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Regular
Miscellaneous

No. 6340 of 1895

FOR WHAT CURRENT.		To whom given.	When taken out.
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Revenue (1899) Department.

MISCELLANEOUS SERIES.

G.O., No. 155

DATED 10th Jan 99

[Despatch Abstract.]

stating that the Court of wards should obtain on behalf of the minor proprietors of estates under the Court, written applications from their legal guardians, for the survey of such estates already directed by Govt.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Cur 291/77			2.57				
			31-1-99				
Cur 7559/29							

Judicial (1898) Department.
Revenue

CURRENT No. 7828

From

The Secretary
to the Court of Wards.

Order Nos.

Recorded.

No. 9. Press.

Dated 31st October 1898.

Received 16/11

Registered 17/11

Enclosures —

Spare copies

19/11/98

To

The Court of Wards.

SUBJECT.

Registrar

In the Sivaganga paper
it was decided that
if the Survey was ordered
from Govt funds the
proprietor should not recover
anything from his
element under section 20.
Please put up that paper

Passing orders on letter from the
Colly of Vizagapatnam asking for an allot-
ment of Rs. 11,000 and a permanent advance
to the Survey Office of Rs. 1000 in account
of the Survey of the Kassin Kota Estate,
and requesting certain Colly to report
on the question of applying to Govt
for the recovery of a portion of the
cost of survey from the tenants of
the estates concerned.

19/11/98

21-11-98

BACK PAPERS.

G.O.	No.	Department.	Date.
	4395	Min. Secy.	22-9-97
	2824		4-6-97
	866		8-11-97

FURTHER PAPERS.

G.O.	No.	Department.	Date.

REVENUE DEPARTMENT.

1898.

Court of Wards,

MADRAS.

Printed November 15th.

Proceedings, No. 9, Press, 31st October 1898.

OCTOBER.

Passing orders on letter from the Collector of Vizagapatam asking for an allotment of Rs. 11,000 and a permanent advance to the Survey officer of Rs. 1,000 on account of the survey of the Kasimkôta estate; and requesting certain Collectors to report on the question of applying to Government for the recovery of a portion of the cost of survey from the tenants of the estates concerned.

PROCEEDINGS OF THE COURT OF WARDS.

READ—the following letter from W. O. HORNE, Esq., Collector of Vizagapatam, to the Acting Secretary to the Court of Wards, dated 4th September 1898, Dis. No. 1595 :—

Referring to the correspondence ending with Court's Proceedings, Mis. No. 1696, dated 3rd November 1897, I have the honour to forward, herewith, a copy of letter No. 2, dated the 21st ultimo, from the Assistant Superintendent, No. I Survey Division, and to request that the Court will sanction Rs. 11,000 on account of the cost of survey operations of the Kasimkōta estate, and a permanent advance of Rs. 1,000 to the Survey officer. I do not see any necessity for debiting the charges in the first instance to Government and recovering the same from the estate.

2. Referring to the notification, I have the honour to observe that section 9 applies to cases where the cost of survey operations are debitable to numerous ryot-wari or other small holders. In this case the Kasimkōta estate pays the whole cost, and may be billed direct. I have amended accordingly the draft notification received with the Assistant Superintendent's letter, and enclose copy of the amended notification for the Court's approval.

ENCLOSURE No. 1.

From D. G. HATCHELL, Esq., Assistant Superintendent, No. I Survey Division, Waltair, to the Collector of Vizagapatam, dated Camp Aska, 21st August 1898, No. 2/Estate.

Referring to your letter, No. 1455/Estate, dated 11th instant, I have the honour to forward, herewith, a copy of the estimate showing the particulars of charges that will be incurred in connection with the survey of the Kasimkōta estate which is exclusive of the cost of hired labour, &c., as desired by you.

