconditional.

6. The rules he refers to are those that were in force prior to 1872.

7. First of all, the rules he refers to, do not apply, as these were *unassessed* and not assessed lands.

8. *Secondly*.—My experience tells me that he is wrong even in the case of assessed lands, and the order he quotes shows it. It is to this effect "if no appeal be made previously to the Jamabandi and if no objection occurs to the officer making the settlement, the applicant shall be confirmed in his possession as far as the revenue authorities are concerned, and a putta shall be furnished to him." This means that every grant was conditional on confirmation at the settlement ; no grant of any kind was a confirmed one till a putta had been issued. Even the Collector could, and sometimes did, cancel his own grant made under an imperfect knowledge of the facts of the case, if the ryots at Jamabandi complained.

9. The very fact of the appeal being made shows it was a conditional grant ; and the Munsif himself takes no objection to it as an appeal, though he does enunciate the most marvellous opinion that the order deciding the appeal of one set of parties was binding against every one else.

10. This seems to be utterly untenable. In this instance, the ground on which confirmation of the grant was refused, was that the plaintiff's land should

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*Proceedings of the Madras Government, Revenue Department,
26th June 1874.*

under the then orders of Government, have been sold, and therefore that the Collector could not confirm it; a fresh objection altogether.

11. The Munsif says the sale was void, because the Board's approbation to the order for sale was not given. He is wrong again, it might vitiate the sale; but that could not possibly assist plaintiff's title, if the Board had not subsequently given their approval of it; but the approval, once given, was a confirmation of all that was done.

12. These are the chief points where the Munsif is wrong: but in paragraph 20, he travels quite out of the record; and without a tittle of evidence, assumes that the plaintiff's Acres 4.22 required pits to be levelled, etc., and large sums of money and labour to be expended on it; and, still without evidence and without any knowledge of his own to bear, says plaintiff could not get it ready for cultivation.

13. In paragraph 21, he records the opinion that as plaintiff thought the grant was unconditional, therefore he must be correct.

14. Further on he remarks that the Government were misinformed in the case: he seems to refer to the late Collector's statement that the grant was never confirmed, and this is a most undoubted fact.

15. Whether it required confirmation or not, is a fact about which there seems a decided difference of opinion.

16. The Government, because such wrong was done by Government, because such wrong was done by Government, in 1870, and if it be left alone, it will govern the cases of six other persons who have suffered in the same way as plaintiff. I see no reason to move from the position I took up in my letter No. 842, May 26th, 1873, recorded in Board's Proceedings, No. 988, June 8th, 1873, that the plaintiff was only entitled to any damages he could prove.

17. By the carelessness of my vakil, I did not get the record till the 22nd April 1874, and the appeal time which lapsed on the 27th has now passed; but, if the Board will permit, I will put in a motion for an appeal under Section 5 (b) Act IX. of 1871. I enclose copy of the appeal petition and if the Board will telegraph permission, I will allow no further delay in the matter.

Enclosure No. 1.—Copy of Judgment.

Enclosure No. 2.—Copy of Decree.

Enclosure No. 3.—Copy of Appeal Petition.

Submitted for the information and orders of Government.

18. In June 1867 plaintiff and others applied for 40 acres of land in the bed of a tank that had been abandoned as no longer required. In September following the Sub-Collector assigned the land to the applicants. In his letter, dated 8th August 1868, No. 280, reporting on a petition from the Darkastdars, the Collector stated that on an appeal made by other applicants his predecessor had decided in February 1863 that the land should be sold by public auction the course prescribed in G. O. dated 7th September 1860, No. 1,545, and that in consequence of

*Proceedings of the Madras Government, Revenue Department,
26th June 1874.*

this decision puttas were not issued for the land at the annual settlement. Before sanctioning the proposed sale the Board Proceedings, dated 23rd September 1868, No. 6,762, desired to be informed whether the

petitioners who were the first applicants commenced cultivating the land and whether the Sub-Collector's order was subject to the condition of its being confirmed at the settlement.

3. In reply the Collector stated that petitioners had cultivated the land and got a crop off 6 or 7 acres and that no condition was attached to the Sub-Collector's order. The Board then directed that the land should be disposed of under the ordinary Darkast Rules due regard being had to the facts that petitioners were apparently the first applicants, and that they were in possession for several months under an unconditional order of the Sub-Collector. When the Board were subsequently informed that the sale had

Proceedings, dated 2nd November 1868, No. 7,781, taken place in July 1868, they declined to interfere in petitioner's behalf. They at the same time pointed out to the Collector that such sales required their previous approval. Proceedings, dated 23rd January 1869, No. 409.

4. Petitioners then appealed to Government who decided that the Collector was wrong in cancelling the unconditional grant of the Sub-Collector, and

G. O. dated 19th October 1868, Petition Department.

to petitioners and the refund of the purchase money.

