

(1) Number of pages 12
(2) Date of repair 7-10-69
(3) Initials of the Referencer

MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.		Press
B.P. No.	389	Mis.
Dated	12-2-1876	156

Not to be folded or roughly handled

See

order of
...
... relate to
... of
... caused by
... of the
... of having
... from culti.
... in the
... which had
... have
... be
...
... of his
... 2 mi
... of
... of
... Adv.
... of
... 11 Feb 1898
... ^{then} Sept. - Both questions
... taken up by him

on the subject was in that kept in among S. C.
The Rev. Sept. also told us on inquiring of his having
that the subject would be desired of by them; yet the hopes have been
now transferred by them to the returned in the
chief Engineer & the remarks of the Navy
of the House Mr Ellis thereon. The letter
ye be crossing

that had resulted in the
-mining & breaching of his flood
embankment, & 2 mi
General question of leasing
for his convenience of
cows refer to his adv.
-case fencing & the H. of
Revenue in G.O. 11. Dtd 3/1/05
no 380. Per Sept. - ^{then} No ^{then} questions
have been taken up by him

Works Sept. & will be fully
gone into & desired of
that Sept. The Board
have sent their present
Proceedings to the P.W. Sept.
& the ~~Board~~ object of sending
the papers also to the Revenue
Department is not apparent.
If it is only for information,
the Proceedings may be lodged,
but if for remarks, they
have to be sent up for orders.
Instructions are requested under subje

LD
6.7.76

It may as well be wished here
that the Public Works, 16 d/11 Feb
1875 no 100 was communicated
to the H^o of Revenue. through
the Revenue Dept, while
P.W. 19 April 1875 no 1106
was communicated direct
to the H^o of Revenue.

LD

*Conservancy of
Rivers*

*Receipt for the order
of the Secretary*

*1st April
Found out in L.P.W.
that the bank is the
proprietary of the
L.P.W.*

*In the P.W. Department
are all the papers of the
L.P.W. Proceedings
have been sent to the
members for order -
It seems sufficient to
send this paper in the
Department of the P.W.*

No. 32.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 7th January 1876.

Read again the following papers:—

G. O., dated 15th February 1875, No. 296, Revenue Department, recorded in Board's Proceedings, dated 15th March 1875, Miscellaneous No. 2,105.

G. O., dated 19th April 1875, No. 1,106, Public Works Department, recorded in Board's Proceedings, dated 19th May 1875, No. 1,358.

Read also the following papers:—

Proceedings of the Madras Government, dated 28th August 1875, No. 1,827, Revenue Department:—

ABSTRACT.—Communicating to the Board of Revenue for their information and guidance Proceedings, Public Works Department, on the subject of conservancy of rivers in the Madras Presidency.

From H. G. PRICHARD, Esq., Government Solicitor, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Madras, 7th July 1875, No. 326:—

I HAVE the honor to acknowledge the receipt of the Proceedings of the Board of Revenue, dated 19th May last, No. 1,358, together with their enclosures, requesting the Advocate General's opinion relative to the claim for compensation made by the proprietor of Chedipi Village, in Godavery District, on account of his having been prevented from cultivating some ground in the bed of the Godavery.

2. I submitted the matter for the consideration of the Advocate-General, and I now forward, herewith, a copy of his Opinion, and return the enclosures which accompanied the above Proceedings.

ENCLOSURE No. 1.

Opinion.

In G.O., No. 69, 28th August 1874, No. 2,442, (Irrigation No. 63), my opinion was desired as to the rights of Government on the one hand, and riverain proprietors on the other, in respect of accretions on river sides and beds of rivers, which vary considerably in width at different times of the year.

2. The opinion which I submitted in obedience to that order indicates the rules which, in my opinion, govern this subject and the difficulties which beset it. The Government has issued order (15th February 1875, No. 250-2) for the preparation of a Bill to deal with these difficulties.

