

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.

892

Press

~~MIS~~

54-55

Dated

3-4-1869

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
3rd April 1869.*

No. 54. Read the following Proceedings of the Board of Revenue, dated 15th March 1869, No. 1,744:—

Read the following letter from the Acting Collector of Madras, to the Acting Secretary to the Board of Revenue, dated Sydapet, 27th November 1868, No. 393.

With reference to the Board's Proceedings of the 20th July 1865, No. 4,218, sanctioning the defence of the Appeal Suit No. 73 of 1865, regarding the excavation of the Nattapetta channel in the Conjeveram Talook by Government, I have the honor to forward, for the Board's perusal, copy of a Judgment and Decree passed by Mr. Whiteside, the late Acting Civil Judge of Chingleput, dismissing the suit with costs as against Government. No special appeal seems to have been preferred in the High Court, and the time prescribed for such appeal having also expired long ago, I have instructed the Government Vakeel to move the Court for the execution of the Decree.

ENCLOSURE No. 1.

ZILLAH CHINGLEPUT.

Conjeveram District Moonsiff's Court, Original Suit No. 574 of 1859.

Present:—C. VEERASAWMY PILLAY.

Civil Court, Appeal Suits Nos. 73 and 75 of 1865.

Present:—W. S. WHITESIDE, Esq., Acting Civil Judge.

Under Act VIII. of 1859.

Appeal Suit No. 73 of 1865.

Jagannada Mudaliar Appellant (1st Defendant,
By Pleader, Sundara Mudaliar.

Gomattam Ranga Charriyar and 8 others ... Respondents (Plaintiffs,
1st Respondent's Pleader, Tiruvaloor Iyengar.

Appeal Suit No. 75 of 1865.

Collector of the Madras District Appellant (15th Defendant,
By Pleader, M. Ranga Row.

Gomattam Ranga Charriyar and 8 others ... Respondents (Plaintiffs,
1st Respondent's Pleader, Tiruvaloor Iyengar.

THE subject of this Suit and of Appeal Suit No. 73 of 1865 is the same. The plaintiffs in this suit sued to prevent the defendants, including the Collector and District Engineer, from completing a new channel which had been excavated for the supply of the tanks of Tiruvidapallam and Nattapetta, whereby it was believed that by draining a certain piece of swampy low-land, water would be served for irrigation purposes, fresh land brought under cultivation, and the Government revenue increased. The plaintiffs, however, objected, urging that the construction of the new channel would be injurious to them.

2. The first, sixth, seventh, eighth, ninth, eleventh, twelfth, and fifteenth defendants defended the suit, and the rest allowed it to be tried *ex-parte*.

3. The District Moonsiff then issued an injunction prohibiting the defendants from completing the channel. An appeal was preferred to this Court, and the suit was remanded to the lower Court for further additional inquiry.

4. During the re-investigation of the suit, the sixth, seventh, eighth, ninth, eleventh, and twelfth defendants did not appear to defend the suit, though notice was duly given them of the re-investigation thereof by the lower Court.

5. That Court has adhered to its former order, and the case has now again come up on appeal.

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3rd April 1869.*

Judgment.

THE Court observes that when the question at stake was how far a new irrigation work was or was not injurious to existing interests, it was the duty of the District Moonsiff to take skilled evidence on that point, and to do this he was specially requested by the fifteenth defendant; but he refused to comply with the application, alleging, as a reason, that he had himself seen the locality, and had been informed by a Maistry in the Public Works Department that the new channel would not be as serviceable as the old one, and that, therefore, there was no necessity for taking evidence on that point. Now it is an indisputable fact that the improvement, as well as the maintenance of irrigation works, rests with Government, through its Officers, and it is manifestly improper for the Courts, presided over, (as in the present instance,) by men of no engineering attainments, to interfere with the lawful action of the Officers of Government, and prohibit them from doing their duty, simply because unfounded or hasty complaints, unsupported by proper evidence, are preferred by individuals who do not themselves understand the real object of the contemplated changes. On the present occasion it was brought, at the remand hearing, to the notice of the District Moonsiff that, so far from being injurious, the new channel, even in its incomplete state, had brought an ample supply of water into the tanks, and that, in three years subsequent to the excavation of the new channel, the beriz of the lands under the two tanks had exceeded the beriz of the seven years preceding the execution of the work. But, in the face of these facts, the District Moonsiff refused to inquire into the injurious or useful nature of the new channel, and persisted in adhering to his own opinion. How utterly mistaken that opinion was, is apparent from the fact that when this appeal came up for hearing, all the respondents, (plaintiffs,) with the exception of first, (Ranga Charriyar,) appeared in person voluntarily, and informed this Court that they themselves had no objection whatever to raise to the new channel; that water was properly brought by it to their tank; and that no injury or loss was occasioned to them by it. Now, it is to be observed that these men, who thus offered to drop resistance to the action of the Government, are the holders of fourteen shares of the village. The first respondent, who alone maintained objections, only owns three shares. It is incredible that these respondents would, of their own accord, thus apply for permission for leave to withdraw from resisting the appeal against a decision in their favor, unless they were perfectly assured that their interests would be in no way injured. The Court allowed time for the first respondent to consider whether he also would not see to join the other respondents in their desire to settle the case out of Court in a friendly manner; but this he has not done, and he now insists on the appeal being heard and disposed of in the usual manner.