5. The puttas granted to the purchasers were accordingly cancelled and fresh ones issued to the original grantees. Some of the purchasers refused to receive the purchase money and claimed in addition compensation for expenses incurred in improving the land. In reporting on this claim the Collector stated in regard to the original grant of the land by the Sub-Collector that the applicants were merely allowed to cultivate the land in Fash 1277, but that no promise was made as to granting puttas for it. From this he inferred that "they had no permanent right to the land so long as puttas are not issued to them."

6. The Board regarded* the fact that the Sub-Collector did not promise puttas as of no importance. Government Proceedings dated 11th May 1870, No. 3,179, however reversed their former order† and resolved to leave the attention purchasers

in possession because their previous order was passed in the belief that the Sub-Collector's original grant was unconditional, whereas it was subsequently shown that the Darkastdars were merely permitted to cultivate the land during the then current Fash (1277). G. O. dated 15th October 1868, No. 1,266.

7. The original grantees then claimed Rupees 726 as compensation for expense incurred in improving the land. Government sanctioned payment of Rupees 272-4-0. G. O. dated 8th December 1871, No. 2,474, and 14th October 1872, No. 88.

8. Such is the history of the case as given in the previous correspondence.

9. Plaintiff, one of the original Darkastdars, being dissatisfied with the decision of Government, instituted the suit to recover his share of the land, Acres

*Proceedings of the Madras Government, Revenue Department,
26th June 1874.*

4-22. He alleged that the Sub-Collector's grant of the land to himself and others was absolute, and that it was confirmed by the Collector.

10. In the defence on behalf of Government it was asserted (1) that the land was assigned by the Sub-Collector to plaintiff and others for one fasli only (1277); and (2) that the grant was not confirmed by the Collector as alleged in the plaint.

11. These assertions were not proved, and from the District Munsif's judgment it would appear that they are unfounded. The evidence goes to show that the original application for the land was made and accepted under the ordinary Dargast Rules. In the Board's opinion such acceptance implies a promise to concede the rights attaching to an ordinary ryotwary holding, one of which is permanent occupancy under putta, provided there is no valid objection to the grant.

12. To hold that such a grant is for one year only because a putta was not promised in express terms is, the Board consider, clearly erroneous.

13. It is evident also from the circumstances of the case and the conduct of the parties that a mere temporary occupancy was not originally contemplated.

14. As regards the second point urged in the defence, it appears that on appeal the grant made by the Sub-Collector was actually confirmed by the Collector by a formal order, dated 18th October 1867—*Vide* paragraph 25 of the judgment.

15. It is observed that throughout the proceedings the Sub-Collector was asserted

23rd January 1868, No. 116, that May that the Sub-Collector's order was revised by an order of the Collector in

February 1868. It appears from the Court's decision (paragraph 26) that this revised order had reference to another Dargast by different parties for other land in the same tank, and that under this order the Sub-Collector sold the land in the tank bed including that previously granted to plaintiff and the grant of which had been confirmed by the Collector.

16. The Court has decided in plaintiff's favour, and the Board see no reason to question the correctness of the decision. They do not therefore agree with the Collector in thinking an appeal advisable. Moreover it is now too late to appeal, as the time for appeal expired on the 27th April 1874.

No. 253

ORDER THEREON, 26th June 1874, No. 733.

Misconduct

Consent to be found

2. The Government concur with the Board.

(True Extract)

Signed: C. G. MASTER,

Acting Secretary to Government.

To the Board of Revenue.

Ed. H. A. Trench.

No. 1,411.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 10th June 1874.

Read the following letter from G. D. LEMAN, Esq., Collector of the Kistna District, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Masulipatam, 11th May 1874, No. 803:—

I HAVE the honour to forward copies of the judgment and decree, in Original Suit No. 65 of 1873, on the file of the District Munsif's Court at Bapatla against myself and ten others.

2. Plaintiff sued to establish his right to, and to recover possession of, Acres 4-22 of Government land, situate in the bed of a tank at Marripudi.

3. The facts of the case are fully detailed in Board's Proceedings, dated 9th June 1873, No. 968.

4. Briefly they are: that in June 1867, plaintiff (with others) darkasted for Acres 4-22 of this tank bed; in September 1867, the Sub-Collector gave an order that agreements were to be taken from them and they were to be put in possession, no mention of a putta being made. This permission was not subsequently made permanent by gift of a putta; and in June 1868 this, and the rest of the tank, was sold by auction by order of the Collector. Plaintiff appealed, and the sale was cancelled by G. O., 19th October, and in April 1870, he received a putta; on July 11th, 1870, the Government passed Order No. 1,025, directing that this latter order was cancelled and that plaintiff was to be ousted, and the auction purchaser put in possession.

