

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT

G.O. No. 834	Press Mis.
594-595	
Dated 23/2 March 1909	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
23rd March 1869.*

No. 594. Read the following Proceedings of the Board of Revenue, dated 3rd March 1869, No. 1,385 :—

Read the following letter from the Acting Collector of South Canara, to the Acting Secretary to the Board of Revenue, dated Mangalore, 11th February 1869, No. 174.

With reference to the Board's Proceedings, dated 21st October 1861, No. 5,795, I have the honor to forward, for their information, copy of the decision passed by the Mangalore Principal Sudder Ameen, in Original Suit No. 38 of 1862, on the file of the Principal Sudder Ameen's Court, and No. 54 of 1861 on the file of the Mufty Sudder Ameen's Court, in favor of the Collector.

ENCLOSURE No. 1.

JUDGMENT.

IN THE COURT OF THE PRINCIPAL SUDDER AMEEN OF MANGALORE.

Present :—M. PANTHASARTHY PILLAY.

Original Suit No. 38 of 1862.

Plaintiff.
Louis Saldhana.

versus.

Defendants.
J. Fraser, Esq., Collector of South Canara,
and three others.

The plaintiff has brought this suit, stating that he executed an agreement to the Government that the vessels laden with salt should be unloaded by Government within six days; that as soon as the receipts for the delivery of salt are produced by him, the amount of the price thereof should be paid by Government; and that if those conditions be broken, the Government should pay him any loss that he may sustain; and claiming from the defendants Rupees 1,486-5-8 the loss sustained by him owing to the defendants having failed to take in the salt from the vessels mentioned in the list A, within the fixed time, and thereby caused him to erect three sheds at his own cost, and to store that salt in the said sheds at his own expense, and having sent that salt to Panimangalore and Bantwal at his cost and measured it there in violation to the above stipulation.

2. The first and second defendants contended that the plaintiff's claim was not just; that he had no lawful right to the amount of any of the items mentioned in the plaint; that he admitted in the petition and deposition marked II that he would bear all expenses that might occur before his salt is measured by Government, as well as all costs in taking the salt to Bantwal and Panimangalore; that money has been paid him without any delay on the very day on which receipts for the delivery of salt were presented by him, or the next day; that though it is not mentioned in the agreement that the sample salt and canisters should be paid for, Rupees 3-3-4, being the price thereof, have been produced in Court; and that the canisters and sample salt have been unjustly over-valued in the plaint.

3. The three main questions to be considered in this case are, first, whether the defendants delayed to measure the salt received in the vessels mentioned in the plaint, and if so, whether the delay was intentional; second, whether the defendants are liable to make good the loss alleged by the plaintiff to have been sustained by him owing to that delay; and third, whether there was any delay on the part of the defendants in paying the plaintiff the price of the salt delivered by him.

4. It appears that there is no proof on the part of the plaintiff in regard to the said three questions.

5. The plaintiff states and defendants deny, that the latter delayed to measure the salt. In the agreement executed by plaintiff (exhibit I, filed by defendants) it is specified that the plaintiff

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should inform the Government beforehand of the number of vessels laden with salt, the quantity of salt therein contained, and the number of days within which the vessels might reach Mangalore; but it does not appear that there is any evidence on behalf of the plaintiff to show that he gave any such information to Government beforehand. The plaintiff's Vakil has admitted in his deposition of the 27th November 1868, that such information was given to Government only after the arrival of the vessels at Mangalore. Thus it becomes necessary to observe, that the plaintiff should be presumed to have, in the first instance, violated the terms of the agreement. It appears from the testimony of the defendant's witnesses, that at the time when the plaintiff says there was delay in measuring his salt after it reached Mangalore, the Government were engaged in measuring the salt brought by other Contractors in the same way as the plaintiff.

6. Now it remains to be considered, whether the loss alleged to have been sustained by plaintiff owing to the delay, such as the above, may be awarded to the plaintiff. On considering this fact, it appears from his petition and deposition marked II., that he made himself a loser of his own benefit. In this exhibit II. he has clearly stated that he would not demand from Government the loss now claimed. In that exhibit II. the plaintiff has stated as follows:—

"The salt contained in the four vessels herein mentioned is about 105 garces, and if this salt be allowed to remain in the vessels, it will be subject to loss and risk. Therefore, as there is no room to store it in the depôts, I will erect sheds near the Mangalore Salt depôt at my own expense, and store it therein. I will bear all expenses attending thereto from my own pocket; and I will have it watched. I will not claim the expenses, &c., from Government."

"If there be any loss in the salt after it is landed ashore, from rain-fall, &c., I alone will bear that loss."

The plaintiff admits the exhibit II.

7. Thus all these circumstances, &c., show that the loss claimed by the plaintiff.

8. Now it remains to be considered, whether there was delay on the part of Government in paying plaintiff the price of the salt delivered by him. It appears from the evidence of the defendant's witnesses that that delay was not caused by Government, but that it was caused by the plaintiff's absence. No credible evidence appears to exist on behalf of the plaintiff so as to form a contrary opinion.

9. The plaintiff claims from the defendants the price of canisters and sample salt. This claim is opposed to the agreement. It is not stated in the agreement that the sample salt to be furnished by plaintiff was to be paid for by Government. However, as it appears from the statement of defendants that Rupees 3-3-4 have been already produced by them in Court, stating that that amount was the price of the sample salt, and that defendants were willing to pay it to the plaintiff, that sum may be paid to plaintiff.

10. For the foregoing reasons, the plaintiff's claim not being founded upon sufficient grounds, it is dismissed with costs, and the sum of Rupees 3-3-4, which appears to have been paid in Court as the price of sample salt, is decreed to be paid to plaintiff.

Judgment given on the 7th January 1869.

(Signed) M. PARTHASARTHY PILLAY,
Acting Principal Sudder Ameen.

(True Copy.)

(Signed) J. A. C. BOSWELL,
Acting Collector.

SUBMITTED for the information of Government.

2. The suit was brought against the Collector by a Salt Contractor for alleged breach of contract in reference to weighing and paying for salt.

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3. The Court decided all the issues in favor of the Collector, with the exception of the unimportant one regarding the payment for samples, and this doubtless would have been given in his favor, had not the sum realised by the sale of samples been paid into Court.

No. 595.

ORDER THEREON, 23rd March 1869, No. 804.

Miscellaneous.

Ordered to be recorded.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.

Erd. G. A. Turton.

GOVT. OF INDIA
 REVENUE
 THE BOARD OF REVENUE
 3rd March, 1869.
 G. O. 2012 March 1869, No. 811.
 MARCH
 Nos. 304-395.
 Smt. No. 33 of 1862, against Collector of South Canara, in favor of the Revenue and against the said Smt. No. 33.

Revenue Office
 17. 7. 69.
 No 19 Dec 1861 No 238-9.
 " 23 Dec 1861 No 338-9.

BOARD OF REVENUE, MADRAS.
 1869.

PROCEEDINGS, 3RD MARCH 1869, No. 1,385.

Contd 8 March 1869
 Received *gf* Encl.

MARCH
 No. 1,385.

Suit—No 38 of 1862 filed against Collector in Principal Sudder Ameen's Court at Mangalore in South Canara District, for alleged breach of Contract in reference to weighing and paying for salt,—Letter from Collector forwarding copy of Judgment in, submitted to Government.

RECORDED
 23rd March 1869.

In Copy to the Hon. Secy. to Govt. of Madras.