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B.P. No.

1386

Press
Mis.

Dated

29 - 9 - 1876
196 .Not to be folded or roughly handled

No. 368. Read the following Proceedings of the Board of Revenue, dated 15th September 1876, No. 2,356 :—

Read the following letter from W. S. FOSTER, Esq., Acting Collector of Kurnool, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 24th August 1876, No. 381.

I HAVE the honor to request the orders of Government on the following case which has arisen in the course of the water-rate settlement of the lands irrigated by the Madras Irrigation and Company's canal for the year 1875-76.

2. Certain ryots of the village of Devarayapuram applied for water for their fields situated in a detached block in the midst of the lands of Chintakunta, a village in Sirwell Taluq. The Company's Officers supplied the water applied for by means of new channels dug, but made no provision for the drainage of the surplus water left after the irrigation of the fields. The consequence was that the surplusage of the fields swamped and rendered unfit for use a village road of Chintakunta situated on the outer skirt of the fields but on a lower level. The villagers, therefore, objected to the irrigation of these lands, and prevented their being irrigated. Now the question has arisen whether the Company was bound to provide escape channels to lead away the surplus of the water which they had conducted into the fields, and, not having done so, are they bound to grant remission of water-rate to the ryots, who were prevented by the villagers from utilizing the Company's water.

3. Mr. Latham, the Company's Chief Engineer and Manager, contends that, under the terms of the Company's contract with the Secretary of State, the duty of the Company ceases when the water has been led into the field, and it is no concern of the Company what becomes of the water afterwards. He further argues that the village Curnam, who registers the applications for water, ought to have known of any objections there might exist to the irrigation of the fields in question, and informed the Company's Officers of the same before they put themselves to the expense of digging distribution channels to the fields, and, after they have done so, it is scarcely fair to the Company that they should be asked to remit the water-rate due to them, because the ryots for no fault of the canal officers failed to avail themselves of the water placed at their disposal.

4. I must admit there is a good deal of force in Mr. Latham's argument; under the rules now in force applications for canal water are in the first instance presented to the Canal Amin who gives the ryot a ticket with the number and approximate extent of the field written thereon. The ryot then takes the ticket to the Curnam, who, in conjunction with the Amin, inspects the field and enters its correct measurement in the ticket in ink, and registers the application. Now the Curnam as an officer intimately acquainted with the locality should have been perfectly well aware of any objections likely to be raised by the villagers to the irrigation of any particular fields, and was morally bound to communicate the same to the Canal Officers, as he would have done in the case of a durkhast for a piece of Government waste, though there is nothing expressly said in the Canal Rules regarding intimation to be given of objections to the Company's Officers. As he has not, however, done so in the present case, I must admit Mr. Latham's contention is reasonable.

*Proceedings of the Madras Government, Revenue Department,
29th September 1876.*

5. It was proposed by Mr. Latham and the Deputy Collector, Nundial, that the Local Fund Board should undertake to construct a culvert, or make a cutting in the road to provide an escape for the surplus water of the fields of Devarayapuram under reference. I do not, however, see how the Local Fund Board can be called upon to provide a remedy for a damage done by the Canal Company. On the other hand, I think the Local Fund Board can rightly and successfully sue the Company for damage done to their road. As however it would appear from the nature of the contract between the Company and Government that the former are not responsible for the damage done, there is no choice left to Government but to supply the remedy at their own cost. Mr. Latham has agreed to grant remission to the ryots concerned this year in case the Government would undertake to construct the proposed works, which are estimated to cost no more than 40 or 50 Rupees.

SUBMITTED for the orders of Government with the Board's recommendation that, under the circumstances, the execution of the necessary works be undertaken by Government as proposed.

2. The Board are, however, of opinion that the Company are bound to provide an escape for surplus water, and that their contract does not relieve them from responsibility for damage done to the communications of the district.

(A true Copy and Extract.)

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

No. 369.

ORDER THEREON, 29th September 1876, No. 1,386.

Irrigation, No. 7.

THE execution of the works is sanctioned under the special circumstances brought to notice on the condition that the water-rate is remitted as proposed.

2. The Government consider that the users of the water should provide means of escape for the surplus not wanted by them, without damage to their neighbours, although in the particular case brought to notice the Government would carry out the works to prevent discouragement to the ryots.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

Read the following letter from W. S. FOSTER, Esq., Acting Collector of Kurnool, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 24th August 1876, No. 381 :—

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4. I must admit there is a good deal of force in Mr. Latham's argument; under the rules now in force applications for canal water are in the first instance presented to the Canal Amin who gives the ryot a ticket with the number and approximate extent of the field written thereon. The ryot then takes the ticket to the Curnam, who, in conjunction with the Amin, inspects the field and enters its correct measurement in the ticket in ink, and registers the application. Now the Curnam as an officer intimately acquainted with the locality should have been perfectly well aware of any objections likely to be raised by the villagers to the irrigation of any particular fields, and was morally bound to communicate the same to the Canal Officers, as he would have done in the case of a durkhast for a piece of Government waste, though there is nothing expressly said in the Canal Rules regarding intimation to be given of objections to the Company's Officers. As he has not, however, done so in the present case, I must admit Mr. Latham's contention is reasonable.