The Court considers that no reason whatever has been shown for prohibiting the execution of the proposed work, which, on the contrary, there is no doubt is very advantageous.

Decree.

For the foregoing reasons the Court reverses the Decree of the lower Court. The respondents to bear proportionate costs up to the 16th December 1867, and from and after that date all costs to be borne by the first respondent alone.

Pronounced in Court at Chingleput the 22nd January 1868.

(Signed) W. S. WHITESIDE,
Acting Civil Judge.

ENCLOSURE No. 2.—Copy of Decree.

SUBMITTED for the information of Government.

2. The circumstances under which this suit arose are the following:—
Government in their Proceedings, dated 19th January 1861, No. 141, passed orders on certain papers submitted by the Board, having reference to a case in which an improved line for an irrigation channel in the Madras District was pro-

*Proceedings of the Madras Government, Revenue Department,
3rd April 1869.*

posed by the District Engineer and approved by the Collector, the execution of the work, however, being opposed by the holders of the land on the proposed line of channel.

3. The Government sanctioned the necessary measure for the acquisition of the land under Act. VI. of 1857.

4. A suit* was then instituted by the complainants against the Collector, and the defence of it was sanctioned by Government in their Proceedings of 19th

* No. 574 of 1859.
January 1861, No. 137, the line of argument adopted in the defence being that no injury was caused to plaintiff by the excavation of the new channel, and that the work was one which Government, acting in the interests of the State, was competent to perform.†

5. The District Moonsiff gave judgment in favor of the plaintiffs, and the Collector, in a letter, dated 16th February 1863, No. 57, intimated his intention of appealing against this decision, and the appeal was sanctioned by the Board in their Proceedings, dated 27th February 1863, No. 1,208.

6. In a letter, dated 18th July 1865, No. 206, the Collector informed the Board that the appeal had been remanded by the Civil Judge to the lower Court (under Section 351 of the Civil Procedure Code, Act VIII. of 1859) for further investigation, and that the Moonsiff refused to alter his original decision.

7. The Collector proposed another appeal to the Civil Court of Chingleput, and this was sanctioned in Board's Proceedings, dated 20th July 1865, No. 4,218.

8. It is worthy of remark that when the hearing of the appeal came on before the Civil Judge all the plaintiffs, except one, appeared voluntarily and offered to withdraw their defence of the appeal on the ground that they found themselves gainers instead of losers by the work against which their suit was directed.

9. As will be seen, the Decree of the lower Court has been reversed, and the suit dismissed with costs as against Government.

No. 55.

ORDER THEREON, 3rd April 1869, No. 892.

Miscellaneous.

ORDERED to be recorded.

(True Extract.)

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

To the Board of Revenue.

Exd. F. R. Bantleman.

Th. Mah Chingfint
 Cojweram District. Municipals Court. O.S. 574 of 1859

Present C. Varasany Pillay

Civil Court. A.S. 75 of 1865

Present W.S. Whiteside Esq. J. A. C. J.

Under Act VIII of 1859.

In the Court of
 First Instance In the Appellate Court

The Collectors of the
 Madras District } 1st Defendant. Appellant

By Pleader
 M. Ranga Rao

1. Gomatam Ranga Chariar
2. Letta Krishnaiah Chariar
3. Ichambadi Anantiah Chariar
4. Sundara Chariar
5. Ramanyia Chariar
6. Lakshunja Annab

Plaintiffs - Respondents
 1st Respondents
 Pleader
 Timmalur
 Jyengar.

2nd Plaintiff died
 his heirs

7. Narasimha Chariar
8. Ramanyia Jyengar
9. Sreenivasa Jyengar

Supplemental
 Plaintiffs

Dist. of 1869

REVENUE.