5. The decision entirely depends on the question whether a grant of land made by a Sub-Collector is final or not. The Munsif finds it so: he says (paragraph 20) that according to the letter of the rules for the disposal of assessed land, it was only a grant, and that the grant was conditional, and that therefore any other must be unconditional.

6. The rules he refers to are those that were in force prior to 1872.

7. First of all, the rules he refers to, do not apply, as these were ~~unassessed~~, and not assessed, lands.

8. *Secondly*.—My experience tells me that he is wrong even in the case of assessed lands, and the order he quotes shows it. It is to this effect: "If no appeal be made previously to the Jamabandi, and if no objection occurs to the officer making the settlement, the applicant shall be confirmed in his possession as far as the revenue authorities are concerned, and a putta shall be furnished to him." This means that every grant was conditional on confirmation at the settlement; no grant of any kind was a confirmed one till a putta had been issued. Even the Collector could, and sometimes did, cancel his own grant made under an imperfect knowledge of the facts of the case, if the ryots at Jamabandi complained.

9. The very fact of the appeal being made shows it was a conditional grant, and the Munsif himself takes no objection to it as an appeal, though he does enunciate the most marvellous opinion that the order deciding the appeal of one set of parties was binding against everyone else.

10. This seems to be utterly untenable. In this instance, the ground on which confirmation of the grant was refused, was that the plaintiff's land should

6th. of 1874

REVENUE

THE BOARD OF REVENUE

10th June 1874

G. O. 26th June 1874, A. No. 103

J. U. N. E.

No. 212233

Suit No. 65 of 1873, in the District Munsif's Court at Bapatla, Kistna District, in which the plaintiff, G. D. Leman, Esq., Collector of the Kistna District, sued the defendants, myself and ten others, for possession of the land in the bed of a tank at Marripudi. The judgment and decree in the said suit were rendered on the 11th of July 1870, and the same were confirmed by the Board of Revenue on the 10th of June 1874.

11th June 1874

under the then orders of Government, have been sold, and therefore that the Collector could not confirm it; a fresh objection altogether.

11. The Munsif says the sale was void, because the Board's approbation to the order for sale was not given. He is wrong again, it might vitiate the sale; but that could not possibly assist plaintiff's title; if the Board had not subsequently given their approval of it; but the approval, once given, was a confirmation of all that was done.

12. These are the chief points where the Munsif is wrong: but in paragraph 20, he travels quite out of the record; and without a title of evidence, assumes that the plaintiff's Acres 4-22 required pits to be levelled, etc., and large sums of money and labour to be expended on it; and, still without evidence and without any knowledge of his own to bear, says plaintiff could not get it ready for cultivation.

13. In paragraph 21, he records the opinion that as plaintiff thought the grant was unconditional, therefore he must be correct.

14. Further on he remarks that the Government were misinformed in the case; he seems to refer to the late Collector's statement that the grant was never confirmed; and this is a most undoubted fact.

15. Whether it required confirmation or not, is a fact about which there seems a decided difference of opinion.

16. I think the case should be appealed by Government, because such wrong is done to the man now ousted, who was finally put in possession by Government in 1870, and if it be left alone, it will govern the cases of six other persons who have suffered in the same way as plaintiff. I see no reason to move from the position I took up in my letter No. 842, May 26th, 1873, recorded in Board's Proceedings, No. 863, June 10th, 1873, that the plaintiff was only entitled to say damages he could prove.

17. By the carelessness of my clerk, I did not get the record till the 22nd April 1874, and the appeal time which lapsed on the 27th has now passed; but, if the Board will permit, I will put in a motion for an appeal under Section 5 (b) Act IX. of 1871. I enclose copy of the appeal petition, and if the Board will telegraph permission, I will allow no further delay in the matter.

Enclosure No. 1.—Copy of Judgment.

Enclosure No. 2.—Copy of Decree.

Enclosure No. 3.—Copy of Appeal Petition.

Submitted for the information and orders of Government.

2. In June 1867 plaintiff and others applied for 40 acres of land in the bed of a tank that had been abandoned as no longer required. In September following the Sub-Collector assigned the land to the applicants. In his letter dated 8th August 1868, No. 230, reporting on a petition from the Dastkardars, the Collector stated that on an appeal made by other applicants his predecessor had decided in February 1863 that the land should be sold by public auction the course prescribed in G. O., dated 7th September 1860, No. 1,545, and that in consequence of

this decision puttas were not issued for the land at the annual settlement. Before Proceedings, dated 23rd September 1868, No. 6,762, desiring to be informed whether the

petitioners who were the first applicants commenced cultivating the land and whether the Sub-Collector's order was subject to the condition of its being confirmed at the settlement.

