

1. Number of pages, 6
2. Date of repair, 31-3-37
3. Initials of referent, J
M.H.O. 1-32 400-23-11-30

M.R.O. 1-32 400-22-11-5

MADRAS RECORD OFFICE.

Government of Madras.

8602406 DEPARTMENT.

G.O. No. 86 Press
Mis.
(G. A. C. C. C.)
Dated Feb 10 1895.

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.
REVENUE DEPARTMENT.

Read—again the following G.O., dated 23rd September 1891, Mis. No. 5044, Revenue:—

Read—the following Proceedings of the Board of Revenue (Land Revenue), dated 30th July 1891, No. 449:—

Read—the following letter from R. SEWELL, Esq., Collector of Bellary, to the Secretary to the Commissioners of Land Revenue, dated 20th April 1891, Ref. No. 1491:—

In the marginally-noted Board's Proceedings, encroachments on roads and streets brought to notice at jamabandi have been ordered to be reported to the Taluk Board concerned for necessary action, the Revenue Department having no authority to charge prohibitory assessment on them. Board's Proceedings, No. 689, dated 2nd November 1887, and No. 65, dated 24th January 1888, Land Revenue.

The word "street" is so defined in the Local Boards Act V of 1884 as to include any road or passage, whether a thoroughfare or not, over which the public have a right of way. In every village there are many pathways across fields, and if such paths are public paths they must, it would appear, be vested in the Taluk Boards under the Act.

2. I have met with several instances in this district of wanton encroachments on such lands. In two places, for instance, in Bellary itself, public paths have been completely blocked by thick prickly-pear hedges and thorn bushes deliberately placed across them so as, presumably, to keep cattle off the ground within, which, in one case, was encroached on and cultivated.

3. Instances are constantly coming up at the present jamabandi. In one case the injury to the public was so marked that the encroacher had actually dug deep ditches right across the field path at either end of his field and ploughed the whole of it up.

4. Now, if by the rules I am prevented as jamabandi officer from charging any prohibitory rate on the land, and if also I cannot interfere because the path is vested in the Taluk Board, the only course open to me is to report the case to that Board.

5. But the Taluk Board is practically powerless, because, though they could doubtless successfully prosecute such a wanton case as that above noted, numbers of similar instances will be brought to their notice; and if in any case a prosecution fails for want of proof, the encroacher will be enabled to block out the public for ever, unless a civil suit is brought, which may fail equally with the other. They have no power to charge any rates on the land encroached on, and to prosecute or sue in each case will cost the Board a large sum of money. To carry out a successful prosecution or suit, the Board must in each case be in a position to prove the actual fact of encroachment. To do this, they must first be able to prove the actual position of the path, and this, in cases of cart-tracks across open fields, will often be found difficult. At jamabandi, in the presence of the village officers and taluk officials, the encroacher often admits his encroachments. Pushed to a nagisterial trial or a civil suit, he will in most cases defy the Board, and force them to prove their case. I submit that the Taluk Board have not the means to enable them to carry out a large number of contested trials to a successful issue, and I can hardly think that this class of paths was ever contemplated when the Act was framed: and yet they are public paths just as much as if they were carefully defined by side rails and hedges.

6. While then the imposition of heavy rates of assessment has generally had the effect hitherto of causing the encroacher to abandon the encroachment, henceforth, if field paths are vested in the Local Boards, he will practically be allowed to do as he likes.

7. I am compelled under the present rules to charge no rate whatever, not even the ordinary assessment on the piece of road alluded to above (paragraph 3) as cut across by ditches and ploughed up, though up to this year the encroacher has for the last two years been charged once four times and once eight times the assessment under a mistake. I cannot charge prohibitive rates because the land is assessed land. I cannot charge the ordinary assessment, even, because the land is a public field track, and, therefore, is vested in the Local Boards; and if the ordinary assessment were charged, such charge would not induce the man to abandon his encroachment. I cannot order prosecution because the power to do this is vested in the Taluk Board. All I can do is to refer the case to that Board. A prosecution by the Taluk Board may in this case prove of no difficulty and be successful, because the ends of the roads have been cut; but it will be a very different matter when that Board have before them numerous cases of encroachments of one cent or two cents on the sides of the tracks.

8. The Taluk Boards have no sufficient agency to enable them to cope with the work involved by the perpetual prosecutions which will be forced on them if my interpretation of the Act is correct.

9. I beg therefore to be favoured with instructions as to whether any, and, if so, what distinction can be drawn in the matter of public roads, public paths, or public field tracks, whereby one class can be held to be vested in the Local Boards and another in the Crown, represented by the Revenue Department.

Resolution—dated 30th July 1891, No. 449.

Submitted for the orders of Government.

2. The question for decision is how encroachments on village pathways should be dealt with. The Collector observes that though the definition of the word "streets," given in the Madras Local Boards Act V of 1884, seems to include village pathways, it is unlikely that the legislature intended it to do so, and he therefore inquires whether any, and, if so, what distinction can be drawn in the matter of public roads, paths and tracks held by Local Boards, and those held by Government.

