

(1) Number of Pages.....26(2) Date of repair.....22. 3. 68(3) Initials of the Referencer.....27. 4. 68**MADRAS RECORD OFFICE****GOVERNMENT OF MADRAS***Revenue***DEPARTMENT**

G.O. No.

B.P. No.

1695

Press

Mis.

Dated

25- 11. 1875 196 .*Not to be folded or roughly handled*

No. 295. Read the following Proceedings of the Board of Revenue, dated 20th November 1875, No. 3,162:—

Read the following letter from H. W. BLISS, Esq., Acting Collector of Madura, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated 15th November 1875, No. 479:—

I HAVE the honor to submit translation of plaint in Original Suit No. 37 of 1875 on the file of the Subordinate Court of Madura, in which the Collector and the District Engineer have been made the first and second defendants, together with a draft of the written statement I propose to put in, and to request sanction for the defence of the suit on the usual terms.

2. Before 1851 there were two earthen embankments in the Vadagarai channel to divert a portion of its water into two branch channels called Thengandom and Vadagandom which irrigate land in Vilampatty village on either side of the main channel. These embankments having been neglected, no water passed down the branch channels, and the lands under them were consequently left waste. To remedy this, and to prevent disputes, the then Civil Engineer, Captain Horsley, after inspecting the spot with the then Collector, suggested that a flooring with three openings of uniform level, the middle one forty feet long and the two side ones three and five feet long respectively, should be built so as to divide the water-supply in the proportion of one-sixth to the two side channels supplying the Vilampatty village and five-sixths to the main channel supplying Kurivithorai and eight other villages according to the then existing custom.

3. When the work was put in hand, however, the ryots of the above nine villages dependent on the main channel filed a suit in the Subordinate Court (Original Suit No. 98 of 1852) to prevent its prosecution. The suit was dismissed, the Judge remarking in his judgment (not in the decree) that the work was not a dam obstructing the flow of the water, but a flooring to restore the bed of the main channel, and that the ryots of Vilampatty had established their right to one-sixth of the water of the main channel. This left matters as they were before, *viz.*, that the Government Officers were at liberty to use their discretion as to the way in which the water should be apportioned and the manner in which the apportionment should be effected.

4. In 1867 the Sub-Engineer then in charge of the Range (Mr. Colquhoun) framed an estimate for raising the level of the middle or main opening in question, by what height the available papers do not show, but it is said by twenty or twenty-one inches. This estimate was carried out in the following year after sanction by the then Superintending Engineer and by the then Collector, Mr. D. Arbuthnott. Why this was done, there is nothing on record to show; but, as the fall below the flooring is greater in the main channel than in the side channels, it would appear probable that the Sub-Engineer thought that on this account the main channel got more than its five-sixths of the supply, and that the flooring of the centre opening should therefore be raised.

5. The ryots of the nine villages mentioned above complained of this change, and the matter was referred for the opinion of the District Engineer, who, considering it advisable that the existing difference of levels should be rectified, forwarded an estimate for removing so much of the flooring of the main opening which the

Sub-Engineer raised as would bring it to the same level as the side openings. This estimate was carried out subsequently, and all the openings made the same level. As will be seen below, this action would appear to have been a mistake.

6. After this the ryots of Vilampatty complained that they could not get their proper share of water. The complaint was referred to the District Engineer. He then personally inspected the flooring in question, and in his letter, dated 10th July 1875, No. 1,361, stated that the original design of the building with all the three openings on the same level was in his opinion wrong, inasmuch as it could not secure to Vilampatty its proper supply by the side channels which were liable to silt up, on account of the fall in them being less than in the main channel; but that he thought he could not interfere with the original arrangement as it was supported by the Court's decree, and that he had, therefore, directed the centre flooring, which was in bad repair, to be restored to its original level by a water-tight wall to prevent leakage, and had ordered the channels to be cleared out. On the 20th idem a reply was sent to him by Mr. McQuhae approving of the arrangement reported, but pointing out that the Government Officers were in no way bound by the original proceedings of Captain Horsley, and that there was nothing in the Subordinate Court's decision to interfere with their right to make from time to time such arrangements as might be necessary to secure to each village its proper supply of water.

