1/816

Revenue Department

Minutes of Consultations.

15th June 1858.

Back Nos 70 & 71.

Order No 896 5/4th June 1858.

Shoots 35

பாதுகாப்பு பிரிவு-1
செப்பனிடுபவர் பெயர்:
செப்பனிடுவதற்காக எடுத்துக்-
கொள்ளப்பட்ட நாள்
சரிபார்க்கும்
முதல் மேற்பார்வை
கையொப்பம்
சரிபார்க்கும்
2ம் மேற்பார்வை
கையொப்பம்
தரக்கட்டுப்பாட்டு
உதவியாளரின்
கையொப்பம்

Fort Saint George, Revenue Consultation of 15*th June* 1858.

No. 70. Read the following letter from CLEMENT DALE, Esq., Government Pleader Sudr Udalut; to W. H. BAYLEY, Esq., Acting Secretary to Government; dated Madras 9th June 1858, No. 56.

SIR,

Para. 1. With reference to the Extract from Minutes of Consultation and in continuation of my letter noted in the margin; I have the honor to report to the Right Honorable the Governor in Council as my opinion, that an Appeal should not be preferred to the Civil Court of Salem, against the Decree passed by the Subordinate Court of that District in O. S. No. 9 of 1855, on the grounds proposed by the Collector; but that an Appeal is sustainable on the ground stated in the accompanying draft of a Petition of Appeal which I have prepared.

Mins. Cons. 28th April 1858, *No.* 541 *R. D.*
Letter from Government Pleader to Government 1st May 1858, *No.* 42.
Mins. Cons. 19*th May* 1858, *No.* 654 *R. D.*

2. The further information afforded me, has shewn that the Collector rested his defence to the Original Suit, virtually, although not so clearly expressed as could have been wished, on the fact that the sanction of Government to repair the Annicut was a voluntary act; and he claimed his costs from the Plaintiff under Regulation I. of 1823 Section 4 Clause 2nd; but in the draft of his proposed appeal he purposed to confine the ground of appeal to the question of his own costs, which he claimed to have paid to him under the Regulation I have quoted.

3. On referring to that Regulation I observe that the Title is couched in general terms to all suits against public officers; while the preamble and Section 2 confine the enactment to Suits for "ACTS DONE" by public officers "in their official capacity" or "connected with official duties." The present Suit was not instituted to seek redress against the Collector for any act done, but was instituted for the purpose of compelling Government to construct conjointly with the Plaintiff a stone Annicut, or to obtain a declaration of the Plaintiff's right to build it, to the exclusion of other Claimants. Therefore it could not be held that the Regulation applied to the present Suit.

4. As to the question of costs, on referring to the 4th Section, His Lordship in Council will observe, it is provided in Clause the first that in the event of the redress sought for by the plaint being granted under orders from Superior Authority, the Court is to certify the amount of costs incurred by the Plaintiff, and shall dismiss the suit on payment being made by the public officer to the Plaintiff of such costs, &c. Then follows the 2d Clause on which Mr. Brett relies, and it will be observed that it is provided the Plaintiff shall not be entitled to receive such costs, if he fail to prove that before instituting the suit he applied to the public officer for redress, &c., but the Regulation does not provide that if the Plaintiff fail in proving such previous application, he is to be mulcted in costs. Now in the Decree passed by the Acting Subordinate Judge, that functionary has in effect so ordered, for he says he "is of opinion that each party should bear their respective costs." It is evident the Judge has not correctly read the Regulation, because he expressly rules that a second application was unnecessary; and therefore under *that Regulation* the Plaintiff was entitled to his costs, an Appeal however cannot be supported merely because a Judge has arrived at a right conclusion on wrong premises.

5. I am not aware of any law by which Government is compelled to make the Annicut in question, and I collect that nothing had passed by which the Government entered into any engagement to construct it; under these circumstances, I am of opinion that the Suit is not sustainable as against the Collector, representing the Government, and I have prepared the accompanying draft Petition, submitting that as the ground of Appeal. I am not aware that there is any objection on the part of Government to raise that question.

