

(1) Number of Pages 34(2) Date of repair 30/1/67(3) Initials of the Referencer 17.2.68**MADRAS RECORD OFFICE****GOVERNMENT OF MADRAS**Revenue **DEPARTMENT**

G.O. No.	859	Press
B.P. No.		Mis.
Dated		2/6/1871 - 196

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
2nd June 1875.

No. 6. Read the following Proceedings of the Board of Revenue, dated 22nd May 1875, No. 1,407.—

Read the following letter from C. T. LONGNEY, Esq., Collector of Salem, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Oosoor, 8th May 1875, Extra No. 3.—

With reference to the Proceedings of the Madras Government, dated the 30th October 1873, No. 1,218, conveyed in the Board's Miscellaneous No. 7,362, of the 1st November 1873, sanctioning the defence in Suit No. 6 of 1873, for cancelment of sale of Thorapalli Agraharam, filed in the District Court of Salem by the Agraharamdars of the Thorapalli Village in the Oosoor Taluq, I have the honor to report that the suit in question was, after repeated adjournments, heard finally on the 1st ultimo, when the judgment was given in favor of the plaintiffs, together with the costs, amounting to about Rupees 1,271-12-0, which are decreed payable by the 3rd defendant (the Collector).

2. It will be seen from the enclosed copy of the judgment that the Judge's decision in favor of the plaintiffs is based on the sole ground that the notice of sale was not posted up for one month. Four witnesses were, however, cited on behalf of Government to prove that the notice was published on the 2nd of April 1872, and not on the 12th, as alleged by the plaintiffs. The chief of these witnesses was the Tahsildar of Oosoor, who, I regret to say, was, owing to illness, unable to attend on the day of the final hearing; but I instructed the Vakil on behalf of Government to move the Court either to obtain an adjournment or to apply for a Commission of Enquiry to examine the Tahsildar. The Vakil has not reported to me the result of his motion, and I have called upon him to do so. The three witnesses who were called to speak to the sale notice having been published on the 2nd April are (1st)—a Gumustah of the Oosoor Taluq, who deposed to the due despatch of the notices to the village offices of the Agraharam on the 31st March, and produced in support of this statement the Taluq Office Despatch Book, (2) the Curnam of the Agraharam, who deposed that he received the notices on the 2nd of April and published them on the same day, after doing which he handed over the Tahsildar's takeed to the Agraharam Munsif; (3rd) one Sabapathy Iyah, a share-holder in the Thorapalli Agraharam, who stated that the notice was duly proclaimed on the 2nd, and though he does not remember the exact date at this distance of time, he traces it to a new moon and by the annual ceremony of his father which falls on a particular day.

3. Of the three witnesses on the plaintiffs' side, one is the Agraharam Village Munsif. He is the 1st plaintiff in the suit, and the 2nd and 3rd of plaintiffs' witnesses are more or less related to him and other plaintiffs.

4. It will be seen that the Judge lays great stress on the fact that the joint report of the Village Munsif and Curnam stating that they had published the sale notices was not made till the 16th April, though it was proved by the Government witnesses that the notices were received on the 2nd. This delay is not to be wondered at when the fact that the Village Munsif was the chief man among the Agraharamdars, and the Curnam was naturally interested in the continuance of the Agraharam on the tenure on which it stood. The Village Munsif must have burked the Tahsildar's takeed issued to the village officer

*Proceedings of the Madras Government, Revenue Department,
2nd June 1875.*

sending the notices and directing their publication, and it will be seen from the joint report of the 12th April how carefully these officers have avoided mentioning the date of either the receipt of the notices, or of the Tahsildar's takeed, or the date of publication of the notices. The careful manner in which this report is worded, and the petition which the Munsif sent subsequently (Exhibit C.) with others prove, I submit, the very opposite to what the Judge assumes, viz, the improbability of the plaintiffs writing the petition in view to subsequently disputing the validity of the sale. The Curnam has, however, accounted for the delay in making the report. He states that after proclaiming the notice and handing over the takeed to the Munsif, he went away to Ooroor for ten or fourteen days, and that thinking that the Munsif would make the report, he did not do so; and it was only on his return to the Agraharam that it was made. I am of opinion that it is most important that an appeal should be preferred against the District Court's decision. If the Board are of the same opinion, I trust that they will send the necessary instructions to the Government Pleader, High Court.