7. Upon this the District Engineer ordered the raising of the level of the middle opening by ten inches; to prevent this raising, the plaintiffs, the ryots of Karupatty, being one of the nine villages referred to above, have brought the present suit. The Collector has not passed any order as stated in the plaint, but the plaintiffs seem to have construed his reply to the District Engineer, dated 20th July 1875, above referred to, as an order.

8. The suit is posted for hearing on the 1st December next, and its value is Rupees 25,000.

ENCLOSURE No. 1.—Translation of Plaint.

ENCLOSURE No. 2.—Draft Answer.

SUBMITTED for the orders of Government.

2. To regulate the distribution of the water of the river Vigay in the usual proportions of five-sixths to plaintiffs' village, Kurivithorai, and eight other villages and one-sixth to Vilampatty, the village of defendants Nos. 3 to 6, a flooring of uniform level with three openings was made in 1851 at the head of the common source of supply. The water for plaintiffs and the other eight villages passed through the middle vent into a main channel, and the supply for Vilampatty passed through the other two vents into side channels.

3. To prevent the execution of this work, the ryots of the nine villages dependent on the main channel filed a suit, which the Court dismissed with the remark that the work was not a dam obstructing the supply of water, but a flooring regulating its distribution, and that the ryots of Vilampatty were entitled to one-sixth share.

4. In 1867 it was discovered that by the arrangement made in 1851, the villages supplied through the main channel got more than their proper share, and to remedy this the floor of the middle vent was raised twenty-one inches. Upon this the ryots of the nine villages complained, and their complaint was referred to the District Engineer, who considered it advisable to restore the floor of the middle vent to its original level. To this the ryots of Vilampatty objected, and their complaint was also referred to the District Engineer, who, on personal inspection, formed the opinion that having the three vents on the same level according to the original design could not secure to Vilampatty its proper share of water, as the fall in the main channel was greater than in the side ones, which were consequently more liable to silt up, but he considered that the Court's decision of 1852 precluded any interference with the original arrangement of 1851. He therefore directed the floor of the middle vent to be restored to its original level. The Collector approved of the arrangement, but pointed out that Government were not bound to adhere to the original design of 1851, and that there was nothing in the Court's decision to prevent such arrangement as might be found necessary to secure to the different villages their proper supply of water. Upon this the District Engineer ordered the level of the middle vent to be raised ten inches, to prevent which plaintiffs have filed this suit.

5. Plaintiffs allege that the Collector passed an order directing the raising of the floor of the middle vent ten inches, and sue for its cancellation and a decree prohibiting the alteration. The Collector passed no such order, but the District Engineer did.

6. The Collector proposes to defend the suit on the grounds (1) that Government have the right to regulate the distribution of water, and that plaintiffs cannot claim an easement as against Government.

7. The Board recommend that the defence of the suit be sanctioned, and suggest the following alterations in the draft answer, viz. :—

(a.) The addition to Clause i. of the words, "*from public sources of irrigation.*"

(b.) The substitution of the following for Clause iii. :—

"That the order complained of was passed by the District Engineer, second defendant, in the exercise of the right referred to in Clause i. *supra.*"

(c.) The omission from Clause iv. of the words "*tenants*" and "*as their landlord.*"

(d.) The insertion of the following as Clauses v. and vi. :—

v. "That the arrangements as ordered by the second defendant and now objected to, secure, as is believed, the distribution of the supply according to the original shares."

vi. "Plaintiffs have no cause of action, and are not entitled to the injunction sued for."

8. Early orders are solicited, as the suit is to be heard on the 1st December 1875.

(A true Copy and Extract.)

(Signed) H. E. STOKES,
Acting Secretary.

*Proceedings of the Madras Government, Revenue Department,
25th November 1875.*

No. 296.

ORDER THEREON, 25th November 1875, No. 1,695.

Miscellaneous.

THE defence of the suit is sanctioned
and the draft answer is approved subject
to the alterations and additions made by
the Board.

(True Extract.)

(Signed)

D. F. CARMICHAEL,
Secretary to Government.

Govt. of 1875 Madras.
REVENUE.

To THE BOARD OF REVENUE

Dated November, 25th.

Recd.

Recd.

G. O. 25th November 1875, No. 1,695.

NOVEMBER.
Nos. 295-296.

Suit No. 37 of 1875 in Madras Sub-Court.
Sanctioning the defence of — regarding certain
water dispute, and approving the draft answer sub-
ject to the alterations and additions made by the
Board.

