M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1118 Press ~~Mis.~~

219-23
Dated 25-7-1820 ~~19~~

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 25th July 1870.

Read the following papers:—

No. 219. From J. W. HANDLEY, Esq., Government Pleader, Madras, to the Acting Under-Secretary to Government, dated 17th June 1870, No. 75.

Dated 3rd June 1870, No. 815.

With reference to the Order of Government noted in the margin, and in continuation of my letter of the 9th instant, No. 71, I have the honour to report that the petition therein referred to came on for hearing before the High Court this day.

2. Mr. Mayne, on behalf of the appellant, objected to Government being made a party to the Suit, on the ground that the costs which his client, if unsuccessful, would have to pay would be thereby increased, and that Government had no right to intervene, as their interests could not be affected by the decree. The Court held that this was not a case in which they ought to exercise the discretionary power, given by the Civil Procedure Code, of adding parties in the course of a Suit, inasmuch as the respondent (the Zemindar) was interested in maintaining precisely the same view as Government of the status of the Polliem, and he was represented by Mr. Norton, who would doubtless bring forward everything possible in support of that view; the only effect, therefore, of making Government a party would be to saddle the appellant, if unsuccessful, with double costs. I shall forward a copy of the Proceedings of the High Court as soon as obtained. I shall, of course, continue to watch the case on behalf of Government.

3. After the above petition had been disposed of Mr. Mayne asked the Court to apply to Government for the papers mentioned in the list filed by him. The Court refused to do so, and ordered the case to stand over for a fortnight to allow time for the appellant to apply for copies of the papers himself in the usual way. Application will doubtless, therefore, be at once made to Government for copies of these documents, and it will be for Government to consider whether such copies shall be given, or the original documents sent to myself or the Advocate-General to produce to the Court; and also whether the production of any of the documents should be objected to, on the ground of their being privileged communications.

4. None of the originals of the papers included in Mr. Mayne's list are among the papers sent to me by the Board of Revenue.

No. 220. From J. W. HANDLEY, Esq., Government Pleader, Madras, to the Acting Under-Secretary to Government, dated 5th July 1870, No. 90.

Dated 17th June 1870, No. 75.

In continuation of my letter to Government of the date and number marginally noted, I have the honour to forward, for the information of Government, copy just obtained from the High Court of the proceedings of that Court in the matter of the application made by me on behalf of Government in the Maranga-poory Zemindary Appeal Suit.

No. 221. From J. W. HANDLEY, Esq., Government Pleader, Madras, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated 13th July 1870, No. 98.

WITH reference to the Proceedings of Government, Revenue Department, noted in the margin, I have the honour to report that the Marangapoory Appeal (Regular Appeal No. 129 of 1869) was set down again for hearing this day, when Mr. Mayne, on behalf of the appellant, applied for a further postponement, pending his application to Government for certain documents to be used in evidence. He also stated that he wished to be allowed to argue, before the full Court, the whole question of the rights and powers of Government in respect to unsettled Polliems and Zemindaries which, he said, had never has yet been distinctly raised and adjudicated upon.

G. O., 3rd June 1870, No. 815.
24th June 1870, No. 946.

2. The Court said they would look into the decisions on the question, and, if they thought necessary, fix a day for having it argued before the full Court, if possible, before the recess which commences the second week in August.

3. I submitted that if the general question of the rights of Government in respect of unsettled Polliems was to be raised, the Court should re-consider its former decision, and make Government a party to the Suit. The Court, however, adhered to the former decision, but intimated that if Government should be disposed to waive their claim to costs, there would be no objection to their being let into the Suit. I request, therefore, that I may be favoured, as early as possible, with instructions as to the wishes of Government in this respect. If Government are not made party to the Suit, they will not, of course, be bound by the decision in it; and it seems to me that if they are to be bound by a decision against them, they are entitled to costs if the decision be in their favour. On the other hand, the present seems to afford a good opportunity of having the question of the tenure of these estates, on which some doubt has existed, decided by the highest tribunal in this Presidency. I have mentioned the matter to the Board of Revenue that they may make any recommendation they may think fit to Government on the subject. If the case is heard before the full Court, the earliest date at which the hearing can take place will be the 5th August.

No. 222. Proceedings of the Board of Revenue, dated 15th July 1870.

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, Madras, to the Acting Secretary to the Board of Revenue, dated 13th July 1870, No. 99.

WITH reference to the Board's Proceedings noted in the margin, I have the honour to report that the Marangapoory Appeal (Regular Appeal No. 129 of 1869) was set down again for hearing this day, when Mr. Mayne, on behalf of the appellant, applied for a further postponement, pending his application to Government for certain documents to be used in evidence. He also stated that he wished

Dated 30th June 1870, No. 4,559.

to be allowed to argue, before the full Court, the whole question of the rights and powers of Government in respect to unsettled Polliems and Zemindaries which, he said, had never as yet been distinctly raised and adjudicated upon.

2. The Court said they would look into the decisions on the question, and, if they thought necessary, fix a day for having it argued before the full Court, if possible, before the recess which commences the second week in August.