It is to be observed that the judgment of the District Court relates to 53½ out of 54 shares of which the Agraharam is composed.

6. Enclosed is a list of the material papers in the case.

ENCLOSURE No 1.—Copy of Decree.

ENCLOSURE No 2.—Copy of Judgment.

ENCLOSURES Nos. 3 and 4.—Statements of Witnesses.

ENCLOSURE No. 5.—Translation Report of Village Officers.

ENCLOSURE No 6.—Translation of Petition of Agraharamdars

ENCLOSURE No 7.—List of papers connected with the Suit.

SUBMITTED for the information and orders of Government, with reference to G. O., 30th October 1873, No. 1,218.

2. The Agraharam of Thorapalli having been sold for arrears of revenue under Act II. of 1864, plaintiffs (Agraharamdars) sued to have the sale cancelled on the following grounds—

(a) That the arrears had been tendered previous to the sale, Section 37.

(b) That the purchase money was not paid within the prescribed time, Section 36, Clause 4.

(c) That more land was sold than was sufficient to discharge the arrears, Section 45.

(d.) That due notice of the intended sale had not been given, Section 36, Clause 2

3. For the defence it was contended that the sale was in every respect regular and legal.

4. It is proved that payment of the arrears was tendered too late, and that the purchase money was paid within the prescribed time. In regard to the third

*Proceedings of the Madras Government, Revenue Department,
2nd June 1875.*

plea, the Court holds that Section 45 does not preclude the sale of the entire property.

5. As to the last point, whether due notice was given, the oral evidence is conflicting. Plaintiffs' witnesses headed by the Munsif, one of the plaintiffs, assert that the notice was published in the village on the 12th April 1872 (the sale took place on the 9th May), while for the defence the Curnam, supported by one of the Agraharamdars, affirms that the notice was published on the 2nd April. The oral evidence being thus pretty evenly balanced, the Judge looking for extraneous matter in support of either side finds that the joint report of the Munsif and Curnam to the Tahsildar regarding the receipt and publication of the notice, though it does not mention the date of publication, is itself dated 16th April; and that in a petition addressed to the Sub-Collector a few days before the sale, it is distinctly stated that the notice was published on the 12th April. The Judge considers that this turns the scale in plaintiffs' favor and proves satisfactorily that the notice was not published a month previous to the sale, which is consequently invalid. He has, therefore, decided in plaintiffs' favor, and decreed that the sum of Rupees 1,271-12 0 be paid by the Collector.

6. The Collector suggests an appeal on the very doubtful ground that the decision is against the weight of evidence.

7. The Board observe that in a case like this, as a rule, nothing can be expected from plaintiffs except oral evidence, but the Revenue authorities should be able to produce something more in the shape of returns showing the date and mode of service of their legal processes. When the regularity of a sale under a rigorous law is impeached, the Court has a right to expect that the Revenue authorities should be prepared to prove satisfactorily that the prescribed formalities have been complied with. The Judge considers they have not done so in this case.

8. The fact that the report regarding the receipt of the notice did not mention the date of receipt or publication, should have necessarily excited immediate inquiry as to the date of publication and the cause of its omission in the report, and such inquiry became the more imperative when some days previous to the sale plaintiffs formally complained that the notice was not published until the 12th April, and asked for further time. But from the Judge's remarks it appears that no inquiry was made, and that it "was assumed as impossible" that any delay or irregularity could have occurred.

9. It appears further that the service of the notice was entrusted to a peon, and that instead of delivering it himself and obtaining an acknowledgment he handed it over to the village toty who gave it to the Munsif. The latter says he received it on the 12th April. The peon and toty were not cited as witnesses to contradict him and show when the notice was actually delivered, and this omission, unexplained as it is, weakens the case for the defence.