Collector's Office
Madras
15th November 1875.

N^o 479

From H. W. Bliss Esq^r,
Acting Collector of Madras

To, H. & Stokes Esq^r,
Acting Secretary to the Board
of Revenue
Madras

Sir, I have the honor to submit
translation of plaint in C. S. N^o 37
of 1875 on the file of the Subordinate
Court of Madras in which the
Collector and the District Engineer
have been made the 1st and 2^d
Defendants together with a draft
of the written statement I propose
to put in and to request sanction
for the defence of the suit on the
usual terms.

Before

2. Before 1851, there were two earthen embankments in the Vadagarai Channel to divert a portion of its water into 2 branch channels called Thengandom and Vadagandom which irrigate land in Velampatty village on either side of the main channel. These embankments having been neglected no water passed down the branch channels and the lands under them were consequently left waste. To remedy this and to prevent disputes, the then Civil Engineer Captain Scorsby, after inspecting the spot with the then Collector, suggested that a flooring with 3 openings of uniform level, the middle

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middle one 40 feet long and the 2 side ones 3 & 5 ft long respectively, should be built so as to divide the water supply in the proportion of $\frac{1}{6}$ to the two side channels supplying the Velampatty village and $\frac{5}{6}$ to the main channel supplying Thrivithorai and 8 other villages according to the then existing custom.

3. When the work was put in hand, however, the ryots of the above 9 villages dependant on the main channel filed a suit in the Subordinate Court (C. S. No 98 of 1852) to prevent its prosecution

prosecution. The suit was dismissed the Judge remarking in his judgment (not in the Decree) that the work was not a dam obstructing the flow of the water but a flooring to restore the bed of the main channel and that the ryots of Vilampatty had established their right $\frac{1}{6}$ of the water of the main channel.

This left matters as they were before, viz, that the Government Officers were at liberty to use their discretion as to the way in which the water should be

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be apportioned and the manner in which the apportionment should be effected.

4. In 1867 the Sub Engineer then in Charge of the Range (Mr. Colquhoun) framed an estimate for raising the level of the middle or main opening in question by what height the available papers do not show, but it is said by 20 or 21 inches.

This Estimate was carried out in the following year after sanction by the then Superintending Engineer and by the then Collector Mr. D. Arbuthnot.

Why

Why this was done, there is nothing on record to show; but as the fall below the flooring is greater in the main channel than in the side channels, it would appear probable that the Sub Engineer thought that on this account the main channel got more than its $\frac{5}{6}$ lbs of the supply and that the flooring of the center opening should therefore be raised.

5. The ryots of the 9 villages mentioned above complained of this change and the matter was referred for the opinion of the District Engineer who considering

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Considering it advisable that the existing difference of levels should be rectified, forwarded an Estimate for raising so much of the flooring of the main opening which the Sub-Engineer raised as would bring it to the same level as the side openings. This estimate was carried out subsequently and all the openings made the same level. As will be seen below this action would appear to have been a mistake.

6. After this the ryots of Vilampatty complained that they could not get their proper share of water. The complaint was referred to the

District Engineer. He then
personally inspected the floor-
ing in question, and in his letter
dated 10th July 1875 & V. 1361
stated that the original design
of the building with all the
3 openings on the same level
was in his opinion wrong in as
much as it could not secure
to Vilampatti its proper sup-
ply by the side channels which
were liable to silt up
on account of the fall in
them being less than in the
main channel; but that he
thought he could not inter-
fere with the original arrange-
ment

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ment as it was supported
by the Govt's decree; and
that he had therefore directed
the centre flooring which was
in bad repair to be restored
to its original level by a water-
tight wall to prevent leakage
and had ordered the channels
to be cleared out. On the 20th
I drew a reply was sent to him
by Mr. Mr. Dubal approving
of the arrangement reported;
but pointing out that the
Government Officers were
in no way bound by the ori-
ginal proceedings of Captain
Hosley and that there was
nothing in the subordinate

Court's decision to interfere
with their right to make from
time to time such arrangements
as might be necessary to se-
cure to each village its pro-
per supply of water.

7. Upon this the District
Engineer ordered the raising
of the level of the middle
opening by 10 Inches; to pre-
vent this raising the Plaint-
iffs the ryots of Karupatty
being one of the 9 villages re-
ferred to above have brought
the present suit. The Collector
has not passed any order
as stated in the plaint, but
the Plaintiffs seem to have
con-

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constructed his reply to the Dis-
trict Engineer dated 20th July
1895 above referred to, as an order.
8.