6. I return the Collector's letter and the draft of his proposed Petition of Appeal.

To the Civil Judge of the Zillah of Salem.

The humble Petition of H. A. Brett Esq., Collector of Salem the 1st Defendant in O. S. No. 9 of 1855, on the file of the Subordinate Court of Salem presented on his behalf by Pleader of that Court; dated Salem June 1858.

SHOWETH,

1. That the said O. S. was instituted to compel the Government to construct conjointly with the Plaintiff a stone Annicut in the Pumbar River in the village of Korasalumputty in the

Tripotore Talook at a cost estimated by the Plaintiff of Rupees 3,901-8-0, or to obtain a verdict directing the Plaintiff to defray the entire cost out of his own private funds.

II. By the Decree made in the said O. S. bearing date the 29th day of September 1857, it was decreed that your Petitioner should issue the requisite instructions for the erection of the Annicut as prayed for, and with regard to cost that although no application was preferred to the Collector subsequent to the special Appeal Decree, the Plaintiff had submitted a request to that effect in writing which rendered a second application unnecessary, and the Acting subordinate Judge was of opinion that each party should bear their respective costs.

III. The said Decree has not been executed.

IV. Your Petitioner is dissatisfied with and feels himself aggrieved by the said Decree and conceives that the same is erroneous and submits to your Honorable Court that the same should be reversed for the following (among other reasons).

1st. That the Suit is mis-conceived as against your Petitioner and cannot be supported against him, inasmuch as there is neither any contract between your Petitioner and the Plaintiff, or between the Government and the Plaintiff whereby your Petitioner or the Government undertook to construct any Annicut as required by the Plaintiff and decreed by the Subordinate Judge, nor does any duty devolve on the Government or on your Petitioner to construct any such Annicut, and although the Government was willing for the benefit of the Ryots and Cultivators of the village to erect the Annicut, your Petitioner submits to your Honorable Court as a question of law that the Plaintiff possessed no right against the Government or your Petitioner which he could enforce in a Court of law or equity, and that therefore the said suit should have been dismissed as against your Petitioner with costs.

Your Petitioner therefore most humbly prays that your Honorable Court will be pleased to admit this Petition, and will also be pleased to reverse or rescinde the said decree made by the said subordinate Court in the said O. S. No. 9 of 1855, and that the said Plaintiff may be ordered to pay your Petitioner's costs incurred in the said Original Suit No. 9 of 1855, and of this Appeal and incident thereto and that your Honorable Court will be pleased to grant to your Petitioner such further or other relief in the Premises as the nature and circumstances of this case may require and to your Honorable Court shall seem meet.

And your Petitioner will ever pray, &c.

No. 71. ORDER THEREON, No. 816 ; dated 14th June 1858.

The Government doubt the propriety of raising the important question on which the Government Pleader proposes to institute an Appeal against the Decree in O. S. No. 9 of 1855, on the file of the Subordinate Court of Salem. Before passing orders therefore on Mr. Dale's letter above recorded, the Government resolve to request the opinion of the Board of Revenue on the subject.

(Signed) W. H. BAYLEY,
Acting Secretary to Government.

3
816

R. D.

No 816.

Extract from the Minutes of Consultation
Under date the 14th June, 1855.

Read the following
Letter from the Government Pleader
Salem 1st ult.

Entered 9th June 1858 No 56

The Government
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the important question on
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Before passing orders therefore
on Mr Dale's letter above
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of the Board of Revenue on the
subject.

W. H. B

4 Prog 58 Nº 9-10
4-5-18-8 64-65
25 13-14
22-8-06

Revenue 1858 Dept.
Dº to Cons 15th June.

Nº 816.

Extract Mins of Cons:
Dº 14th June 58.
Extract from Bd 18th June 58
Nº 9080 Cons 2 July

913/5

Calling for the Boards opinion on a proposal of the Govt Pleader to institute an appeal against the Decree of the Subordinate Court of Salem directing the Collector of that District to bear his own Costs in Suit &c instituted by the Moturdar of Tatwady in connection with the restoration of an Annicut =

Nº 70 & 71.