3. "Street" as defined in section 3 of Act V of 1884 includes any passage over which the public have a right of way, and G.O., No. 1330, dated 20th July 1888, referred to by the Collector are obviously therefore public streets, and as section 49 of the Act vests all public streets not specially excluded in the Local Boards, it follows that the above pathways, &c. vest in the Taluk Boards concerned, and no distinction can be made in the matter.

4. In its Proceedings, No. 441, dated 10th August 1887, the Board considered that encroachments on public streets should not be dealt with by Revenue officers by the imposition of penal assessment, but should only be reported to the Presidents of the Taluk Boards concerned, who could take action under section 98 of the Act. Government accepted this view in G.O., dated 20th September 1887, No. 916.

5. The Collector, however, urges that the system cannot be, and has not been, effective, because (1) there will always be a very large number of cases for each Board to deal with, (2) Taluk Boards have no agency for the purpose, (3) the prosecutions will be expensive, and (4) they may fail for want of evidence, as it will often be difficult to prove the proper position of the path preliminary to proving the encroachment.

6. The Board considers the difficulties pointed out to be real. Section 98 of the Act which empowers Presidents of Taluk Boards to forbid the erection of any obstruction or encroachment on a public street does not prescribe the manner of enforcing such prohibition, and it is presumed therefore that it could be done only under section 188 of the Indian Penal Code. There is no doubt, however, that such prosecutions, the result of which will often be uncertain, cannot be as effective as the imposition of penal assessment by Revenue officers.

7. When a representation of the kind under reference was made by the Collector of Tinnevely in 1889, the Board considered, that where roads were so remote from

the control of Taluk Boards that there was danger of encroachments on them being left unnoticed, the Collector or President might move Government to withdraw them from the control of the Taluk Boards (*vide* Board's Proceedings, No. 506, dated 29th July 1889). The Board would now go a little further and submit that there is no reason why any but roads and streets properly so called, viz., those which are maintained by the Local Boards, should vest in them. These might be named, and the Board would suggest that all, except those named, should as a rule be withdrawn from the operation of the Act under the proviso to section 49. This seems the only way out of the difficulty.

(A true Copy and Extract.)

(Signed) W. S. MEYER,
Acting Secretary.

To the Secretary to Government, Revenue Department.
Copy to the Collector of Bellary.

Order—dated 23rd September 1891, Mis. No. 5044, Revenue.

Transferred to the Local and Municipal Department.

(Signed) C. A. GALTON,
Secretary to Government.

READ—again G.O., dated 15th February 1893 No. 160, Revenue.

ABSTRACT.—Declining to sanction the revival of the old practice of imposing penal assessments as a means of checking encroachments on Local Fund roads and transferring the Proceedings of the Board of Revenue on the subject to the Local and Municipal Department for consideration in connection with the Bill to amend the Madras Local Boards Act.

READ—again G.O., dated 15th February 1893, No. 161, Revenue.

ABSTRACT.—Approving Board's proposal that tank bunds and distribution channels overgrown with prickly-pear can be required to be cleared by the villagers at the cost of Government, and sanctioning the extension to 20 years of the period for which free cowles are granted for clearing prickly-pear land.

READ—again the following G.O., dated 7th September 1893, Mis. No. 3286, Rev. :—

Read—the following Proceedings of the Board of Revenue (Land Revenue), dated 10th August 1893, Mis. No. 4632 :—

Read—endorsement of Government, Revenue Department, dated 13th July 1893, No. 2587, on that of Government, Local and Municipal Department, dated 1st July 1893, Mis. No. 1442 L.

ABSTRACT.—Referring to the Board of Revenue for remarks Proceedings, Local and Municipal Department, regarding the question whether "puntas" can be regarded as public streets and as such the property of Local Board.

Resolution—dated 10th August 1893, Mis. N. 4632.

The Board considers that "puntas," being paths over which the public has a right of way, and in which there is no private property, are public roads, and whether they existed at the time Act V of 1884 came into force or not, vest in District Boards under section 49 of the Act.

(A true Copy and Extract.)

(Signed) W. S. MEYER,
Acting Secretary.

To the Secretary to Government, Revenue Department,
with original Government Order, Local and Municipal Department, returned.

Order—dated 7th September 1893, Mis. No. 3286, Revenue.

Transferred to the Local and Municipal Department with an expression of concurrence in the Board's remarks.

(True Extract.)

(Signed) E. GIBSON,
Ag. Secy. to Government.

To the Local and Municipal Department,
the Board of Revenue, Land Revenue.

READ—the following Proceedings of the Board of Revenue (Land Revenue), dated 29th August 1893, Mis. No. 4997:—

Read—the following letter from M. HAMMICK, Esq., Acting Collector of South Arcot, to the Secretary to the Commissioners of Land Revenue, dated Cuddalore, 12th August 1893, Ref. on Reg. No. 3947:—

I have the honour to enclose the accompanying letter from the Sub-Collector, Mr. Harding, for the orders of the Board.