3. In reply the Collector stated that petitioners had cultivated the land and got a crop off 6 or 7 acres and that no condition was attached to the Sub-Collector's

order. The Board then directed that Proceedings, dated 2nd November 1868, No. 7,781, the land should be disposed of under

the ordinary Dastkard Rules due regard being had to the facts that petitioners were apparently the first applicants and that they were in possession for several months under an unconditional order of the Sub-Collector. When the Board were subsequently informed that the sale had

taken place in July 1868 they declined Proceedings, dated 23rd January 1869, No. 409, to interfere in petitioner's behalf. They

at the same time pointed out to the Collector that such sales required their previous approval.

4. Petitioners then appealed to Government who decided that the Collector G. O., dated 19th October 1869, Petition Department, was wrong in cancelling the unconditional grant of the Sub-Collector and directed the issue of puttas for the land

to petitioners and the refund of the purchase money.

5. The puttas granted to the purchasers were accordingly cancelled and fresh ones issued to the original grantees. Some of the purchasers refused to receive the purchase money and claimed in addition compensation for expense incurred in improving the land. In reporting on this claim the Collector stated in regard to the original grant of the land by the Sub-Collector that the applicants were merely allowed to cultivate the land in Fash 1277 but that no promise was made as to granting puttas for it. From this he inferred that "they had no permanent right to the land so long as puttas are not issued to them."

6. The Board regarded the fact that the Sub-Collector did not promise puttas as of no importance. Government Proceedings, dated 11th May 1870, No. 3,179, however reversed their former order and

resolved to leave the auction purchasers in possession because their previous G. O., dated 19th October 1869, order was passed in the belief that the

Sub-Collector's original grant was unconditional whereas it was subsequently "shown that the Dastkardars were merely permitted to cultivate the land during the then current Fash (1277)."

7. The original grantees then claimed Rupees 750 as compensation for expense incurred in improving the land. G. O., dated 30th December 1871, No. 2,914, Government sanctioned payment of

Rupees 272-4-0. and 14th October 1872, No. 23.

8. Such is the history of the case as given in the previous correspondence.

9. Plaintiff, one of the original Darkastdars, being dissatisfied with the decision of Government, instituted the suit to recover his share of the land, acres 4-22. He alleged that the Sub-Collector's grant of the land to himself and others was absolute and that it was confirmed by the Collector.

10. In the defence on behalf of Government it was asserted (1) that the land was assigned by the Sub-Collector to plaintiff and others for one fasli only (1277); and (2) that the grant was not confirmed by the Collector as alleged in the plaint.

11. These assertions were not proved and from the District Munsif's judgment it would appear that they are unfounded. The evidence goes to show that the original application for the land was made and accepted under the ordinary darkast rules. In the Board's opinion such acceptance implies a promise to concede the rights attaching to an ordinary ryotwary holding, one of which is permanent occupancy under patta, provided there is no valid objection to the grant.

12. To hold that such a grant is for one year only because a patta was not promised in express terms is the Board consider clearly erroneous.

13. It is evident also from the circumstances of the case and the conduct of the parties that a mere temporary occupancy was not originally contemplated.

14. As regards the second point urged in the defence it appears that on appeal the grant made by the Sub-Collector was actually confirmed by the Collector by a formal order, dated 18th October 1867-- *Vide* paragraph 25 of the judgment.

15. It is to be observed that throughout the whole correspondence from 1863 to 1873 this fact was never mentioned. On the contrary it was asserted * *Vide* letters recorded in Board's Proceedings, dated 26th September 1865, No. 676; 21st January 1866, No. 202; 21st May 1866, No. 317. The Sub-Collector's order was reversed by an order of the Collector in February 1868. It appears from the Court's decision (paragraph 26) that this reversal order had reference to another Darkast by different parties for other land in the same tank and that under this order the Sub-Collector sold the land in the tank bed including that previously granted to plaintiff and the grant of which had been confirmed by the Collector.

16. The Court has decided in plaintiff's favour and the Board see no reason to question the correctness of the decision. They do not therefore agree with the Collector in thinking an appeal advisable. Moreover it is now too late to appeal as the time for appeal expired on the 27th April 1874.

(A true Copy and Extract.)

J. G. M.
Secretary

To the Acting Secretary to Government, Revenue Department,
with three original enclosures,
The Collector of the Kisma District.

Edw. G. A. Tatum

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Revenue 1874. Department

Board of Revenue
MADRAS.

PROCEEDINGS, 10TH JUNE 1874, No. 1,411.

Chief 157 1/2 1/2

Foot.

Received 16 June 1874.

JUNE
No. 1,411.

Suez—No. 65 of 1873, filed in Bapatla
Munshi's Court, in Kistna District, to establish
plaintiff's right to, and to recover possession of
certain Government land situated in bed of a
tank and made over by Government to another
for cultivation.—Collector's application for
sanction for appealing from decree passed in
favour of plaintiff in—submitted to Government,
with remarks; and appeal, objected to.

with
order