3. I submitted that if the general question of the rights of Government in respect of unsettled Polliems was to be raised, the Court should re-consider its former decision, and make Government a party to the Suit. The Court, however, adhered to the former decision, but intimated that if Government should be disposed to waive their claim to costs, there would be no objection to their being let into the Suit.

4. I have written direct for instructions as to the wishes of Government in this respect, but I mention it also for the information of the Board, and that they may, if they think fit, convey to Government their views as to the desirability of adopting the course suggested by the High Court. Of course, if Government are no party to the Suit, they will not be bound by the decree in it; on the other hand, if the question admits of doubt, it will have to be decided some day or other as against Government, and the present seems as good an opportunity as is likely to occur.

5. The earliest possible date of hearing, if the case is set down before the full Court, will be the 5th August.

THIS letter will be submitted to Government, whom it is observed that the Government Pleader has addressed direct, with an expression of the Board's opinion that it is most desirable that Government should be represented if the question whether a Polliem, for which an Istimirar Sunnud has not been issued, is or is not hereditary property, is raised and argued before the full Court.

2. If it is decided that Government, in assuming the power to determine the succession to unsettled Polliems, have erred, there may be cases in which Suits for the recovery of such estates from men whom Government have placed in possession will not be barred by the Law of Limitation, and, even in cases where claims are barred, a wide field will be opened out for petitioning, and even for litigation.

3. Hence, the matter is of importance in spite of the fact that Government are about to issue Sunnuds for all unsettled Polliems.

4. Under these circumstances, the Board think that the costs should not prevent Government from becoming parties to the appeal.

No. 223. ORDER THEREON, 25th July 1870, No. 1,118.

Miscellaneous.

THE Right Honourable the Governor in Council resolves to request the Board of Revenue to confer personally with the Advocate-General and the Government Pleader, and to report, by telegraph,

whether it is deemed advisable that the Government should intervene in the peculiar manner in which the High Court is reported to be willing to permit their intervention.

2. When the application for the papers referred to in paragraph 3 of the Government Pleader's letter, dated 17th June 1870, No. 75, is received, the points raised by Mr. Handley will be considered by Government.

(True Extract.)

(Signed) H. E. STOKES,
Under-Secretary to Government.

To the Board of Revenue.
,, the Government Pleader.

Exd. F. R. Bantleman.

Revenue Department

Proceedings of the Board of Revenue
dated 15th July 1870.

Read letter from Government Madras
dated 13th July 1870, No 99.

This letter will be distributed to
Government, (whom it is observed that the
Government Pleader has addressed direct)
with an expression of the Board's opinion,
that it is most desirable that Govern-
ment should be represented at the ques-
tion, whether a Petition for which an Ad
interim decree has not been issued is or
is not hereditary property, is raised
and argued before the full Court.

If it is decided that Government
in assuming the power to determine the
succession to unsettled Estates have
erred, there may be cases in which suits
for the recovery of such Estates from
them, whom Government have placed
in possession will not be barred by
the Law of Limitation, and even
in cases where Claims are barred

a

V. Rec. 1364/71

Govt. of {1870} Madras.

&

REVENUE.

To

THE BOARD OF REVENUE.

&c., &c., &c.

Dated July, 25th.

Read. Encl.

G. O., 25th July 1870, No. 1,118.

JULY.
Nos. 219—223.

Marungapoory Appeal Suit on file of the High Court.—Board of Revenue requested to confer personally with the Advocate-General and the Government Pleader, and to report, by telegraph, on certain point connected with this case.

a wide field will be opened out for petitioning and even for litigation.

Hence the matter is of importance in spite of the fact that Government are about to issue Samads for all unsettled Polliems.

Under these circumstances the Board think that the costs should not prevent Government from becoming parties to the appeal.

/True Extract/

J Gnle
Actg Secretary

To,
The Actg Secretary to Government
Revenue Department
with Copy of letter from
Government Pleader

Ltd

No 98

Madras
13th July 1870

From
J. H. Sandys Esqre
Government Pleader
Madras

To
C. A. Oakeley Esqre
Actg Secy to Government
Revenue Department

Sir

With reference to the Proceedings of Government Revenue Department noted in the margin I have the honor to report that the Marungapory appeal (Reg. a/c. No 129 of 1869) was set down again for hearing this day when Mr Mayne on behalf of the appellant applied for a further postponement pending his application to Government for certain documents to be used in evidence. He also stated that he wished to be allowed to argue before the full Court the whole question of the rights & powers of Government in respect to unsettled Polliems & Zemindaries which

G.O. 3rd June 1870 No 815
24th June 1870 No 946

4
5

he said, had never as yet been distinctly raised & adjudicated upon.

2 The Court said they would look into the decisions on the question, & if they thought necessary, fix a day for hearing it argued before the full Court, if possible before the recess that commences the 2nd week in August.