2. I have further the honour to enclose herein a notification regarding the survey of the said estate, for publication in the District Gazette in three consecutive issues in accordance with the provisions of sections 6 and 9 of the "Madras Survey and Boundaries Act No. IV of 1897" and to request you will accord sanction, as required in section 9 of the Act, to charge the cost of the operations, &c., detailed in paragraph 2 of the enclosed notification to Government in the first instance and to recover the same from the Court of Wards on behalf of the proprietor of the estate under section 19 of the said Act. This procedure is very necessary as delay to the work is sure to occur if the surveyors should have to depend on the ryots for daily labour. In the event of your according sanction, I request you will place a floating advance of Rs. 1,000 to my credit; all amounts chargeable to the estate on account of labour, &c., will be drawn by me in Survey officers' bills.

ENCLOSURE No. 2.

SURVEY NOTIFICATION.

Kasimkōta Estate.

The survey of the Kasimkōta estate, Vizagapatam district, having been sanctioned by Government (*vide* Government Order, No. 866, dated 11th October 1897), tenants of lands in the villages of the said estate, and persons who may have any other interest in such lands, are hereby informed that the survey of the said estate will be taken up immediately. They are invited to attend the surveyors deputed to make the survey, in person or by agent, at the villages wherein the lands in which they have an interest are situated for the purpose of pointing out their boundaries and supplying information in connection therewith.

2. The cost of the following operations, labour and material will be defrayed in the first instance by the Local Government and recovered from the estate :—

- (1) Clearing boundaries or other lines which may be necessary for the purposes of the survey by cutting down or removing any trees, jungle, fences, standing crops or other material obstructions.
- (2) The employment of flag holders and chainmen.
- (3) Survey stones.

(Ganjam,
21st August 1898.

(Signed) D. G. HATCHELL,
Survey Divisional officer,
No. I Survey Division.

ENCLOSURE No. 3.

AMENDED NOTIFICATION.

Kasimkōta Estate.

The survey of the Kasimkōta estate, Vizagapatam district, having been sanctioned by Government (*vide* Government Order, No. 866, dated 11th October 1897), tenants of lands in villages of the said estate, and persons who may have any other interest in such lands, are hereby informed that the survey of the said estate will be taken up immediately. They are invited to attend the surveyors, in person or by agent, at the villages wherein the lands in which they have an interest are situated for the purpose of pointing out their boundaries and supplying information in connection therewith.

VIZAGAPATAM,
4th September 1898.

(Signed) W. O. HORNE,
Collector.

RESOLUTION—No. 9, Press, dated 31st October 1898.

With reference to paragraph 2 of his letter, the Collector's attention will be drawn to section 18 of Madras Act IV of 1897, which requires the Survey officer's procedure to be regulated as far as may be by the provisions of Chapter II of the Act. A notification in the terms of sub-section (3) of section 6 being clearly inappropriate to a case in which the proprietor of the estate has formally expressed his consent to defray the whole cost of the survey, Mr. Hatchell rightly drew up the notification in the form contemplated by section 9, *i.e.*, stating that the cost would in the first instance be defrayed by the Local Government. It is to be observed that this is also the course which appears to be contemplated by the wording of section 19, which provides for the recovery from the proprietor of the costs incurred by Government. For the proper audit of such charges it is probably better that they should pass through the Accountant-General's books, and having regard to this aspect of the question as well as to the literal requirements of the law, the Court considers it preferable that the cost of survey should, in the first instance, be defrayed from Provincial funds, the expenditure being recouped from time to time as occasion requires by contributions from the funds of the estate. The Accountant-General will accordingly be requested to place at the disposal of the Survey officer the floating advance of Rs. 1,000 which Mr. Hatchell has applied for, and to state whether he desires an immediate contribution from estate funds to make good the expenditure on the survey, and if so what amount will suffice.