10. As a rule, an Appellate Court accepts the lower Court's appreciation of evidence as to facts unless there are clear and cogent reasons for doing otherwise. Considering all the circumstances of the case, it seems improbable that the High Court will hold that the lower Court has not rightly appreciated the evidence.

Proceedings of the Madras Government, Revenue Department,
2nd June 1875.

1. There is a very important principle involved, and the only object in appealing is to the Court from the heavy costs, Rupees 1,271-12-0; but the Board fear an appeal involves considerable risk of having the amount doubled. They accordingly recommend that no appeal be made, and that payment of the costs be sanctioned.

12. The Collector should explain why the peon and toty were not cited as witnesses for the defence.

(A True Copy and Extract.)

(Signed)

H. A. STOKES,
Acting Secretary.

No 7.

ORDER THEREON, 2nd June 1875, No. 859.

Miscellaneous.

UNDER the circumstances set forth by the Board, Government agree that it is not advisable to carry the case to the higher Court.

2. The costs, amounting to Rs. 1,271-12-0, are sanctioned.

(True Extract.)

(Signed)

A. MACGREGOR,
Acting Secretary to Government.

To the Board of Revenue
,, the Accountant-General

Exd W. H. French

Revenue Department

Proceedings of the Board of Revenue
dated 22nd May 1875 No. 1407

Read letter from the collector of Taluk dated 8th May 1875 Extra No. 3 requesting that an appeal be preferred against the judgment in the Thorapalli suit decided against Government.

Submitted for the information and orders of Government with reference to G. O. 30th October 1873 No. 1218.

The Agraharam of Thorapalli having been sold for arrears of revenue under Act 2 of 1864 plaintiffs, agraharam-dars sued to have the sale cancelled on the following grounds.
(a) That the arrears had

Vol. of 1875 31st

REVENUE.

THE BOARD OF REVENUE.

Do, do, do

Dated June 2nd

Recd

Dist

G O, 2nd June 1875, No. 859.

JUNE.
Nos. 6-7.

Sent No. 6 of 1875, filed in the District Court of Salem for the enforcement of the sale of Thorapalli Agraharam, for arrears of revenue—Concurring with the Board that it is not advisable to appeal to the higher Court in —, and sanctioning the costs, amounting to Rs 1,371-12-0



been tendered previous to the sale section 37.

(b) That the purchase money was not paid within the prescribed time section 36 clause 4.

(c) That more land was sold than was sufficient to discharge the arrears section 45.

(d) That due notice of the intended sale had not been given section 36 clause 2.

For the defence it was contended that the sale was in every respect regular and legal.

It is proved that payment of the arrears was tendered too late and that the purchase money was paid within the prescribed time. In regard to the third plea the Court holds that

that section 45 does not preclude the sale of the entire property. As to the last point, whether due notice was given, the oral evidence is conflicting. Plaintiffs witnesses headed by the Munsiff, one of the plaintiffs, assert that the notice was published in the village on the 12th April 1872 (the sale took place on the 9th May) while for the defence the Kurnam supported by one of the Agraharamdars affirms that the notice was published on the 2nd April. The oral evidence being thus pretty evenly balanced the judge looking for extraneous matter in support of either side finds that the joint report of the Munsiff

and Hurnane to the Tahsildar
regarding the receipt and
publication of the notice though
it does not mention the date
of publication, is itself dated
16th April; and that in a petition
addressed to the Subcollector
a few days before the sale it
is distinctly stated that the
notice was published on the 12th
April. The Judge considers that
this turns the scale in plaintiffs
favor and proves satisfactorily
that the notice was not published
a month previous to the sale which
is consequently invalid. He
has therefore decided in plaintiffs
favor and decreed that the
costs Rupees 1271-12-0 be paid by
the Collector.