The suit is posted
for hearing on the 1st December
next and its value is Rs. 25,000.

I have &c
[sigd] H. W. Bliss
District Collector.

[True Copy]

Sharma
Attaining Secy.

[Signature]
C.D.

Mr. M. G. Roberts

Revenue Department

Proceedings of the Board of Revenue
dated 20th November 1875, No 31

Read letter from the Acting
Collector of Madras dated 15th Novem-
ber 1875, N^o 479 submitting translation
of plaint in O.S. N^o 37 of 1875 on the
file of the Sub Court, Madras with
a draft of written statement
to be filed and requesting sanc-
tion for the defence of the suit.

Submitted for the order
of Government.

To regulate the distribution
of the water of the river Vigay in
the usual proportions of $\frac{5}{6}$ to
plaintiffs village, Kaurivithorai,
and eight other villages and $\frac{1}{6}$ to
Vilainipathy

Enclosure in Pro-
ceedings of the
Board of Revenue
in the Government P.O.
dated 20th Nov 1875

No 4499/5

Copy of Madras
Collector's letter
dated 15th November
1875 N^o 479.

Vilampatty, the village of defendants 3 to 6 a flooring of uniform level with three openings was made in 1851 at the head of the common source of supply. The water for plaintiffs and the other eight villages passed through the middle vent into a main channel and the supply for Vilampatty passed through the other two vents into side channels.

To prevent the execution of this work the ryots of the nine villages dependant on the main channel filed a suit which the Court dismissed with the remark that the work was not a dam obstructing the supply of water but a flooring regulating its distribution and that

that the ryots of Vilampatty were entitled to $\frac{1}{6}$ share.

In 1867 it was discovered that by the arrangement made in 1851 the villages supplied through the main channel got more than their proper share and to remedy this the floor of the middle vent was raised 21 inches. Upon this the ryots of the nine villages complained and their complaint was referred to the District Engineer who considered it advisable to restore the floor of the middle vent to its original level. To this the ryots of Vilampatty objected and their complaint was also referred to the District Engineer who

who on personal inspection
formed the opinion that having
the three vents on the same level
according to the original design
could not secure to Vilampatty
its proper share of water as the
fall in the main channel was
greater than in the side ones which
were consequently more liable
to silt up but he considered that
the Court's decision of 1852 precluded
any interference with the ori-
ginal arrangement of 1851. He
therefore directed the floor
of the middle vent to be restored
to its original level. The collector
approved of the arrangement
but pointed out that Government
were

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were not bound to adhere to the
original design of 1851 and that
there was nothing in the Court's
decision to prevent such arrange-
ments as might be found ne-
cessary to secure to the different
villages their proper supply of water.

Upon this the District Engineer
ordered the level of the middle
vent to be raised 10 inches to
prevent which plaintiffs have
filed this suit.

Plaintiffs allege that the
collector passed an order
directing the raising of the floor
of the middle vent 10 inches and
sue for its cancellation and a
decree prohibiting the alteration.
The collector passed no such
order

order but the District Engineer did.

The collector proposes to defend the suit on the grounds (1) that Government have the right to regulate the distribution of water and that plaintiffs cannot claim an easement as against Government.

The Board recommended that the defence of the suit be sanctioned and suggest the following alterations in the draft answer viz-

(a) The addition to Clause I of the words from public sources of irrigation.

(b) The substitution of the following for Clause III.

That the order complained of was passed by the District Engineer, 2nd defendant, in the

exercise of the right referred to in Clause I supra.

(c) The omission from Clause I of the words tenants and as their landlord.

(d) The insertion of the following as clauses V and VI.

V. That the arrangements as ordered by the 2nd Defendant and now objected to secure as is believed the distribution of the supply according to the original shares.

VI. Plaintiffs have no cause of action and are not entitled to the injunction sued for.

Early orders are solicited as the suit is to be heard on the 1st December 1875.
(True Extract)

H. E. W. M.

Acting Secretary

To, The Secretary to Government
Revenue Department
with 2 original enclosures to be returned & copy of collector's letter

Copy BB

C. M. N.

Procession 1875 before

No 4494

Proceedings of the
Board of the name

Date 20th Nov 75

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