2. The Collector is requested to consider whether it is expedient to make an application to Government under section 20 of the Act for the apportionment of the cost of the survey among the lands surveyed with a view to the recovery of a portion of it from the estate ryots. The Government has not laid down the principles which will be followed in dealing with such applications, but before approaching it on the subject, the Court would like to have some idea of the extent to which the proprietor will be a gainer by the survey and to be placed in possession of information showing whether the ryots on the other hand are likely to derive material benefit from it, and if so, whether the rate of rent which they pay and the terms of their tenancy are such as to make it equitable to recover the whole or a specified proportion of the cost of the survey from them.

3. A copy of the preceding paragraph

Ganjám.
Kistna.
North Arcot.
Madura.

Tinnevelly.
Coimbatore.
Salem.

Serugada.
Telaprole.
Timmajiammal's estate.
Saptur.
Mambarai.

will be communicated to the Collectors of the marginally-noted districts with the request that they will report as to the advisability of making a similar application to Government in regard to the undermentioned estates now under survey:—

Some villages in the Ettiyapuram estate.
Sivagiri.
Sivasamudram.
Kakangarai.

Care should be taken to see that the report now called for reaches the Court in sufficient time to admit of orders being passed on the matter before the completion of the survey, as the apportionment, if directed, should be carried out by the officers conducting the survey.

(True Copies and Extract.)

Acting Secretary.

To the Collector of Ganjám,
" " of Vizagapatam,
" " of Kistna,
" " of North Arcot,
" " of Madura,
" " of Tinnevelly,
" " of Coimbatore,
" " of Salem,
" Accountant-General.

Managers.

Copy to other Collectors in charge of wards' estates (Managers).
" Collectors, except Madras.
" to the Secretary to Government, Revenue Department.
" " Superintendent, Revenue Survey.

Exd. T. K. Narayana Aiyangar.

Copy of "opinion" of the Advocate-General.

dy 14. Nov 98

O P I N I O N.

1. For the purposes of the Madras Survey and Boundaries Act (IV of 1897) proprietor is defined as "any person in whose name any estate is for the time being registered in the office of the Collector of the district wherein the estate is situated". Under Section 17 Clause (c) of the same Act, the Local Government may, by notification, direct the survey of any estate on the application in writing of the proprietor of such estate.

2. It is clear that the Vizianagaram Zemindary is an "estate" within the meaning of Section 3 of Madras Act IV of 1897, and it is equally clear that the Minor Rajah, as soon as the estate is registered in his name in the office of the Collector, could, if he were sui juris, apply under Clause (a) of Section 17 of the Act of 1897 for an order directing the Survey of the Zemindary. Mr. H. F. W. Gillman is the guardian of the Minor Rajah appointed under the Guardian and Wards Act, 1890, and the question for consideration is whether the Government can take action under Clause (a) of Section 17 of the Act of 1897 on the written application of the Guardian.

3. Section 27 of the Guardians and Wards Act 1890 empowers the Guardian of a Ward to do all acts which are reasonable and proper for the realization, protection or benefit of the property. There can be no question that the survey of the estate in question would be for the protection and benefit of the property; but it seems to me that the general powers conferred upon the Guardian do not constitute him the "proprietor" of the estate for the purpose of enabling him to apply under Section 17 Clause (a) of Act IV of 1897. The narrowness of the definition of "proprietor" in Act IV of 1897 is unfortunate, but as the law stands, I do not think

C. No. 7828 of 1898.

From the Court of Wards.

Dated 31st October 1898 Pro Ho 9
(Registered 17th November 98).
FOR ORDERS.

Paras 2 & 3 of Court's Pro Ho 9
of 31 October 1898.

that Government can direct the Survey of the estate in question under Clause (a) of Section 17.

4. There seems no reason, however, why the survey should not be directed under Clause (b) of the Section in question, or why, pending the issue of the notification, the work should not be commenced as suggested by Mr. Gillman in paras 5 and 6 of his letter of October 2nd 1898.

Madras.
14th November 1898..}

/Sd/. C. Arnold White.
Advocate-General.