The

What can be more
satisfactory than
the evidence
the Revenue authorities
received on the 2nd inst
the Tahsildar's report
shows that the notice
was displayed on the
31st March

853
6
The collector suggests an
appeal on the very doubtful
ground that the decision
is against the weight of evidence.
The Board observe that in
a case like this as a rule nothing
can be expected from plaintiffs
except oral evidence but the
Revenue authorities should
be able to produce something
more in the shape of returns
showing the date and mode of
service of their legal processes.
When the regularity of a sale
is impeached a rigorous law is impeached
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have been complied with.
The judge considers they have
not done so in this case.

The fact that the report re-
garding the receipt of the
notice did not mention the date
of receipt or publication should
have necessarily elicited im-
mediate inquiry as to the
date of publication and the
cause of its omission in the
report, and such inquiry be-
came the more imperative
when some days previous to
the sale plaintiffs formally
complained that the notice
was not published until the
12th April and asked for further
time. But from the judge's
remarks

the court
is satisfied
that the
notice was
not published
until the
12th April

this was the
Luffell's
to the Plaintiff

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no inquiry was made and
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possible that any delay or
irregularity could have occurred.

It appears further that
the service of the notice was
entrusted to a Peon and that
instead of delivering it
himself and obtaining an
acknowledgement he handed
it over to the Village Lote who
gave it to the Munsiff. The
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There is no important
principle involved and the only
object in appealing is to be
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fear an appeal involves con-
siderable risk of having the
amount doubled. They accordingly
recommended that no appeal
be

85/1
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of the costs be sanctioned.

The collector should explain
why the Pon and Giti were
not cited as witnesses for the
defence.

True Extract

H. B. B. B.

Acting Secretary

To,
The Secretary to Government
Revenue Department
with copy of collector's letter & en-
-closure to be returned.

M. Narasimam

Salem collector's office
Salem Collector, 8 May 1875

Extract No 3
From
The Collector of
Salem
To
The Secretary to the
Board of Revenue
Madras

Sir
With reference to the Pro-
ceedings of the Madras
Government, dated the 30th
October 1873, No 1218, conveyed
in the Board's Miscellaneous
No 7362 of the 1st November
1873, sanctioning the
defence in suit No 6 of
1873 for cancellation of
sale of Thorapully Agrar-
haram, filed in the District
Court of Salem by the
Agraharamdars of the
Thorapully village in the
Ossor

11030 October 13 1873

Am: 1875: 2446
No 2013.

Proceedings of the
Board of Revenue

Dated 29th May 1875
Recd 28th —

255/1000
No 3492 of 1874
Sut. No 6 of 1873 filed

in District Court of Salem
for the cancellation of sale of
Thorapully Agraharam
for want of purchase, —
and the Court's order
in suit No 6 of 1873
with recommendation that
costs incurred by the defendant
be paid by the plaintiff in
addition to the costs of the
defendant in the suit.

255

255/1000
11030 October 13 1873

11030 October 13 1873

11030 October 13 1873

Passos, Jany, I have the
honour to report that the
suit in question was
after repeated adjourn-
ments, heard finally
on the 1st ultimo, when
the judgment was given
in favour of the Plaintiffs
together with the costs
amounting to about
Rupees 127/-12/- which
are decreed payable by
the 3rd Defendant (the
Collector).

2. It will be seen from
the enclosed copy of the
judgment that the judges
decision in favour of
the Plaintiffs is based on
the sole ground that the
notice of sale was not
posted up for one month.
Yours