3. The present case, if I understand the facts aright, falls clearly within the general rule that all riverain rights must be so enjoyed as not to interfere with, or endanger the rights of, other persons similarly interested. The grass appears to have been planted in the actual bed of the river for the purpose of checking an erosion which endangered the existence of a neighbouring village; and compensation is now claimed by the riparian proprietor on the ground of interference with his alleged right of rooting up this grass for the purpose of planting tobacco. I am of opinion that no such right can be maintained, and that the claim should be resisted on the grounds: first, that there can be no right, prescriptive or other, to cut the bed of a river; and second, that even if any such right existed, the rooting up of the grass endangered the course of the river and the right of other riverain proprietors.

(Signed) H. S. CUNNINGHAM,

Advocate-General.

5th July 1875.

(True Copy.)

(Signed) H. G. PRICHARD,

Government Solicitor.

From the Collector of Godavery,	17th April 1875.	No. 139.
" " of Kistna,	27th Oct. "	" 1,455.
" " of Nellore,	23rd June "	" 1,698.
" " of Chingleput,	28th May "	" 289.
" " of North Arcot,	27th "	" 272.
" " of South Arcot,	28th April "	" 179.
" " of Tanjore,	21st May "	" 187.
" " of Tinnevely,	14th April "	" 171.

In the first Government Order read above, Government ordered the preparation of a Bill, for the conservancy of rivers, by the Advocate General, in communication with the Board of Revenue and the Chief Engineer for Irrigation, and communicated a memorandum by the latter officer setting out the principal matters which in his opinion should be provided for in the proposed enactment; and with the G.O. of 28th August 1875, a precis of remarks by Superintending and District Engineers of certain districts, with Colonel Mullins' comments, was furnished for the Board's information. The letters from Collectors above recorded are replies to the Board's call for reports on the subject referred to them.

2. Colonel Mullins' proposal contemplated action with regard to deltaic rivers only, which definition was to include the lower parts of all rivers liable to spill in high flood. It is suggested by several officers that there is no object in confining the scope of the proposed Act to such portions of rivers, and the Board fully agree in this opinion. There are many rivers and portions of rivers which are not deltaic or lower portions, but in which nevertheless it might be necessary to adopt systematic measures of conservancy requiring special powers; and the adoption of Colonel Mullins' proposal would induce a formidable difficulty as to definition of a deltaic river or the lower portion of one.

3. The question as to what constitutes the bed of a river cannot as stated by the Advocate-General be decided by means of any general definition; but the facts of each case must be considered. Several definitions, such as the tract comprised between embankments; the area submerged in ordinary floods, or maximum ordinary floods; or up to the lip of the lunka washed by the stream have been suggested; but all seem to the Board to be unsatisfactory, and they would not attempt any definition.

4. The difficulties referred to in the last two paragraphs can best be met by making the Act applicable only to such rivers or portions of rivers as the Government may decide, and providing that before the application of the Act, a survey and river chart shall be prepared, and that the limits within which the Act confers special powers shall be marked on the map and on the ground by special marks when necessary.

5. As to the property in marginal or mid-stream accretions, which Colonel Mullins thinks should be conferred on Government, the Board observe that there seems to be at present a more or less settled rule of law on the subject which they think ought not to be abrogated so completely as Colonel Mullins proposes. So long as suitable powers are conferred upon conservancy officers for the regulation of the use of such accretions or formations, the question of property is of secondary importance; and it is clear that though the use of the land for some purposes, for example, cultivation, might prejudice conservancy, the property in it might be very

valuable, for others such as pasture which would be in no way injurious. Colonel Mullins' suggestion seems to be made in order that if it be hereafter necessary to take up any of these formations for conservancy purposes, Government may be saved the expense of paying compensation. But it seems to the Board unjust to confiscate valuable and extensive private rights to secure a mere contingent benefit to the State, of a value which will probably be but a fraction of that so confiscated. The Board think that it would be well to enact in the proposed new law an express provision as to proprietary rights in alluvial formations, similar to the law contained in Bengal Regulation XI. of 1875.

6. The proposed law need not contain any special provisions for the acquisition of land for conservancy purposes, as the ordinary Land Acquisition Act is sufficient. With reference to Colonel Mullins' suggestions I.-c, the Board are decidedly of opinion that compensation should be paid in all cases when there is a valid private title, whether under putta, title-deed, or survey registry; or merely acquired by prescription; and they think that it is undesirable to rule as proposed in I.-d, that the property in land reclaimed by conservancy works carried out at the public expense should vest in the Government. It might be difficult to prove that the reclamation was due to the particular work; and it may be assumed that, the work having been undertaken in the interests of conservancy, it will suffice if that object is attained. The Board would leave the property in such accretions to be determined by the ordinary rule.

