

Dec
Revenue (189/) Department.

MISCELLANEOUS SERIES.

G.O., No. 1731

No 419.
DATED 13 March 91

[Despatch Abstract.]

*Ans. Regarding Road's Pro. re. the forest
settlement of the Attipadi valley.*

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

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



Reverend

2. The papers submitted.
by the (Bureau of) B.P. no. 65.
of 23 Feb. 51. will be forwarded
to the Sec'y. Please. Run 13 Dec. 51.

$$\frac{22-3497}{13-10.80} ; \frac{50.166}{23.86} ; \frac{3861}{17.86} ; \frac{2914}{16.5.88}$$
$$\text{ex. } \frac{630}{1.7.87}; \frac{354}{17.5.88}; \frac{2860}{8.7.84}; \frac{611}{22.7.86}$$
$$Q.O. = \frac{6325}{24-10.86} ; \frac{3578}{12-6.89} ; \frac{7456}{10-12.86} ; \frac{6621}{6-11.88}$$
$$C.O. \quad \frac{5735}{26.9.88} ; \quad \frac{1307}{24.2.88} ; \quad \frac{145}{31.1.87} ; \quad \frac{889}{12-10-86} ;$$
$$q.o. \frac{313}{4.5.86}; \frac{359}{24.5.85}; \frac{470}{6.5.82};$$

CONFIDENTIAL.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

MR. W. S. WHITESIDE.

READ—the following letter from J. W. F. DUMERGUE, Esq., Acting Collector of Malabar, to the Secretary to the Commissioners of Land Revenue, dated Calicut, 29th November 1890, No. 4134-P:—

I have the honor to submit, for orders, a letter, dated 4th October 1890, No. 1807, from the Conservator of Forests, Southern Division, enclosing notes (in original) by the Forest Settlement Officer and the District Forest Officer, South Coimbatore, on the subject of forest settlement in the Attapadi valley.

2. In these papers is discussed the course of action which it is most advisable for Government now to adopt, and certain alternatives are suggested. But considering the complicated nature of the operations, it appears to me necessary, before dealing with the proposals now made, to review the past history of the case and the present position as briefly and as clearly as I can.

3. The Attapadi valley is a tract of country measuring 232 square miles and situated in the Aravakurishi amsam of the Walawanád taluk. In 1879 Government brought a suit against nine individuals, in O.S. No. 15 of 1879 on the file of the Subordinate Judge, Calicut, for a declaration “that the lands, hills and forests forming the upper watershed of the Bhaváni river, and known by the name of the Attapadi valley, are the absolute property of Government, and that the defendants have no right or title thereto.”

Of the nine defendants, the third, fourth, fifth, sixth and seventh expressed their willingness to surrender their claims, and the ninth relinquished his rights to the eighth. Hence the suit proceeded against the first, second and eighth defendants (who were, respectively, the Eralpad Raja, the Mannarghat Nair and Colonel Scott), and the eighth defendant merely set up a title under the second defendant.

The Judge found that Government had failed to prove its title, and dismissed the suit with costs. This decree was confirmed by the High Court in appeal No. 100 of 1879, with the observation that the judgment left unaffected the right of the Crown to revenue or the rights of inferior proprietors. But while the judgment placed beyond all doubt the fact that Government has no present right to the lands, it did not affirm that they or any part of them belonged to any of the defendants. Thus the only result is that Government has been eliminated, and the question of ownership remains as problematical as ever.

4. Subsequently to the decision of the High Court, various attempts at negotiation were made, and it appeared in 1884 that the two principal claimants, the Eralpad Raja and the Mannarghat Nair, were disposed to come to reasonable terms. But later on, the same year, both these claimants rose in their demands—the Nair holding out for 20 lakhs—and negotiations were broken off. The only claimant with whom a settlement was made was Colonel Scott, the eighth defendant in the suit, and by the arrangement sanctioned in G.O., dated 1st July 1886, No. 3861, and

G.O., dated 16th May 1888, No. 2938, Revenue, Colonel Scott pays to Government an assessment of Rs. 281-8-0, while Government pays to the Mannarghat Nair Rs. 500 a-year as rent for the lands held by Colonel Scott.

5. After the failure of negotiations, steps, under Chapter IV of the Forest Act, were at first contemplated, but on consideration of the fact that the owner of the Attapadi valley was still unknown, it was finally decided by G.O., dated 1st July 1887, No. 630, Revenue, to proceed under Chapter II, and, in accordance with G.O., dated 17th May 1888, No. 354, Revenue, a notification, under section 4 of the Act, was issued.

6. Under this notification, four blocks of land in the Attapadi valley were proposed to be constituted reserved forests. Block No. 1 forms the northern extremity of the valley and is composed of irregular ranges of hills running down to the Bhavani river; block No. 2 is a narrow range of lofty hills along the eastern bank of the same river; block No. 3, in which Colonel Scott's estate is situated, contains the sources of the Kodangaraipalayam river, and block No. 4 forms the southern extremity of the valley. The whole of block No. 4 is described as being "one dense mass of ever-green forest with no deciduous forest and but little grass-land," and it contains the sources of the Siravani and Pambar rivers, tributaries of the Bhavani.

7. The publication of the notification was followed by the appearance of 12 claimants. Four of these claim ancient janmam rights over the tract, three claim janmam right by purchase, and five are inferior proprietors claiming occupancy and timber-felling rights under the janmis. All plead that, in consequence of the judgment of the High Court in appeal No. 100 of 1879, the Crown is estopped from denying the title of the janmis. It is argued, on the other hand, that, in the present proceedings, Government appears as the sovereign power and not as a land-owner, but, nevertheless, I think that, as the claims of Government have been completely negatived, the decision of the Forest Settlement Officer in each claim must inevitably be adverse to Government.

8. It is in view of this fact that the Forest Settlement Officer has, at the Conservator's request, suggested two alternatives to further procedure under the Forest Act. One is to cancel the notification altogether and drop forest settlement, but have the valley regularly surveyed and settled at revenue settlement, after which Government could assess private janmam waste lands. The objection raised by the Forest Settlement Officer himself to this course is the danger that Government might be sued by the various claimants for the expenses incurred in preferring their claims. But my opinion on this point is that no such suits as those anticipated would lie, because Government, in endeavouring to ascertain the rightful owner or owners of the blocks notified, has acted in good faith under the powers conferred on it by law. The withdrawal of the notification, however, is recommended only if Government is prepared to impose a rate on waste lands in order apparently to find out who the janmi is, and the Conservator and District Forest Officer, South Coimbatore, are of opinion that this action on the part of Government would lead to a relinquishment of janmam rights. A similar proposal was made by Mr. Logan, in his demi-official letter to Government dated 4th July 1884 and referred to in G.O., dated 8th July 1884, No. 2860, but with all the deference due to the opinion of an officer who had such long experience of Malabar, I am bound to express my conviction that there is nothing a Malayali prizes so highly as his janmam right, and that there is nothing to which he would not submit sooner than lose it. If my view is correct, the measure would fail in its purpose, but if, on the other hand, it succeeded, then I submit that it would amount to an act of unjustifiable expropriation. I would also submit that the object of ascertaining the janmi by the levy of even a pepper-corn rate is wholly indefensible as a basis of taxation.