Four witnesses were how-
ever cited on behalf of
Government to prove
that the notice was
published on the 2^d of
April 1872, and not on
the 12th as alleged by the
Plaintiffs. The Chief of
these witnesses was the
Tahsildar of Passos
who, I regret to say, was
sick and unable
to attend on the day of
the final hearing, but I
instructed the Vakeel on
behalf of Government
to move the Court either
to obtain an adjournment
or to apply for a Com-
mission of Enquiry
to examine the Tahsildar.
The Vakeel has not re-
ported to me the result
of

of his motion and I have called upon him to do so. The three witnesses who were called to speak to the sale notice having been published on the 2^d April are: (1st) a Guinastah of the Oassan Suley who deposed to the due despatch of the notices to the Village Officers of the Agraharam on the 31st March and produced in support of this statement the Suley Office Despatch Book; (2^d) the Kurman of the Agraharam who deposed that he received the Notices on the 2^d of April and published them on the same day, after doing

doing which he handed over the Sahildar Sahed to the Agraharam Moonsiff; 3rd one Sahapathy Syiah a shareholder in the Thorapully Agraharam who stated that the notice was duly proclaimed on the 2nd and though he does not remember the exact date at this distance of time he traces it to a New Moon and by the Annual Ceremony of his father which falls on a particular day.

3. Of the three witnesses on the Plaintiffs side, one is the Agraharam Village Moonsiff. He is the 1st Plaintiff.

in the suit and the 2nd
and 3rd of Plaintiffs' wit-
nesses are more or less
related to him and
other Plaintiffs.

4. It will be seen that
the Judge lays great
stress on the fact that
the Joint Report of the
Village Moonsiff and
Kurmian stating that
they had published
the sale notices was not
made till the 16th April
though it was proved by
the Government witnesses
that the Notices were
received on the 2nd. This
delay is not to be won-
dered at when the fact
that the Village Moonsiff
was

was the Chief man among
the Agraharindars and
the Kurmian was natu-
rally interested in
the continuance of the
Agraharain on the
tenure on which it stood.
The Village Moonsiff must
have buried the Tah-
sildar's Saleed issued
to the Village Officer
sending the notices and
directing their publica-
tion, and it will be
seen from the Joint
Report of the 16th April
how carefully these
officers have avoided
mentioning the date
of either the receipt
of the Notices or of
the Tahsildar's Saleed,
or

on the date of publication
of the Notices. The careful
manner in which this
Report is worded and
the Petition which the
Monsieff sent subse-
quently (Exhibit C) with
others prone, I submit,
the very opposite to what
the Judge assumes. viz.
the improbability of the
Plaintiffs writing the
Petition in view to
subsequently disputing
the validity of the sale.
The Murrain has how-
ever accounted for
the delay in making the
report. He states that
after proclaiming the
Notice

Notice and handing over
the Sale to the Monsieff, he went away to
Dassor for 10 or 14 days
and that thinking that
the Monsieff would
make the report, he
did not do so; and it
was only on his return
to the Aggaraham that
it was made. I am of
opinion that it is most
important that an
appeal should be
preferred against the
District Court's Decision.
If the Board are of
the same opinion, I
trust that they will send
the necessary instructions
to the Government Pleader.
High

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appeal should be
preferred against the
District Court's Decision.
If the Board are of
the same opinion, I
trust that they will send
the necessary instructions
to the Government Pleader,
High

High Court

5. It is to be observed
that the judgment of the
District Court relates
to 53 1/2 out of 65 shares
of which the Agraharam
is composed.

6. Enclosed is a List of
the material papers in
the case.

I have no

/s/ B. J. Rongley
Collector

/s/ [unclear] Copy

W. H. [unclear]

Ag Secretary

[Signature]
CP [unclear]

I do accept the decision
of the Hon^{ble} Court. I do not
make any appeal.

In questions of fact
the Appeal should not
be taken. The finding
of the Hon^{ble} Court appears
to be correct. I do not
in the fact of 30th day of
the 1873. I do not follow
6 days before the sale
and I do not wish him
in the 1873. I do not follow
the Hon^{ble} Court. I do not follow
fair evidence that the
notice was not published
for a month before the
sale. I do not follow
It is the Hon^{ble} Court
that it was for the
interest of the Hon^{ble} Court
of the Hon^{ble} Court.