3 I submitted that if the general question of the right of Government in respect of unsettled Pollicies was to be raised, the Court should reconsider its former decision & make Government a party to the suit. The Court, however, adhered to the former decision, but intimated that if Government should be disposed to waive their Claim to costs there would be no objection to their being struck into the suit. I request therefore that I may be favored, as early as possible, with instructions as to the wishes of Government in this respect. If Government are not made party to the suit, they will not of course be bound by the decision

in it & it seems true that if they are to be bound by a decision against them they are entitled to costs if the decision be in their favour. On the other hand the present seems to afford a good opportunity of having the question of the tenure of these estates, on which some doubt has existed, decided by the highest tribunal in this Presidency. I have mentioned the matter to the Board of Revenue that they may make any recommendation they may think fit to Government on the subject. If the case is heard before the full Court, the earliest date at which the hearing can take place will be the 5th August.

I have the honor to be
Sir
Your most obedient Servt
J. H. Hanbury
Secretary to Government

Nos ~~2006~~, 1824, 2006, 2113 & 2114.

The Rt Hon.ble the Govr. in Council
concurs with the
Board of Revenue
in considering that
the Govt should be
represented in their
behalf on any appeal
which shall be
heard in the High
Court, the according
authorizes the Govt
Pleader to appear
and to prep the

The hon.ble Shivaji
the Govt. Solicitor
the Independent on
behalf of his client
that the Govt. has
to bear its own
costs.

The Estate is what
termed an "Unsettled
Village" - since the
Govt. has not been
permanently fixed
and is assessed - i. Milk
Revenue has been
from last under Reg
XXV of 1802 ~~Settled~~
~~Unsettled~~ under
decision of the Highest
Authority the Govt
the Reg but - as was indi-

Hon 18th Sept
Com
Govt Pleader
Madras

Govt Solr
Govt Pleader
Madras

Govt Solr
Govt Pleader
Bridge

Govt Solr
Govt Pleader
Madras

Govt Solr
Govt Pleader
Madras

Claim upheld
Plaintiff's Estate
Appellant (C.C. No.
129 of 1869) Objecting
further proceedings in
execution of instrument
as Collector Guntur
& against claim Govt.
Mr. Pandurang Govind.

C. 18th Aug 1873
221

claim to costs in accordance with the terms proposed by the Court.

When the application for the papers referred to in para 3 of the first Plaintiffs letter dated 17 June 1920 No 75 is received the point raised by Mr Handley will be considered by His Lordship in Council

RWB

duct of the trustees of administering the trust herein, when a case occurs - and on the Defendants first application for determining what the Defendants should be - I think the Executors of the late [illegible] three times, viz "acts of State" his Majesty's Court can in no case. If the policy of the Act were to retain Executors I should have no hesitation in acting on the recommendation of the Lds of Trade but the Act has decided on leaving

the point of the rights for the future, as a rule as a successor - and they will be liable to the Defendants in the future it is intended to create permanent funds at the present particulars and thus place these Estates, as regards succession & Death duties on the footing of Foundations under Ry XXV of 1902.

As the Act authorizes the Court, the Court, the decision of the High Court whatever it may be will be binding on them - and I do not think they should intervene - in the peculiar manner in which the High Court is requested to be willing to permit their intervention - I advise on the point as to the Defendants but not Plaintiffs - I would therefore instruct the Board to direct the matter to be dealt with in the Native Affairs Dept by telegraph The claim to costs if of no consequence, I think be waived if in the event, it be

deemed expedient that the Pet. should enter heard in this litigation. The pet. Plaintiff in his letter of the 6th states that the High Court held that as the Respondent is interested in maintaining precisely the same as pet. of the states of the Plaintiff & was represented by the Hon'ble who could draw petty, bring forward everything possible in support of that view, the only result of intervening pet. a party could be to increase the costs. I submit however that the Hon'ble is only bound to support his client's interests here & in appeal and that he must not be regarded as the custodian of the rights of pet. in any case the pet. will be free to draw to the line of argument to be used by pet. in this case.

I am not quite clear the committee desired to intervene but my impression is that pet. intervened as a party. The fact and decision thereon question of right at once. NP

The Ld C. - Council will note on the back of No 1824 leave to withdraw that application has been made for before them. Memo should be sent. in duplicate. To the pet. Plaintiff

No 1118. 9

Read Nos. 1824. 2006, 2113 & 2114

The Rt Hon'ble the Lds. in Council resolved to request the Board of Revenue to confer personally with the Advocate General and the first Plaintiff, and to report, by telegraph, whether it is deemed advisable that the first named intervene in the peculiar manner in which the High Ct reported to be is willing to permit their intervention

When the application

for the papers referred to in para 3 * of the Govt Pleaders letter dated 17 June 1870. In 75 is received, the points raised by Mr Handley will be considered by Govt.

[illegible]
25th July 1870

List from index.

[illegible]

14 Letts Bo. Supl. Dept. Secy
3 — Govt Pleaders

35/4

Mr. S. — I see Mr Wellesley has noted on In 1824 "this kept until application for papers is received, and a reply is put on —

Received and put up.

As, however, no application for papers is in the bundle I presume this reply is a mistake.

[illegible] Mr. K.

Kings. Ed. 6. 1st
Num.

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the 1st copy of the
last must be printed in
the volume

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