7. The Board do not attach importance to the remark by the Collector of Kistna that the beds of the rivers are shown by old surveys to belong to the riparian villages, some of which are Zemindari and some foreign. It is probably beyond doubt that the beds are in all cases registered as poramboke, or land reserved for public purposes, in Zemindaries as well as Government villages, and is not available for cultivation or private appropriation. The theoretical point as to whose the property is, is not important; the practical question is to obtain adequate powers to regulate the use of the bed. Where part of the river is foreign territory no Act can apply, and conservancy must be made matter of negotiation. The Board do consider that it is objectionable to enact that new formations in mid-stream shall belong to Government even where both banks are Zemindari. The rights of Zemindars to porambokes are not very clearly defined.

8. There seems to be a pretty general agreement as to the nature of the powers to be conferred by the Act on conservancy officers, viz:—power to permit or prohibit cultivation or plantation, or the construction of any works or buildings whereby the course of the stream may be affected, with adequate remedies and penalties for disobedience or contravention of rules on these points. The injurious practices referred to in some of the reports, e.g., digging wells within fifty yards of the toe of the embankment, making sluices temporary or permanent therein, cutting trenches for deposit of river silt, &c., might be left to be embodied in by-laws for each particular river which Government might be empowered to pass, on the proposal of conservancy officers.

9. The Draft Act is to be prepared by the Advocate-General; and the Board resolve to forward to him the accompanying paper containing the heads of the Bill as the Board would frame it, with marginal notes explaining, where this seems necessary, the reasons which lead the Board to propose particular provisions. The

general principle of the Act should be that the conservancy officer should have ample power to do what may seem to him necessary, subject to compensation being scrupulously awarded where private rights are invaded or private property damaged in the interests of the public, or of the riparian proprietors as a body. If the Advocate-General desires a personal conference with the Board, and the Chief Engineer, such can no doubt be arranged.

10. The Advocate-General's opinion in the Chedipi case (G.O., 19th April 1875, No. 1,106, Public Works Department) received with the letter from the Government Solicitor will be submitted for the information of Government. There appears to be no doubt as to the course to be pursued; and such cases are amply provided for in the Board's proposals.

(True Copies and Extract.)

[Signature]

Acting Secretary.

To the Secretary to Government, Revenue Department, with file of
Collectors' reports, and paper containing proposed heads of Draft Bill;
also copy of Board's Proceedings, dated 19th May 1875, No. 1,358.
,, the Secretary to Government, Public Works Department, with six
enclosures to G. O., dated 19th April 1875, No. 1,106 returned.
,, the Advocate-General, with paper containing proposed heads of Draft Bill.
Copy to the Government Solicitor.

,, to the Collector of the Godavery District, with copy of G.O.,
dated 28th August 1875, No. 1,827, Revenue Department.
,, to the Collector of the Kistna District, with do.
,, to the Collector of Nellore, with do.
,, to the Collector of Chingelput, with do.
,, to the Collector of North Arcot, with do.
,, to the Collector of South Arcot, with do.
,, to the Collector of Tanjore, with do.
,, to the Collector of Tinnevely, with do.

Exd. W. H. French.

File 65-669/96

*4.0.1876/1000 296/111
30 April 1876
30 Aug 1876
10 Sept 1876 - 21/11/76*

Board of Engineers,
MADRAS.

PROCEEDINGS, 7TH JANUARY 1876, No. 32.

Copy to Secretary

J. V. D. L. V.
No. 32.

Received 23rd Feb.

*Encl. 3
Copy to
Govt. Secy
for Mr.
[unclear]*

Consentancy of Rivers.—Submitting to Govt. for settlement, with Board's remarks, reports from Collectors regarding preparation of a Bill for —, and Opinion of Advocate-General on a claim for compensation preferred by a party in Godavery District for his having been prevented from cultivating some land in Godavery, River; also forwarding to Advocate-General a paper containing heads of Draft Bill. Board would frame it.

10.4.76 12.7.76