In these Pro: the Board
recommend that no ap-
peal be made to the High
Court on the decision of
the Civil Judge of Salem
in O.S. No 6 of 1873. by which
the sale by the Collector
of the Thirupuliy Appaharan
for arrears of Revenue was
cancelled & the Collector
adjudged to pay Plaintiff's
costs amounting to Rs. 100-0-0.
The point on which the whole
question turned was whether
one month previous notice
as required by the Act
was given before sale was
effected. The date of sale
was 9th May 1872. The date on
which notice was published
on the land is contained
by the Plaintiff to be 12th
April & by the Defendant (Collector)

Enclosure in Pro:
Proceedings under
O.S. No 6 of 1873
the Hon^{ble} Court.
Revenue Dept.
Dated 23/1/75
Per 20/3/75
Copy of the
from Collector
of Salem dated
8th May 1873.

enclosed 1) 2^d April 1872
 The Tahsildar's order ^{431 dated 1872} directing
 publication of notice was
 addressed to the Village Muz-
 daff & Curman-jumty. The
 former (Muzdaff) is one of the
 Plaintiffs & naturally in-
 terested in having the sale
 cancelled. He says he recd.
 the Taked on the 12th while the
 Curman. who is admitted
 to have opened the Taked.
 in the presence of the Muzdaff.
 appears it was on the 2^d April.
 The Civil Judge finding the evi-
 dence on both sides so evenly
 balanced, bases his judgment
 on the following ^{circumstances}
 1. Report of the Village Muzdaff.
 & Curman. replying to the Tah-
 sildar's Taked. regarding
 notice of sale. being ~~received~~
 on 16 April 1872
 2. Petition by Plaintiffs to the
 Subcollector, presented six
 days prior to the sale, having
 stated that the notice was
 published only on the 12th
 instant, & the fact having
 remained undisturbed
 by the Subcollector.
 It is submitted that

over & delay
 proof of the intention
 to sell if possible
 & I don't think
 the fact of the
 notice is suffi-
 ciently established to invalidate
 the inherent probabilities
 of the opposite case
 being true. L.B.
 29.5.73

I agree with the
 above remarks &
 would not appeal
 there.

Under any circumstances
 the case was a hard one
 worthy of consideration
 and the rectification in
 this manner is not to
 be regretted 16/6

we cannot have any
 bearing on the point
 The fact of the report having
 been made on the 12th cannot
 prove that the Taked reached
 the Village officers only on the
 12th & not on the 2^d as proved
 by the Collector. By the contrary
 the Taked having been dated
 21st March 1872, its receipt
 after a delay of 12 days
 we have been brought to the
 notice of the Tahsildar by
 the Muzdaff, if the facts were
 as alleged by him - but he
 has made no mention of the
 delay in his report. If
 he had added the fact that
 he was interested in supplying
 information in the procedure
 in view to the sale being
 ultimately pronounced an
 nullity, & also that the Village
 Curman makes a statement
 quite different from that
 made by the Muzdaff, it is
 clear that no delay whatever
 occurred in the delivery of pub-
 lication of the notice in that

22/1/71

The statement contained
in the petition to the Lord
Sh. has been made so
much of. The Lord Sh. will
not have known as well as
the T. Sh. the date of sale
etc; it cannot be expected
that such complete scrutiny
of statements in a petition
ought to be made.

There is thus no real ground
at all for the decision of the
court judge & yet the House of
Commons has no appeal.
need be made & that the costs
of the appeal should be paid
by the Plaintiff.

Orders are requested in
the subject.

The date at which the time
fixed for appeal expires
is not stated either in the
Collector's letter or the R.D.
No. 1; but according to the
Limitation Act, 90 days from
the date of judgment is fixed
as the limit for appeal to
the High Court. The appeal
if made should be made before
the 29 June 1871.

The Collector is
an appeal

28/1/71

Under the circumstances set forth by the
Board govt. agree. that it is not advisable
to carry the care of the higher Court -
the cost, amounting to Rs 1271... 12. an sanction.

After

27 June 1875 -

Indep. to the Board of Revenue and the Office of the Board of Revenue
to the Secretary General of the Government.