THE BOARD OF REVENUE.

Dated April, 3rd.

Recd

For

G. O. 3rd April 1869, No. 692.

APRIL.

No. 54-55.

See No. 75 of 1865 regarding the revenue
 of a certain in Madras District. Report
 of its dismissal recorded.

The Collector of the Madras District
15th Defendant above named appeals to the
Civil Court of Chingleput, against the
Decree of the said Munsif in the above
original suit dated 19th June 1865, for
the following reasons. Viz

1. The appeal is preferred by the
Appellant as the present agent of
Government and as the successor of the
late Collector 15th Defendant in the
original suit and as such bound to
protect the interests of Government.

2. That a decree was passed by the
District Munsif before the alterations
in the Channel which was alleged to
affect the supply to the Timorettu-
pallam Tank (Plaintiffs) had been
carried out, and before therefore the
result of the projected work could be
estimated with any precision, which
was an error of the District Munsif,
and to which his attention should
have been called when the suit was
remanded by the Civil Judges to the

lower

lower Court as requested by the late Collector
Mr. Cunliffe, appellants.

3. That it was urged by the Vakil of
the 15th Defendant at the hearing of the
case by the Munsif, that the new chan-
-nel instead of diminishing the supply of
water to the Timorettupallam Tank, in-
-complete as it is, tended to secure to it a
better supply, and that if the Court
entertained any doubt on this point the
village accounts should be called for
and examined, but this the Munsif
failed to do.

4. It was also urged at the same
time that the position of the new chan-
-nel was more favorable to the Tank in
question than the former one, and
that if the Court had any doubt on
that point, the evidence of some
Superior Engineer officer should be
obtained, but this point also the
Munsif took no notice of and passed

a judgment confirming his previous decisions.

5. That the irrigation work in question being the property of Government alone, and all the ryots including the Plaintiffs even paying the Nuyya Ternals only when water is duly supplied to them; the Appellant begs to submit that it must be the right of Government to improve the source of supply to such irrigation works in the manner ^{best} calculated to promote these interests and that this right cannot be questioned.

6. That the Teruvettipallam ryots (Plaintiffs) are entitled to no more than 3 months supply to their Tanks according to their own irrigation Register, and the Nymala accounts, and if this is secured to them, of which there is not the slightest doubt as will be seen from the accounts of the last 3

Fusties

Fusties, they can have no real cause for complaint.

7. The Plaintiff failed to get reliable information regarding the real effects of the new channel upon the Teruvettipallam Tank although such was offered at the rehearing the case.

Decree

The Court reverses the Decree of the lower Court. The Respondents to bear proportionate costs upto the 16th December 1867 & from & after that date, all costs to be borne by the 1st Respondents alone.

Statement of Costs of suit incurred by both parties
Costs incurred by Appellant (1st Defendant)

Stamp duty ————— 8-0-0

Reader's fees ————— 7-8-0

Value of other stamps ——— 2-8-0

Process Watten ————— 1-8-0

This sum should be made good } 19-8-0
to them by Respondents

Costs incurred by 1st Respondents
1st 12th

One Roll for Vakalatnama ——— 4-8-0

Reader's fee ————— 7-8-0

This sum was paid by him 8-0-0

Total Papers 27-8-0
given

Given under my hand and declared in
Court at Chingleput the 22nd January 1860

Das Jijay, s/o of *D. S. S. S. S.*
22nd *Chingleput* *Chingleput* *Chingleput*
on *Chingleput* *Chingleput* *Chingleput*
Chingleput

(Signed) *W. J. White side*

At Civil Judge

True copy

W. J. White side

Acting Collector

W. J. White side

W. J. White side

W. J. White side

W. J. White side

W. J. White side

W. J. White side

No 19 January 11. 1860
" 19 " " 1860

50-8-06

Revenue 1869. Oct
Board of Revenue,
MADRAS.

Mr. G. B.

PROCEEDINGS, 15TH MARCH 1869, No. 1,744.

Sup 20-8
Received *22*

Encl 1

MARCH
No. 1,744.

Appeal Suit—No. 73 of 1865, on file Chingle
put Civil Court in Madras District regarding e
cavation of Nattapetta Channel in Conjever
Talook, by Government.—Letter from Collect
forwarding copy of Judgment and Decree
submitted to Government.

22/8/65
W. J. White side

32.07.1892

14 Copies taken of Mr. White side