2. I refer the matter to the Board, because I do not feel certain myself as to whether undemarcated foot-paths are included under the term streets in the Local Board Act V of 1884. The G.O., dated 15th February 1893, No. 160, Revenue, read in Board's Proceedings, dated 13th April 1893, No. 179, makes it perfectly clear that prohibitory assessment is not to be levied in the case of public roads and streets, and I should, therefore, have no difficulty in replying to Mr. Harding's question on this point.

3. I feel doubtful, however, whether the common village paths, which lead to the burial grounds or drinking wells or to fields, are included under the term public roads and do not therefore feel certain as to whether prohibitory assessment may or may not be levied on encroachments in such cases. The definition in the Act V of 1884 of "street," viz., a road, alley or passage over which the public have a right of way seem wide enough to include the smallest village paths. On the other hand, it can hardly be held that the Taluk Board have authority over every public path in every village, and it would, at all events, seem more reasonable if their control was held to exist only over the larger tracks used for wheel traffic and such as have been generally demarcated out at the survey as road poramboke.

4. In England it is, I believe, the practice to leave small thoroughfares in rural districts to be protected by the persons who use them, and the local bodies having control over the roads have nothing to do with the numerous pathways which exist in fields and plantations. Suits to enforce rights over these are usually brought by private persons. In this country where, for various reasons, private persons do not resist encroachments, the Government seem the proper authority to do so, and if the Board holds that the numerous paths used by villagers to obtain access to their burial, grazing, and other public grounds, are not public streets in the sense used in the Local Boards Act, I presume prohibitory assessment may be levied in cases of encroachments on them.

5. In the case of *bona fide* village streets and cart tracks demarcated out as road poramboke, there can be no doubt that the control vests in the Taluk Board and prohibitory assessment cannot be levied in such cases.

ENCLOSURE.

From H. O. D. HARDING, Esq., Acting Sub-Collector of South Arcot, to the Collector of South Arcot, dated 15th July 1893, No. 1782-Eng.

With reference to G.O., No. 160, of 15th February 1893, I have the honour to ask for instructions: Government is not prepared to sanction the revival of the old practice of imposing penal assessment to check encroachments on public streets.

Board's Proceedings, No. 441, of 10th August 1887, was passed on a question regarding encroachments in village streets. It dealt only with that matter, and no orders have, to my

knowledge, ever been passed prohibiting penal assessments for encroachments on roads other than streets. In fact, in the Coimbatore district, Collectors have charged such penal assessments in question only as regards streets to which alone it applies. The practice of charging penal assessments on roads, not having been done away with, cannot be revived, and it seems that Government considers the Board's Proceedings therefore, the honour to inquire whether I am to have gone farther than it really did. I have, therefore, the honour to inquire whether I am forbidden to charge penal assessment on all roads about the country and classed as path poramboke. These, at any rate, are never touched by Taluk Boards, and I do not know if they are Local Board property or not. They are mammoth encroachments on them is of the greatest separately demarcated as poramboke. The stopping and registry of all roads, but road poramboke, are demarcated all down both sides by stones; they are of very varying width, and it is impossible to measure them all the way down. It is impossible to register all village pathways. There is no way at all of stopping these encroachments other than by penal assessment. Prosecution can only be applied in very rare cases, and then the accused actually gets off, on the ground that his encroachment does not tend to cause actual obstruction or annoyance. If the prosecution be for trespass, he gets off, on the ground of long occupancy, civil dispute, and so forth. The Board cannot sue civilly all persons who move their hedges a yard or two into the Board's property.

Resolution—dated 29th August 1893, Mis. No. 4997.
The Collector is referred to Board's Proceedings, dated 10th August 1893, No. 4632, a copy of which is enclosed.

2. The attention of Government will again be drawn to the evil results which will follow the maintenance of its refusal to allow the imposition of prohibitory assessment in the case of village foot-paths, in regard to which it is impossible that the Taluk Boards should exercise adequate control.

(True Copies and Extract.)

(Signed) W. S. MEYER,
Acting Secretary.

To the Secretary to Government, Revenue Department,
with Collector's letter, and its enclosure in original (to be returned).

ORDER—dated 4th October 1893, No. 865, Revenue.

Miscellaneous.

The Government, on reconsideration, is of opinion that "puntas" and other village pathways entered as porambokes within the meaning of section 49 of the Local Boards Act, V of 1884, and that, therefore, encroachments thereon should be dealt with by the Revenue authorities under Standing Order No. 16.

(True Extract.)

(Signed) E. GIBSON,
Ag. Secretary to Government.

To the Board of Revenue, Land Revenue, with enclosures,
the Local and Municipal Department.

Govt. of {1893} Madras.
REVENUE.

22-1-02
22-1-12
10-7-20
25.7.23 ✓
19-1-24-II
25.8.26 II ✓

Issued

Recd.

Encl.

G.O., 4th October 1893, No. 865.

OCTOBER.

"Puntas."

Stating that the Government, on reconsideration, is of opinion that — and other village pathways entered as poramboke in village registers are not roads or streets within the meaning of Section 49 of the Local Boards Act, V of 1884, that, therefore, encroachments thereon should be dealt with by the Revenue authorities under Standing Order No. 16.