Moreover, I would point out that the proposal now made to assess waste lands generally has been definitely rejected by G.O., dated 17th May 1888, No. 354, Revenue, which explained that the sanction accorded by G.O., dated 8th July 1884, No. 2860, and G.O., dated 1st July 1887, No. 630, for the levy of assessment on waste lands referred only to lands occupied by tenants, and then finally, after the fullest consideration, Government decided in G.O., dated 22nd July 1886,

No. 611, Revenue, not to assess even culturable waste lands belonging to janmis in Malabar. In this G.O. it is definitely laid down, in para. 3, that "the land revenue is the Government share of the profits of cultivation and cannot fairly be assessed on land which is unoccupied." If then a rate cannot be imposed as land revenue, it appears to me that it cannot be imposed at all without a legislative enactment, and that legislation, at any rate at present and for the Attapadi valley, is out of the question. I am, therefore, of opinion that the suggestion which I have now discussed should not be adopted.

9. The other alternative proposed by the Forest Settlement Officer is to stay further proceedings and arbitrate with the janmam claimants for the lease of the forest lands, and this has the support of the Conservator. But the obvious difficulty in this course is that Government does not yet know who the rightful claimant is. I am positive from conversations which I have had with the Mannarghat Nair and a member of the Erulpad Raja's family, that any attempt to reconcile their conflicting claims will be futile and that no settlement between them is feasible except by process of law. It might be possible to obtain an indemnity from one of the claimants—for instance, the Mannarghat Nair—against the rest. But if the Courts ultimately recognised, as the owner, a claimant other than the one who gave the indemnity, any contract which Government entered into with the latter would be useless, in whole or in part, and fresh negotiations would have to be conducted with lessened chances of favorable terms.

With regard to these terms it may be remarked incidentally that the estimate of the value of the forests has undergone considerable change. For the purposes of the original suit, the lands, hills and forests were valued at Rs. 1,48,480, and it will be seen from Mr. Galton's demi-official letter to Government dated 5th September 1884, that the Conservator, in a letter to Mr. Logan, dated 5th August 1884, not only set down the value of the tract at, at least, a lakh of rupees, but was also prepared to guarantee a return of at least 5 per cent. on this amount at the outset, and much more eventually. It must, of course, be noted that this valuation referred to the whole valley, and that at present only certain portions of it have been selected. I have no information as to the actual area of these portions or their value as compared with the rest of the block, but recently, while at Mannarghat, I saw raft after raft floated down the river, and was told that the timber came from Sub-Judge Krishna Menon's forest in Attapadi. This forest, I presume, is the one nominally held by Pálát Ráman Menon, a relation of the Sub-Judge

Irivúl—*Xylia dolabriformis*.
Teak—*Tectona grandis*.
Karumarutha—*Terminalia tomentosa*.
Benteak—*Lagerstræmia microcarpa*.
Marutha—*Terminalia paniculata*.
Chadaachi—*Grewia tilivifolia*.
Vedankorana—*Stereospermum Xylocarpum*.
Vitti—*Blackwood*.
Irimbakam—*Hopea parviflora*.
Punna—*Poonspar*—*Calophyllum tomentosum*.

and one of the present claimants, and in the margin I give the names of the different kinds of timber as reported to me locally. I am not in a position to know whether all this timber comes from any of the blocks notified, but I submit that the facts I have stated indicate that the forests are more valuable than they are now represented to be, and that a thorough examination of the

tract will be necessary before the blocks are finally acquired. Final acquisition, however, appears to me to be impossible and negotiation useless until the real owner is ascertained, and I am unable to concur with the Forest Settlement Officer and the Conservator in recommending that proceedings should be stayed and recourse had to arbitration.

10. The only other course open to Government is the second of those mentioned by the Forest Settlement Officer and is to proceed with the cases and let the dissatisfied parties appeal. In this course the Forest Settlement Officer can see no possible advantage to Government, while it would be distinctly advantageous to the claimants, who would finally get a valid title. But it seems to me that Government would gain a distinct advantage in knowing, as it ultimately would, with whom to deal, and the real object of the inquiry is to ascertain the true janmi. The Forest Settlement Officer is of opinion that all the appeals and the costs would

be decreed against Government, but I see no necessity for Government to be a party to any appeal which may be filed against the decision of the Forest Settlement Officer. The appeals will be lodged against the claimants successful in the first instance, and Government will certainly not be one of these. Hence it appears to me that Government will be liable for the costs of those litigants only who establish their claims before the Forest Settlement Officer, and the Conservator is of opinion that there are only three important and genuine claimants, viz., the Mannarghat Nair, the Erampad, and the Mankada Rani. But it must be remembered that the claims of the Mankada kovilagam were surrendered by the Valia Raja, who was the third defendant in the civil suit, and that, although a special notice of the Raja's written statement was sent to the Rani by the Court, with the intimation that she was at liberty to apply to be made a party to the suit, no action was then taken by her. This, of course, is a very relevant fact in testing the truth of the claim now made, and it seems to me, on the whole, that the only formidable claimants are the Mannarghat Nair and the Erampad. It appears, therefore, that Government will have to pay the costs of only two or, at most, three claimants, and in one court alone, and will presumably have to bear only its own costs as regards the other claimants who fail equally with it. I consider, therefore, that the expenditure will not be so great as is apprehended, and that settlement on the present lines is the only safe method of procedure.

Four claims have already been disposed of, three being totally rejected, and I would strongly recommend that orders be issued for the completion of the present inquiry with as little delay as possible.

READ—the following letter from Colonel I. CAMPBELL WALKER, Conservator of Forests, Southern Circle, to the Secretary to the Commissioners of Land Revenue (through the Collector of Malabar), dated Madras, 4th October 1890, No. 1807:—

I have the honor to submit, in original, notes by the Forest Settlement Officer and District Forest Officer, South Coimbatore, with regard to the forest settlement of certain blocks in the Attapadi valley, now in progress, and to solicit early instructions from the Board and Government.

2. When I passed through Coimbatore, towards the end of August, I saw Mr. Castlestuart Stuart, who expressed to me his doubts and difficulties in the matter, which I asked him to reduce to writing. This he has done, and Mr. Porter, the Forest Officer representing Government at the settlement, has also favored me with an expression of his views.

3. Both officers are agreed that to proceed with the settlement in the ordinary manner can do Government no good and will probably involve it in protracted and expensive litigation; for, as pointed out by Mr. Stuart, if he rejects any claim there will certainly be an appeal to the District and High Courts, the result of which, in view of recent decisions on the Wynaad cases and the High Court's judgment in the original Attapadi suit, must be against Government.

On the other hand, if Mr. Stuart admits any claim, the other claimants are sure to appeal or file civil suits in which they will join Government as co-defendant.

4. Mr. Stuart suggests three alternative courses for adoption, of which I am inclined to recommend that the third be tried, provided Government is not prepared to assess the waste janmam lands, which would probably lead to their relinquishment.

It seems that there are really only three important and genuine claimants, viz., (1) the Mannarghat Nair, (2) the Erampad Raja, and (3) Mankada Rani, and Mr. Stuart's idea is that they might be induced to reconcile these claims where they conflict so as to divide the whole valley amongst them, Government admitting their title and obtaining the control over the forests on the head-waters of the Bhavani and Siruvani with an indemnity against all other claimants.

I think it is possible this might be done, and that it would, at any rate, do no harm if Mr. Gordon Hadfield, District Forest Officer, South Malabar, were authorised to approach the three claimants in the direction indicated without compromising or pledging Government in any way. In this the services of Mr. Vengu Aiyar, the vakil employed by Government in the case, of whom Mr. Porter and Mr. Stuart entertain a high opinion, might be found useful.

But to be of any use the negotiations must be kept strictly private and conducted with much discretion and tact. I think Mr. Hadfield may safely be entrusted with them under Mr. Dumergue's supervision should Government feel inclined to authorise it.

5. It should be understood that Mr. Stuart, in bringing the state of affairs to my notice, was actuated solely by a desire to promote the interests of Government, which he has, so to speak, gone out of his way to do. It would naturally have been much easier and simpler for him to have adjudicated on the claims, with regard to which his inquiry is complete, in the ordinary manner, but the result would have been inimical to the interests of Government, which is clearly in a much better position to treat and compromise, if possible, before the Forest Settlement Officer passes his orders on the several claims than afterwards.

6. I think it best to avoid entering into details at present as to the shape which the control over the forest might take, and as regards the question of the value of the blocks as forests need only express my general concurrence in Mr. Porter's view that they are of little value though doubtless they may yield some timber (chiefly cedars) if the communications are ever developed. It is in the interests of agriculture and irrigation that the control over them should be acquired, not on account of their value as forests.

ENCLOSURE No. 1.

Attapadi Valley.

After the Forest Settlement Officer has given a decision, there will be appeals to the District and High Courts. If he decides in favor of the Mannarghat Nair—the Erampad Raja, Wynaad Raja and others will appeal, and *vice versa*. With which claimant then are we to compromise? We must either wait till the High Court has given a decision, or else compromise with the claimant or claimants in whose favor the Forest Settlement Officer gives a decision, after obtaining an indemnity bond to the effect that they will defend all subsequent suits.

2. For "forest purposes," *i.e.*, for the value of the timber they contain, the blocks notified for settlement are of no value, and would not pay the cost of establishment. The forest they contain is all evergreen; there are a few cedar trees, scattered about, but they would not pay the cost of getting them out. There is minor produce, such as honey, wax, dammer and a few cardamoms, but I doubt whether we should get Rs. 500 per annum for the minor produce; I feel certain the janmis don't.

3. The blocks notified are only valuable for protective purposes, as the sholas protect feeders of the Bhavani river. These sholas are being destroyed by Muduvars and Irulars for kumeri cultivation. The janmis don't care whether they are destroyed, or not; with much difficulty they extract a few annas from the cultivators: the exact sum is not known, but it could be ascertained: for the notified blocks it probably would not exceed Rs. 200.

4. Because we pay Rs. 5,000 per annum for the lease of the Tekadi forest, which is a valuable timber forest, the janmis hope that we shall pay a proportionately high rate for the notified blocks of the Attapadi valley—commercially these blocks are not worth Rs. 1,000 a-year.

5. If called on to pay assessment on the whole area, even at 2 annas an acre, the janmis will probably evacuate their claims.

6. If we effect a compromise, all we need bargain for is that no felling is to take place in the notified blocks. Kumeri cultivation is to be restricted to the old kumeris, which must be demarcated. If the ploughmen want more land, they must emigrate to the portions of the valley not notified for settlement. The janmis may collect minor produce and catch elephants.

7. Grazing is another question which must be referred to: the notified areas contain grass-land, and cattle go up there for grazing purposes, especially during the hot weather, from the Coimbatore district, as there is plenty of water there. The grazing itself does no harm, as there is, of course, no grazing in the sholas. The damage is done by the herdsmen, who fire the grass

in the hot weather; by doing this, they obtain a fresh growth almost at once on account of the heavy dews. These fires are gradually eating away the sholas. This must be put a stop to. The Mannarghat Nair receives something from the ryots who graze their cattle in the valley, but it is difficult to say how much. Probably about 2,000 or 3,000 cattle graze in the notified blocks during the hot weather. If we collect the fees at 4 annas per head, we should probably get about Rs. 600 per annum. We should have to allow grazing during the hot weather, forbid firing the grass, and, if the ryots persist in this, prevent their grazing.

27th June 1890.

(Signed) H. J. PORTER,
District Forest Officer.

ENCLOSURE No. 2.

Short Memo. re Attapadi Valley Claims.

Some years ago Government sought to obtain a declaration of title to the whole of the Attapadi valley. The suit brought in the South Malabar District Court by Government was given against Government, and the District Judge—Wigram—found that the whole valley was private property.

Government appealed, but the High Court upheld the District Court and distinctly declared that the whole valley was private property.

A special map was made at the instance of the High Court to show the various claims then advanced by private persons. The whole valley except a piece to the west and a small bit at the east was claimed.

The High Court did not find that such and such persons were the private janmis, but generally recorded that Government had no right in the valley except that of imposing assessment and the rights of "inferior proprietors"—whatever that may mean.

The most important claimants originally as now were the Mannarghat Nair and the Eralpad Raja.

Subsequently certain blocks were notified under the Madras Forest Act as proposed to be constituted "reserved forest."

Some eleven persons claimed rights of sorts, but the most important janmam claims are those of the Eralpad Raja and the Mannarghat Nair.

The District Forest Officer was instructed to *oppose* all claims—save that of Colonel Scott to a limited area—though not a particle of evidence was adduced for Government. The line taken was "let the claimant prove his alleged title"—on him rests the burden of proof.

The High Court have recently laid down the doctrine that this is not so—but that where claimants are in possession, that possession is presumptive evidence of title and that Government cannot even call upon the claimant to prove title, unless it can show superior title!

I cannot see what possible good can accrue to Government by going on with these claims. Already, I believe, Rs. 1,000 have been spent in paying Vengu Iyer, the vakil that was appointed to help Porter.

If I go on, I must find that *A, B or C, &c.*, has better title to such and such hills and malais. Suppose I decide that *A* has; *B* and *C, &c.*, will promptly appeal and Government are dragged into court and made to pay costs. If I find *B or C* has superior title, *A* will appeal. Government can't appeal as it has no evidence, and if it did, it has the High Court decision flaring in its face saying the whole valley is private property, and so far as Government is concerned, it is *res judicata*. If it did appeal, it is certain to lose.

The question is what is best to be done?

The following alternatives suggest themselves:—

(1) Cancel the notification altogether and drop forest settlement, but have the valley regularly surveyed and settled at revenue settlement when the Walawanad taluk is settled. Provided Government make up its mind to assess private janmam waste lands—even at a pepper-corn rate—this would be far the best plan. The only objection that I can see is that Government might perhaps be sued by the claimants—all of whom have spent money in vakils, &c., in preferring their claims—for the sums each has spent in preferring claims consequent upon the notifications published under the Madras Forest Act. If, however, Government think they would not be liable to such suits, I think this would be the simplest solution of the difficulty. A short notice would be published that notification, dated so and so, and all action taken thereunder up to date was thereby cancelled.

If, however, Government thought suits would lie against them for having dragged the claimants into court, the costs would be considerable.

(2) Proceed with the claims and let the dissatisfied parties appeal and Government take the risk of all the appeals and costs that would certainly be decreed against Government. I can see no possible advantage to Government in this course. It would be distinctly advantageous to the claimants, who would finally get a valid title and Government would be no better off than before.

(3) Stay further proceedings and arbitrate with the janmam claimants for the lease of their forest lands to Government on the most favorable terms to Government, and if this could be arranged to have the agreements filed in the Forest Settlement Court and decisions passed accordingly.

I believe all the janmis would be glad to lease to Government for 99 years, with option of renewal, at fair rates, as they would thereby get a secured annual income, instead of the very trifling sums they now get—mostly in kind, forest minor products, such as honey, wax, gall-nuts, &c. The tract is notoriously unhealthy and they hate to go near it. The main object of the proposed reserves is the protection of the head-waters of the Bhavani. A lease based on an undertaking that the forests would not be worked could be got, I think, for very small consideration, but I don't see why Government should bind themselves not to work. Under proper management, in time when roads, &c., were made, these forests would, I believe, pay their way, and having them under proper control would certainly tend to open up what is almost a *terra incognita*. If the first alternative is negatived, I think this last suggestion the most practicable. Gordon Hadfield knows Malayalam thoroughly and the manners and customs of Malayalis, and I can name no better officer to do this arbitration work under yourself than Hadfield. As Porter knows what took place at the settlement, he might be associated with Hadfield under yourself, but Porter, I think, altogether underestimates the potential value of the Attapadi valley forest. Much of the wood is evergreen, but not much, I believe, is yet known of the value of such timber. My own idea is that, in time, when communications were made, the leased forests, if leased, could be made to pay whilst the main object of the proposed reservation could also be attained.

This is a very hurried note, written in camp, away from all records; but will, I hope, serve to remind you of the points we discussed the other day. Before going on with the decisions, I think it would be well that the Board and Government should foresee the almost certain expense—with no commensurate result—that Government will be put to if some arrangement is not made. I append extracts from High Court decision regarding the *onus probandi*.

7th September 1890.

(Signed) A. E. CASTLESTUART STUART.

EXTRACT from High Court decision dated 30th April 1890 on S.A. No. 1024 of 1888.

[In this case Government appealed to the High Court against the decision of the Lower Appellate Court which had reversed my decision in Edavalath Lakshmi Rani's claim *re* Perya proposed reserve. The High Court has now remanded the case to the Lower Appellate Court for further findings. I had called upon the claimant to prove her claim and found Government was in possession and that she had failed to prove her title. The Lower Appellate Court agreed that claimant had not proved title, but found (most extraordinary to relate as the Forest Department had for years been exercising rights in the lands claimed) that *she*, and not Government, was in possession and that the *onus probandi* rested with Government.]

The High Court (Muthuswami Aiyar, J.) says:—

"It is first contended (on behalf of the Crown) that the burden of proving title was on the claimant and that the claim was barred by limitation. Accepting the facts (!) as found by the Judge, viz., that the claimant's family has been in possession at least from 1864 and that the Crown has failed to prove either title or possession (!), I think that this contention cannot be supported. The claimant having been found to be in possession, no question of limitation can arise, nor can the hills be treated as unoccupied land and therefore at the disposal of Government within the meaning of the Forest Act. It is certainly not competent to the Government to eject a party in possession or to call upon him to prove his or her title any more than it is for a private individual except on proof of its own title either conclusive or *prima facie* sufficient to meet the presumption of ownership arising from peaceable possession for several years. It would not be correct to say that, whenever the Crown forms *occupied land* into a reserved forest, the party in possession must fail unless such possession extends to 60 years; for the land being occupied, there is no statutory power to include it in a reserved forest unless it is the property of Government, and in the absence of such power the act of Government would amount to trespass or a wrong in law of which it is not entitled to take advantage for the purpose of depriving a subject of the presumption of ownership arising from possession."

A. E. C. S.

RESOLUTION—dated 18th December 1890, Forest No. 711.

The Board entirely agrees with the Collector. The main object of the settlement, as laid down in G.O.s, dated 1st July 1887, No. 630, and 17th May 1888, No. 354, is to ascertain whom the blocks really belong to, and by far the simplest,

easiest and quickest means of doing this is to proceed with the settlement: the suggestion that all the lands should be assessed, in order to find out the owner, is not one that Government is likely to consider, nor would it be in any way more effective, while the alternative to persuade the claimants to reconcile their differences and surrender a portion of the land to Government in return for the admission of their claims by Government—if the Conservator interprets Mr. Stuart correctly—is said by the Collector not to be feasible.

2. Mr. Stuart's fear that Government will be led into protracted and costly litigation, in the defence of successive appeals, appears to the Board to be unfounded. The claims will presumably be disposed of under section 10 of the Forest Act, appeals under which must be put in within one month. Within one month, therefore, the appeals against any one particular decision will all be put in: they will be put into the same Court, and they will probably all be heard together, Government taking part in them or standing on one side, as may seem advisable at the time. When the appeals are decided, further action under clause I of section 10, or under Chapter IV, may then be taken, but to proceed to take such action now, in an informal way, which is practically what is recommended, does not commend itself to the Board, for the uncertainty of the title so obtained would far outweigh its cheapness. The settlement should, therefore, be proceeded with.

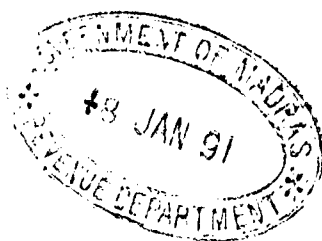
3. It may be pointed out that a decision in favor of the claimants is not altogether a foregone conclusion: the High Court decree may have been against Government, but, as pointed out in the Advocate-General's opinion contained in Board's Proceedings, dated 11th September 1886, No. 480, Forest, it was not necessarily in favor of the claimants, and there may possibly be evidence, which, though not strong enough to support the Government case, may yet be strong enough to defeat those of the other side. The view of the law taken by the High Court, in regard to the *onus probandi*, appears to be not that such *onus* rests on Government, but that proof of adverse possession for a reasonable period is *sufficient to throw it on* to Government, and such a view the Board, under the circumstances, is not disposed to say is inequitable. *En passant*, also, it may be pointed out to Mr. Stuart that "the rights of inferior proprietors," the closing words of the Attapadi valley case (I. L. R., Mad., IX, 187), are not meant to belong to the Crown.

4. The value of the forest from a commercial point of view is immaterial at this stage: it is for climatic purposes that it is now proposed to be taken up.

5. A copy of these Proceedings will be submitted for the information of Government.

(True Copies and Extract.)

Ag. Secretary.



To the Collector of Malabar.

" Conservator of Forests, Southern Circle.

Copy to the Secretary to Government, Revenue Department.

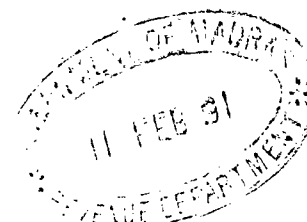
Erd. E. Fernandez,

Revenue 1891. Dept. Board of Revenue

(Land Revenue),

MADRAS.

No. 1129.
To The Secretary to Government
Revenue Department



Recd 11 Feb 91
Proceedings, dated 16th February 1891,
Forest No. 36, Routine

Subject.

Forwarding to Government
Copies of judgments and
decrees in certain Forest
appeals, and requesting Collectors
to send copies of remand orders
in certain others.

Submitted to the
Secretary -

Rm
20 Feb. 91.

re turned to the P. 143.

C.R. 1129/91

NOTE FOR THE SECRETARY.

through the undersery.
Submitted for perusal.

I understand from the As-
Registrar that these papers
were called for from the Board
under instructions from the
Secretary.

L.P.
19/2

The confidential packets
bearing on the subject are
retained in the office.

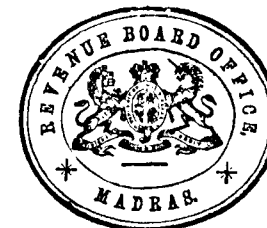
The papers which will be sent up if
up are not the required.

specifically required -
my judgment is *R*
S.A. 1024 7/100.

Account except to
the undersery order. *Col. 2/1/2*
24/2 to be the *R.D.* submitted. *R*

To The Secretary to Government. R.D. with 7 enclosures to be returned
The Collector of Malabar.

N.B.—The reply to this communication
should be addressed to the Secretary, Board
of Revenue (Land Revenue).



Memorandum.

REVENUE BOARD OFFICE,
(LAND REVENUE),

Dated the 10th February 1891.

Forest No. 36 .Routine

Read Memorandum from the Secretary to
Government, Revenue Department, dated 3rd
February 1891, requesting, for reference, copies
of the judgments and decrees of the High Court
in all the recent Malabar Forest appeals.

Copies of judgments and decrees in
Second Appeals Nos 833, 834 and 1744 of 1888
and of the remand order in S. A No 834 of
1888
herewith sent.

2 copies of remand orders in S. A Nos: 831,
832 and 1024 of 1888 are not in this office;
the originals having been sent to the Collector.
The Collector will be requested to furnish
them at an early date.

Ag secretary

To The Secretary to Government. R.D with 7 enclosures to be returned
The Collector of Malabar.

Revenue 1891. Dept.
Board of Revenue
(Land Revenue),
MADRAS.

P. 1540.

To

The Secretary to Government,
R. O.

Sent to Govt. Pleader 13/4/13.

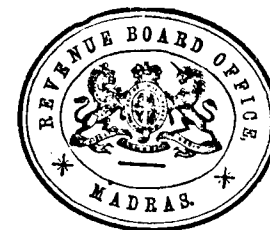
Recd 24 July

Encl 3.

Proceedings, dated 23 February 1891,
Forest No. 165 Miscellaneous.

Subject.
Submitting to Govt Remands
orders in second appeals nos
831, 832 and 1024 of 1888,
in the file of the High Court
and requesting that the
orders may be sent to
the Govt Pleader, as soon
as done with.

Sent by the Secretary
to the Board of Revenue,
MADRAS.



Proceedings of the Board of Revenue

(Land Revenue),

Dated 23 February 1891.

Forest No. 165 Miscellaneous.

READ the following letter from the Sub Collector in Charge,
Malabar, dated 18 February 1891, no 1857
G.P.

Referring to the Board's memorandum
dated 10 February 1891, Forest no 36, Karkine,
I have the honor to forward herewith the
Resound orders in second appeals 831, 832
and 1024 of 1888 and to request that they
may be sent to the Government Pleader,
Madras, at an early date as he requires them
for the further hearing of the appeals. The
District Judge has delivered findings
favourable to Government in two of the
appeals. I am to-day addressing a
separate letter to the Board on the subject.

Resolution.

Submitted to Government with
reference to para 2 of Board's Proceedings,
dated 10 February 1891, Forest no 36 Karkine
2. It is requested that the papers
may

may be sent on to the Government Pleader,
as soon as done with.

(True Copy and Extract)

W. S. S. S.
Ag. Secretary.

To
The Secretary to Govt. R. D.
with 3 enclosures.
Copy to the Govt Pleader, Madras.
Copy to the Collector of Malabar.

D.S.



Revenue Secretariat,

Sept 20 1890

My Dear Sir

I enclose a brief

note on the Attapadi Valley
Forest question. I am sorry
not to admit of my dealing
with the subject more ex-
haustively but if you
would like to discuss the
question with me after
perusal of the papers I
will come over tomorrow
afternoon at any hour
you may fix. Sincerely
W. S. S. S.

Reminded to take action
in this regard very soon.

Senar - 4 - 2.30 Sept

- 1) 14/3/10 - 1857 - Arch No. 18 Rev 49 to 49 - 1857 - 479
2) - 1870 - Bureh no - 19 - Rev. ¹⁷⁸¹ ~~178~~ - 1893 - 597



Woodstock
17.9.90

My dear Galtun,

Campbell Walker
has sent me these papers about
Forest Settlement in the Attipond
Valley, & proposes to meet me here
(you being present) or come after
Council to Stuehoun, & ascertain
the general policy of Govt in the
matter.

Garstin advises me strongly
against allowing such formal
meeting, but thinks it might be

Recommended to take action
if we require any can

Campbell Walker & tell him that
before determining their policy we
must hear what the Board have
to say, & he must make his
representations through them.

Accordingly I am going to
tell Campbell Walker that I
shall be glad to talk the matter
over with him on Monday morning.
In the meantime I send the papers
& shall be glad if you will give
me your opinion about them.
Both Campbell Walker & Cas-
tle Stuart Shantz seem to think
that Govt may access the waste
lands of Indians. Has it not been



Conservator
OF
FORESTS

My dear Gore -

I send you
Castle Stuart Shantz and Porter
notes re Act of 1881 valley
settlement.

Will you kindly read them and
let me know the lines Govt. will
approve on before I go down
on 21st. I let I may come
up the 13th. Unhappily
we are close to the line I have the
General policy of Govt. in the
matter.

I can see one or more of the
ridges & discuss it with you
Let the Gallon head letter join
us & if you could arrange
themselves to (perhaps) a meeting
at the Fort. When they are

Returned to take action
in with your very care

C

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definitely decided that this shall
not be done?

your sincerely
J. E. Lee

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intended to take action
in the future very soon

Notes on the Chicago
Valley Farm. Section one.
—

The questions raised in
Dr. (or Ernest) Stewart's
Notes are most complica-
ted + 2 very great im-
portance. It is im-
possible to deal with them
comprehensively and satis-
factorily in the very short
time which I have had.
I have nearly been able to
glance at the leading orders
but this will suffice to
convince the Hon. Mr. Stewart
that a discussion of the
questions raised would be
thoroughly impracticable +
that considering the policy
of Government has been
indicated in several respects
since the it was first
determined to take action
it will require very care.

ful ~~discussion~~ and pro-
longed discussion to
decide on the future course
of action. The Board
must be consulted & pro-
bably the Law Officers
will have to advise on
the legal points involved;
it is submitted therefore
that we is extremely
unadvisable to express
any opinion until
the whole matter has been
laid before Gov^{ty} officially.

The Hon^{ble} Member is
aware that the result
of the appeal to the High
Court was that the
Cotopaxi Valley was de-
clared to be the property
of certain private individuals,
not of Gov^{ty}, but the
intent to divide the proprie-
taryship of each claimant
was not in any way disputed.

In order to secure the
protection of the sources
of the River, it was
decided to clear certain
rocks which it was de-
termined to remove & the
Patron was designated for the
purpose, it was inter-
dicted thereafter to take
action under Chap IV
of the Forest Law - under
Sec. 3 which says 86.166
+ 4 say 86 no 313.
It was represented however
that there was no objection
to the application to take ac-
tion under Chap IV, be-
cause the watership was
disputed in some parts
of the valley & because in
others there was as far
as known no claimant.
The procedure prescribed
by Chap IV, therefore,
could not be complied with
and it was strongly re-
commended that action
should be taken under Chap
II of the Law instead.

The Gov agreed to this case
No. 609. 1 July/57
No 630 & the papers
printed therein. The ho
tip estate was agreed
in No 9. 17 Aug/58
No 354.

The Gov seems to have been
that unless claimants
present an independent
title before the Trust
Settlement Office the
Gov would be entitled to
include the land in the
Reserve notwithstanding
that the Gov might not have
known any right of
ownership over the land
and notwithstanding that
the claimants might have
been in possession of it
for years, though not for
the statutory period.
Note in this connection
the Mts. Res. 2. 18 Sept
/56 recorded in No
800 21 Oct/58 No 6325.

There is no foundation
theoretically for this assumption
in any of the provisions of
the Trust Act nor in the
Report of the Committee, who
draw up the Trust Act
in Appendix I to the
Board's Report. The
High Court has in its recent
decisions on the Helston
Trust appears to have shown
fallacy. The position then
is this that the Gov having
been relieved by the High Court
not to possess the ownership
of any land in the valley
can only reserve what is
unclaimed & the Trust
Settlement Office who have
to decide as best he can on
the conflicting claims of
rival claimants. This
was laid to a copy of laws
- Acts & under a condition
of competent jurisdiction
has decided who is the
rightful owner the Gov
cannot take steps with
reference to acquiring the land
nor can it take any action
under Chap IV.

H. (Edmund) Stuart

submits 3 alternative
proposals for getting over the
difficulty.

The first is to have the
valley regularly surveyed
+ settled in the manner
set down in the Warrant
and to assign private

land at a proper
rate. This proposal
was originally put forward
by H. Logan with his
draftsmen's draft
with Co. 2. 8 July 1864

1860 - He turned to
think that the High
Court were of opinion
that for would be jus-
tified in taking action
in this way because the

judgment of the High
Court in the Attorney

valley sent down that
the judgment of the High
Court leaves unaffected
the right of the Crown to
resume.

The order of Court dated
8 July 1864 was not
63

Deposited. To countermand
H. Logan to fix the value
of the land in the valley
occupied in the valley of
high rates as he may
consider it will be
ending the rates fixed for
land taken up in the valley
under the waste land rules.
This order was confirmed by
Co. 2. 1 July 1867 no 630
but Co. 2. 17 Aug 1868
no 354 explained that
the authority granted by
the former order was
intended to cover only lands
occupied by tenants and not
not those that are merely
claimed by the mis-
taking

In Co. 2. 22 July 1866, 611
defining the principles on
which the settlement of the
valley was to be conducted
the Court considered the
same questions + at the
standing the arguments of
H. Logan + the Mount
farm of crossing the valley
the waste land belongs
to the mis- deed of acquisition
the proposal.
H. Logan came with so
far as to suggest that

Gov. should impose a
prohibitory rate of interest
at the 2 an a an on land
which it was desired to
secure via the Gov.
20 Jan/80. Attached with
No 2. 17 May/80 No 352.

Thus Gov. has after
the most hasty con-
sideration definitely decided
not to allow waste lands
in Madras, which are
not in the occupation
of a tenant & it is
admitted that the pro-
position should not be allowed
to be reopened. The course
proposed is altogether
opposed to the revenue
system which has pre-
vailed in Madras from
the earliest times & would
certainly be rejected
by the Gov of India &
Secretary of State. It
is moreover inequitable
as when 3 per cent are ac-
crued to a tenant under
the extension clause
of Forest Land which
at present yields little
or no return & for many
years to come will be
unproductive.

I don't think there is any
reason to fear that Gov. will
be liable to damages, if
it does not proceed with
the document under the
Forest Act, as the action
taken was bona fide
with a view to a settlement
of rights. The Gov. is not
bound to proceed with it &
if any damages could be
obtained, which would
have to be proved.

The second alternative is
to proceed with the claims
& let the disappointed par-
ties appeal, the Gov. taking
the risk of all the expenses
& loss connected therewith.
As Stuart says that the
result of this would be
that the claimants would
get a valid title & Gov.
would be no better off than
before. The right course
known, & claimed which
is to ascertain decisively
where the ownership lies &
then acquire the land or
take steps under Chap. IV
to protect the interests
of the State.

The third alternative is
to stay further proceedings
and arbitrate with the
Hawaii claimants for the
value of the Forest lands
and to have the agreement
fixed with the Forest Service
Hawaii Trust & Hawaii
Forest accordingly. But
how is it to be decided
with whom to negotiate
until the question of
title is solved? The
fore-mentioned point as well
presented at once under
the head of negotiation is
(X of 1870). The only
point of proceeding under
the Forest Act is to as-
certain rights & get a
statement of claims.

Mr. Porter says that the
Hawaii title is of
no value for Forest
purposes, i.e. for the value
of the timber. Hawaii Co.
timber, but only for
protection purposes.
The amount which Gov.

would have to pay in the
event of its being decided
not to acquire them from
a private owner would be
something very considerable
I imagine, and if the
owner, then ascertained
do not consent to have
them on private terms
it would probably not be
possible to acquire them
by paying the value which
would be fixed by any
Court, but the highest
owner has been ascertained
negotiation would be the
best & therefore if any
steps are to be taken to
acquire the forest in
or ensuring its conservation
the document
must be presented with
whatever it may cost. It
will be a long business
with the possibility of having
cost a good deal of money;
but as Gov. has gone so far
for it seems undesirable
to give the matter up.
The question is, however,

a very complicated one
that cannot be decided
in the offhand way which
Colonel Campbell Walker
considers possible. I
trust that Mr. Stuart
thinks I think he will
to set forth his views
fully & submit them
for the views of Govt
through the Conservator
& the Board.

Ch
2079

Note on the Atapadi
Forest Settlement

Loose
Ch
2469

REVENUE DEPARTMENT.

CNo. 152/51.

Confid^l no. 2.

From the Board. (Land Rev.)

Dated

18. Dec. 1890.

FOR ORDERS. Rec^d 8. Jan. 91.

The object of Govt is to
get a Civil Court to decide
where the owner of the
land in the Atapadi valley,
to get them to know
the Govt may set to work
& acquire title from the
person legally possessing
it. & of the 3 courses
suggested in Mr. Campbell Walker's
Report, Mr. Stuart's is the 2nd ^{illegal} ^{one}
containing the simplest &
safest, as Mr. Dummer, &
Mr. W., agree with him,
Mr. B. disagrees with him,
also Mr. C. Mr.
Commission is to let the Forest
Settlement proceed under
Chap II of the Forest Act
to give the different
portions into Court.
There seems to me, however,
to be a legal difficulty

The current contains the
Board's orders upon certain
questions raised by the
Conservator, S.C. in connection
with Forest Settlement in the
Atapadi Valley. These questions
were raised by Mr. Campbell Stuart
in a note written at
the Conservator's suggestion: & they
already been before Govt
as it was sent up, de-
officially by Mr. Campbell Walker in
September last. The Secretary
then wrote a note pointing
out the extremely complicated
nature of the questions raised,
and deprecating the expression
of any opinion until the
matter had been properly
submitted to Govt through the
ordinary official channels.
The Conservator

was instructed accordingly,
and the Collector and Board
have recorded their opinions
upon the various points raised.

M^r Dummergue gives
a short history of the whole
case and arrives at the
conclusion that the Settlement
should be proceeded with.
This was the view taken by the
Secretary in September, and
the Board also expresses
its entire agreement therewith.

Orders are requested
as to whether the Current
may be simply recorded
with an expression of
concurrence with the Board's
views, or whether the
Law Officers of Govt. should
be consulted as regards
the probability of Govt. being
involved in numerous
appeals as co-defendants.
W. Castle Stuart-Stewart
thinks that all appeals
and costs would be deemed
against Govt., but M^r Dummergue
sees no necessity for Govt.
to be a

in the way & it is his -

The High Court in its judgment
in S. A. N^o 1024 of 1898. dated
30th April 1900. has decided
that "there is no statutory power
to include it (that is occupied
land) in a reserved forest
unless it is the property of
Govt. in the absence of such
power the act of Govt. would
amount to trespass or a wrong
in law of which it is not entitled
to take advantage for the purpose
of depriving a subject of the
presumption of ownership
arising from possession."
Now the High Ct. has
clearly decided that the
Attached Valley is private
property & does not belong
to Govt. it seems to me that
this is the initial difficulty,
namely, that the Govt. has no
legal power to carry out the
Forest Settlement, or to take
any steps there to that end,
at least in the Attached Valley.
If this is so, then we must
(1) either proceed under the
Land Acquisition Act, or (2)
the Valley alone altogether,
or (3) proceed under Chap IV
of the Forest Act & acquire
it by negotiation.
The adverse Government might

FOR ORDERS.

It is submitted whether the difficulty
which seems to me to exist, in
the way of settling the forest
settlement ground, is a real
one or not. If it is the
latter - I think that of the 3 other
alternatives we will adopt.

11/2/91

I have not seen the judgment of
the H.C. referred to by my hon.
colleague, but it appears to me to
be a complete bar to proceedings
under Ch. II of the Forest Act. It is
so I think against all the blocks
notified, those not included in the

the Board further
states that the value
of the forests from a
commercial point of view
is immaterial at this

stage.

Whether abandoned or not of proceeding with the settlement
claims then have been forwarded by private
claimants & dependants of them not so in-
cluded. Nor do I see how
these proceedings will eventuate
in settling who is the owner of the
land. If the F.S.O. recognizes A's
claim, he will at once contest it
by suit, & in such suit the validity
of the whole proceedings will certainly
be called in question - it may also be

to be a party to any appeal,
which may be filed against
the decision of the Forest
Settlement officers. The appeals,
says M^r Dummergue, "will be
lodged against the claimants
successful in the first instance,
and Govt. will certainly not be
one of these." The Board
also thinks that M^r Stewart's
fears are unfounded: it points
out that Govt. can take part in
the appeals or stand aside, as
may seem desirable at the
time.

The avowed object
is to ascertain, who are the
real owners of the Valley.
The High Court has declared
that Govt. is not the owner,
but no Court has yet stated

to whom the land really belongs. It seems pretty certain that the F.S.O. will decree all the claims against Govt and the procedure laid down in s. 10 of the Forest Act must then be followed. Suppose A has been successful in his claim and Govt wants the land: Govt must either make an agreement with A for the surrender of his rights, or proceed to acquire the land under the provisions of the Land Acquisition Act (X of 70). If on the other hand the settlement is dropped altogether, Govt must proceed in the first instance to acquire the land under Act. X of 70: if the Govt & A are agreed as to the amount of compensation an award is made, otherwise the matter is referred to the Courts. (s. 15). This section also provides for the settlement of rival claims. It is not quite clear what is gained by completing

If ~~the~~ the parties accept the decision of the F.S.O. the proceedings can only be taken in the acquisition of the land either under (1) or (3) of cl. i. s. 10 of the Forest Act. Under (1) the demands will be so expeditious that recourse will be had to (3) the acquisition under the Land Acquisition Act of 1870. Proceedings under Ch. IV would have the same result. If the Forest Settlement under Ch. II is not upheld as void ab initio it must ultimately come to the same thing, viz. the application of the Land Acquisition Act. I have always thought the Govt. of 1887 a mistake, and that it would be wiser for Govt. alone to make up their mind what they wanted ^{Govt. to direct the} ~~direct to the~~ Collector to offer that sum ~~in~~ in proceedings taken directly under the Land Acquisition Act, pay that sum into Court, and let the claimants fight it out amongst themselves. I agree with the Board as to the inexpediency of informal negotiations now. The question whether the Forest Settlements are not entirely void is a purely legal one. I can't say how far it is determined by the decision of the Court quoted in the papers. I think my hon. colleague is right in preferring the view that the matter is open to the Courts.

Yes
27th

by completing the Forest Settlement. The F.S.O. declares that A is the owner of certain land as against Govt: then is nothing to prevent B from subsequently filing a suit in the Civil Courts to establish his right as against A. If B is not a party in the Forest Settlement, he cannot appeal against the F.S.O.'s decision, and his only course is an ordinary civil action. If their view is correct the F.S.O.'s decision does not declare finally who the owner of the land is: it merely says, A's claims are superior to those of Govt: under the Land Acquisition Act is however a special provision made for rival claimants, and the Civil Courts' decision would be final. In the event of the owner not agreeing to the amount of compensation fixed by Govt, the Land Acquisition Act must be used, whether the Forest Settlement be proceeded with or not.

Rm
20 Jan 91

FOR ORDERS.

Confidential

Forest Settlements
in the Allegheny
Valley.

The Hon. W. Grose.
The Hon. W. Stokes, C.S.

Please see my previous note which, I believe forms the basis of Mr. Duncanson's letter. When Mr. Duncanson was here the other day the Allegheny Valley Settlement was one of the questions which came under discussion and I gave him my note to read. He told me he entirely agreed with what I had written and his letter expresses exactly the same views. The reason why the Gov. decided to proceed under Chap. II without amending Chap. IV of the Forest Act as originally drafted is fully stated in the letter of 15 July 1874 No 630 to which attention is specially invited. It was to ensure that much of the Valley is at the disposal of

REVENUE DEPARTMENT.

Current No.

From

Dated

18

FOR ORDERS.

Government is contented under the present law to make a permanent settlement under the various provisions of the Act. Mr. Logan pointed out in para 5 of his note (page 10 of the 80) that if it is intended simply to apply the provisions of the Land Acquisition Act as existing under Chap. II of the Forest Act is unnecessary. Sections 9 to 16 of the former Act provide the necessary machinery for giving Government an indefeasible title. It was thought however that in the case of some of the tracts which it was proposed

to ensure that there
would be unnecessary
and financially unde-
sirable. It was pointed
out that in order to es-
tablish the owner's
title claim for the forest
that was, it was
necessary to proceed first
under Chap II of the Act
but that afterwards for the
land not proved further
under that Act Chapter
the ^{make} right, ^{and} any evidence
for the protection of the
forests by agreement
with the owners without
acquiring the forests
at all.
The Hon. Mr. Justice
Loren, (unassisted) I
think it would be best
to leave to proceed under
Chap IV which in certain
events would then be
an obligation to buy
out the owners; under

Chap II it was propo-
sition to do so.
The reason why it was
directed to proceed in
the first instance under
the first Act instead
of the other proceeding
under the Land Acquisition
Act and to adopt the
procedure of Chap IV
in preference to that of
Chap IV is clear and
it is submitted that the
decision was right and
that the Government
should be proceeded with.
It has been said that Clauses
II & III (a) were not
claimed by any of the
parties to the appeal
before the High Court and
the other respondents in the
original suit abandoned
their claims so that in
regard to those Clauses the

FOR ORDERS.

Current No.

From

Dated

18

FOR ORDERS.

Decision of the Trust
Statement Office will
probably be that the
title claim has been
established in which
case the Gov. can treat
the land as the disposal
of Gov. + constitution is
a reserved power without
doubt.

As regards the other blocks
the number of possible
claimants is known, for
it would be useless for
any fresh claimant to
put forward a title here
after the matter has been
litigated, and it has
been widely testified
that the ownership of
the Valley was in dispute
like the dependents in
the original suit for
Capt. the Sulphur Key's
homestead claim and
Charles Scott Jones.

And their claims, though
unfortunately ^{a decision} ~~the~~ ~~fact~~
was not given against

them. Though some are
doubtful, it would be
useless for them to claim
their claims, and the
question of ownership
really lies between the
Sulphur Key's and the
homestead claim.
Whether Mrs. Estlin
is claiming a homestead
decision from the Trust
Statement Office is open
to appeal to the District
Court & the question is
little while thus is defini-
tely solved. It is uncer-
tain to go which party
wins but it will simply
lay to rest the suit
undisputed as far as it
is concerned. The expense

of the Appellate Courts are
to try as far as possible
is correct and it
seems to me almost to
suppose that damages
can be given against
Gov^t for its actions under
the Trust Act & that
it can be added with
the costs of the various
claimants. In this
case there is no risk
that an entirely new
claimant may appear
& make good his claim
in the trial court but
if he does it would
be better to Gov^t, they are
treat with the person
who gets a decree in
his favor and make
the best terms they can.
In the last resort they
will proceed under the
Land Acquisition Act.

There does not appear
to be any question to
go before the Gov^t Law
Officers.

Ch
27/1/91

FOR ORDERS.

Current No. 152 Conf^d. no 2

C. N. 152 of 1891

From

Dated

18 .

FOR ORDERS.

Forest Settlement in
the Latawadi valley.

The Hon^{ble} Mr. Justice
C.S.
The Hon^{ble} Mr. Justice
C.S.

The papers are circulated
again together with the
judgments of the High Court
in all the recent Forest
Settlements from Malabar.
I believe the forest settlement proceeding
will prove a time and will secure
the ends desired by Govt; but in all
the circumstances I think the best course
is to let them go on, as proposed. We may
lose a few papers in the process but we must make
some progress in the end with which
we ought to deal, though this is done fast.

The judgment is sent
as to 24 of 1880
from which the Hon^{ble} Mr.
Justice further is attached
to No 1540.

Attention is also invited
to the previous comparison.
On the question raised
namely as to the power of
Govt to include in a notice
petition under sec 4 of the
Forest Act which is
not at the time at the
disposal of Govt. vide
papers in bundle C.

* S.O.D. 7 June 1883 700
27 June 1883 707
6 Aug 1883 950
14 July 1886 536
14 Dec 1886 892
24 Jan 1887 70
17 May 1890 3046

See especially the notes for
orders started with S.O.S. dated
27 June & 6 Aug 1883
24 Aug 1887 & 17 May 1890

The Act would not have contained such provisions if it had been the intention of the Legislature that no land other than land at the disposal of Govt. should be included in a disposition under sec 4. The reason if the Govt. were limited to land of which it is the absolute owner there would be no necessity to have any statement at all, as the Govt. would be free to do what it pleased with its own property. In Justice Matthews and Lingard judgment in S.C. no 1024 of 1880 does not appear to be

FOR ORDERS.

to conflict with this view,
he says the land being
occupied there is no
statutory power to include
it in a reserved forest
unless it is the property
of Govt. "This was because
the Govt. ignored the claimants
occupation dating from 1884
on the ground that the land
had been cleared & the house
was made with reference
to the argument that the
party in possession was
bound to establish such
adverse possession for a period
of thirty years. In
Mr. Justice's opinion says
the Govt. has no statutory
power to ignore possession
& include the land in a
reserve but the judgment
does not say, nor does it
I think imply that Govt.
could not stop their inten-
tion to reserve the land
& then acquire it in a
legitimate manner from
to constituting it a reserve.

The act goes further & says 'at the
disposal of Govt.' 249

How can Govt. declare this inter-
dicted land as land that does not
belong to them. But then acquire
it from them & then do so.
The act, I think, enables Govt. to do
so.

Current No.

From

Dated

18 .

FOR ORDERS.

Attention is also invited to
The Full Bench judgment
in J.L. 256 of 1905. p. 309
Vol. XI Indian Law Reports
See especially the passage
quoted on page 311.

"In order that land may be con-
stituted a reserved forest
it is necessary that it should
first be at the disposal of
Govt. and Chap II prescribes
the mode in which claims
may be made or rights ac-
quired by Govt. before the
final notification under sec
16 declaring the limits of the
reserved forest is issued."

What does it mean? Govt. has
long it means before any
steps are taken. If
Govt. has not given final notification
in this case the Government land
claim is a piece of forest which
has been demarcated under the
Boundary Act by a survey officer
in 1895, as not belonging to the
Government. The Govt. has
his area as part of a proposed
forest reserve. This was perfectly
legal because it has been legally
declared to be Govt. land. The
Government has no objection to
claiming it to be forest land.
The survey officer has not
on appeal to the High Ct. that Ct.
has decided it to be Govt. land &
has dismissed it. as the High
Ct. has no jurisdiction;
"a claim distinction is drawn in

The Govt. has no objection in
his comments on the note for
orders stated with 80 dated
17 May 90 No 3046 G.O. The
Forest Settlement
as properly explained only
to claims to establishments over

land as the disposal of
 from. but the claim
 dealt with in S. A 786
 of 85 was not to an
 Eastern but to a large
 tract of land claimed
 by the remainder of Bod
 huyakman. The decision
 is therefore directly in
 point & I think, supports
 the view taken by Gov in
 1883.

This was also the basis
 of Hutchins' view on the
 remarks on the letter
 dated 24 Jan 7/87 to 70

If the view proposed
 by the Hon Mr. Justice
 is adopted namely to fix
 the amount of compensation
 which the Gov is prepared
 to give and to then take
 steps in proceedings taken
 directly under the Land
 Acquisition Act, the
 Gov must be prepared for
 a very large expenditure

the Gov before land which
 on a whole is in the
 disposal of Gov. - but it is
 not so simply as to take
 what is made for it of the Gov
 but some in respect of any Gov's
 private property - nor does the Gov
 say so. though that was probably
 intended. *It is*

Written down the Gov's view it can't be
 1883

Remember Mr. Hutchins' view
 is wrong. He says "Sec. 3
 is quite general & of course shows
 that Gov's cannot include in a
 reserve any land not already dis-
 posed, but by proceeding under Sec. 4
 land not previously already disposed
 may become so, it is only after the
 Gov come to an end that the
 reserve is constituted." But he
 overlooked the fact that the land
 in Sec. 3 are
 "The Gov. in Council may
 constitute any land as the
 disposal of Gov. reserved
 forest in the manner hereinafter
 provided"

is that the following Section 4
 also says: can only apply to land
 at the disposal of Gov. -
 The Act was laid down. & did
 not convey the meaning intended
 by its framers. *It is*

8

9

hodge
 7/3/91

as they will have to pay the
 full market value of the
 land plus 15 percent
 for compulsory acquisition.
 In 1884 I estimated that
 this would amount to at
 least 2 lakhs of rupees
 in May 50 of the 30th
 1884 in the confidential
 packet. The Gov is not
 likely to be able to make
 better terms now than it
 could have then and it is
 a pity that the Commission
 of Madras was not em-
 powered to make a liberal
 offer then.

27/2

FOR ORDERS.

C.N. 152, 1129, & 1540

Re Attapadi Valley
Trust Document.

The Hon^{ble} Mr. Carson
C.S.
The Hon^{ble} Mr. Stokes
C.S.

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

STATEMENT WITH DITTO

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

S.B.—

A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only