In the Proceedings read above, the Court of Wards while passing orders on a letter from the Collector of Vizagapatam re: the Survey of the Kassimkote estate requests the Collectors of Vizagapatam & some other Districts to report on the question of applying to Government under Section 20 of Act IV of 1897 for the recovery of a portion of the cost of survey of proprietary estates from the tenants. The Survey of the estates in question was ordered by J. & B. the Court of Wards having agreed on behalf of the minor proprietors to defray the whole cost of such survey from estate funds.

2. Section 17(a) of Act IV of 1897 provides that the Local J. & B. may, by notification direct the survey of any estate on the application in writing of the proprietor of such estate & as the term "proprietor" is defined in

Act as "any person in whose name
any estate is for the time being registered
in the office of the Collector of the District
wherein the estate is situated."

~~It was thought that~~
It was thought that
minors could apply for the survey of
their estates through their
guardians. But the Advocate General
has recently pointed out that the
general powers conferred upon a guardian
do not constitute him the proprietor
of the estate for the purpose of enabling
him to apply under Section 17 (a) of
Act IV of 1897. It is therefore proposed
to amend the definition of the term
proprietor to include among others
the manager appointed by the Court
of Wards in the case of the estates
under its management.

3. In the above circumstances the
survey of estates already ^{directed} ordered by Govt.
at the instance of the Court of Wards
must be regarded as having been ordered
by Govt. under Section 17 (b). ~~Therefore~~
The question arises whether the cost
of the survey in these cases can be
recovered from the estates concerned.
The proviso to Section 19 lays down that
cost shall be recovered from the

FOR ORDERS.

vide opinion 8/14 November 98 H.
in F.O. No 4809 37 December 98

not available now
put up with encl 602

Volume
No 399

The purpose seems to be with the Secretary.

Taken out of the
file with the
H.C. permission in
an 10-4-99
Volume I attached
10.4.99

clause (b) of Section 17 shall be borne
by the Local Government unless other-
wise prescribed by any law for the time
being in force. The Court of Wards having
agreed to defray the cost from the estate
funds there seems to be no difficulty
in recovering it from the estates concerned.
But the estates cannot recover any
portion of the cost from the tenants under
Section 20 of the Act. It is submitted
that the Court of Wards may be
informed that the survey of estates
already sanctioned must be regarded
as having been ordered by Govt. under
Section 17 (b) and that while the cost
is recoverable from the estates inasmuch
the Court has agreed to bear it from
estate funds no portion of it can be
recovered from the tenants under Section
20, as there is no proprietor
at present to apply under the
Section

L.R.
10/12/98

Secy
12/12/98

The Adv. Gen. tells me that
it will be practically safe
to accept the guardian's ap-
plication as that of the
proprietor under Sec 17 (a)

he may proceed on that hypothesis until the necessity of the Bill is further considered.

S.R. 13/12/98

Please see draft for. Submitted below

14/12/98

Secy
He
C.S.

question whether

10/11/97

Revenue Department

Read Pro. of the Court of Ward
No 9 of 31 October 1898.

(Cno. 7828 of 1898) 1099

Lt. Col. Mier. In order to avoid any
the survey of estates under
the management of the Court of
Wards already directed by prob.
cannot be regarded as having
been properly ordered under Section 17(a)
of Act IV of 1897, In view of these
cases under Section 17(a) the
Court of Wards should obtain
on behalf of the minor proprietors concerned
written applications
from the legal guardians on behalf of
the minors concerned on their behalf

He
10-1-98
S.R. 10-1-

To the Court of Wards.
no. 12-1-97

14/12/98

Revenue (1899) Department.

When given for copying _____
When copied _____
When examined _____
When signed _____

189 .

READ AGAIN G.O., No.
189 ,

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

SENT WITH DITTO.

YES NOT ED UP, BEING MEANT FOR DESPATCH
IN SIGNAL.

N.B.—

- A = Copy in full.
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