Obit: of 1876 } Andrews

REVENUE.



5. It was proposed by Mr. Latham and the Deputy Collector, Nundial, that the Local Fund Board should undertake to construct a culvert, or make a cutting in the road to provide an escape for the surplus water of the fields of Devarayapuram under reference. I do not, however, see how the Local Fund Board can be called upon to provide a remedy for a damage done by the Canal Company. On the other hand, I think the Local Fund Board can rightly and successfully sue the Company for damage done to their road. As however it would appear from the nature of the contract between the Company and Government that the former are not responsible for the damage done, there is no choice left to Government but to supply the remedy at their own cost. Mr. Latham has agreed to grant remission to the ryots concerned this year in case the Government would undertake to construct the proposed works, which are estimated to cost no more than 40 or 50 Rupees.

SUBMITTED for the orders of Government with the Board's recommendation that, under the circumstances, the execution of the necessary works be undertaken by Government as proposed.

2. The Board are, however, of opinion that the Company are bound to provide an escape for surplus water, and that their contract does not relieve them from responsibility for damage done to the communications of the district.

(A true Copy and Extract.)

Acting Secretary.

To the Secretary to Government, Revenue Department.

Copy to the Acting Collector of Kurnool.

Ed. A. Grubert.

No. 1036 of 29 September 1876

The execution of the works is sanctioned under the special circumstances aforesaid. In view of the fact that the water is not to be supplied to the ryots, the Government are not responsible for the damage done to the ryots.

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Intention of certain fields in Devarayapuram Village in Kurnool District. - Submittal to Government Collector's letter relative to proposal to construct a culvert or make a cutting to provide an escape for surplus water left after - and recommending that execution of necessary works be undertaken by Government.

SEPTEMBER.
No. 2,356.

25th/10/76

25th/10/76

PROCEEDINGS, 15th SEPTEMBER 1876, No. 2,356.

BOARD OF REVENUE,
MADRAS.

1876.

No. 2355
25th/10/76

Memo for the

1350

Board's Proceedings

15 Sept. 1876 No. 2356.

The question raised is who is responsible for the damage caused by the supply of canal water for irrigation purposes by the Irrigation & Canal Company on application made to them according to rules. The Company are not responsible because there is nothing in their contract with Government binding them to make good damage done by their proceedings under the contract. But it is not a contract with the Government. It is a contract with the ryots. The ryots are not responsible for the damage done to the ryots. The ryots are not responsible for the damage done to the ryots.

Circular

Don't say the liability of the Company

The applicant practically led the water to the cause of loss. And the Board cannot go into the County cutting drainage channel. I say as little as possible about this.

I don't want to say as little as possible about this. I don't want to say as little as possible about this. I don't want to say as little as possible about this.

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interfere with the
operation of the public.
The court can take cogni-
zance of the plea & the
company will certainly
be held liable for the
natural consequences
of their act. - But it
is however contended
that as the Village Council,
who is a public official, is
generally a party to the
transaction, viz the water
supply, the Govt is as much
responsible for the act or
omission of their subordinates
as the Company is for those
acts done by them. To this
it might be alleged that
there is no special stipulation
that the officers of Govt are
bound to give information
to the Canal officers & the
plea put forward by the
Government, viz want of express
stipulation, is likely to be
a mere special plea in
the

Order to prevent the
Company
20th Nov
M M

the case of Village Officers
in as much as the law
cannot under the cir-
cumstances consider
them amenable for the
damage. They are besides
were assistants & not
company's officers; &
cannot be held primarily
responsible for the Company's
proceedings. For these
reasons it is submitted
that as a rule the Company
should be called upon
to indemnify parties
for damages caused by
their act, & to arrange
for the precaution of proper
means for preventing
such damages before
undertaking the water
supply. The Village Officer
will of course be entitled
to afford all assistance
under the Act, in the

expanding restlessness
with the company.

In the case brought
to notice, the settlement
proposed was accepted
by (1) with the company and
the other two.

to the rights (2) that the
Government had carried out
the proposed work intended
to prevent the damage
caused by infiltration
because the case brought
forward is the first of its
kind; & because the
expenditure involved
is trifling.

D

22 Sep R 29: Sep:
25 Sep R 27: Sep: