

Revenue (1897) Department.

PRESS SERIES.

G.O., No. 250

DATED 14th April 1897.

[Despatch Abstract.]

Nilgiri Game and Fish Preservation Act
II of 1879.

Agreeing with the Advocate-General in considering that it is not legal to withdraw by a notification portions of the Nilgiri District from the operation of the —, and requesting the Board of Revenue to submit a revised draft notification on the lines suggested by the Advocate-General.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Revenue (1897) Department.

CURRENT No.

2923

The Govt. has from C. S. S.

Reas again to 1509 (18.3.97)

also case 2923 of 97 (14/4/97)

P.S. (14/4/97)

Order No 250 (14-4-97)

The Govt. agrees

with the Advocate General,
and the Board of Res. will
be requested to submit a
revised draft notification
accordingly.

R. N. S. M. 6.4.97

From

The Govt. Solicitor
Madras

No. 219

Dated 2nd

Received 3rd

Registered 3rd

Enclosures 9

Spare copies

April 1897

SUBJECT.

Forwarding the opinion
of the Advocate-General
on the subject of the
proposed encumbrance of
certain portions of the
Nilgiri Sh. from the operation
of the Nilgiri Game and Fish
Preservation Act.

To the Board of Res. with
enclosures ret'd

The Advocate General's opinion
in every particular with those
agreed and every part containing
the views expressed by the Hon.
(and in the office note) - note

note stitched with G.O. 1509 (18.3.97)

B.M. 8.10.97

M. 6.4.97

97 29/4/97 30/2

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.



Proceedings of the Board of Revenue (Land Revenue)

Forest NO, 89 Misc, dated 27th January 1897.

Read the following endorsement of the Conservator of Forests Southern Circle, dated 18th December 1896, NO. 3252 on letter from the Collector of Nilgiris, dated 20th November 1896, Cir. NO. 61/B.

Forwarded: If the proposal meet with the approval of Govt. and be put into force, the vexed question at issue should be solved.

It will still be within the power of the Collector to protect if expedient, the Forest interest in the minor Produce consisting of the Horns and skins of the animals shot under these free licences and to register the names of the servants who are authorised to shoot on behalf of their masters. It will probably happen that the result of the concession will be the early migration of the animals to more distant cover. It is noted that the Collector proposes to secure the separate sanction of Government for the same exemption in each case where similar well founded complaint is made.

Resolution.

Submitted to Government.

3 In the letter read above, the Collector of Nilgiris submits proposals for affording relief to two planters, Messrs. Mullaly and Grey, who with some others have been agitating against the over-preservation of sambhur in the forest reserves surrounding their Estates. The Collector, after personal inspection, reports that in the two cases, for which relief is now recommended, considerable damage has been done to the plantations by the sambhur breaking in from the forests.

3 It is understood that the agitation is not directed

in certain localities. The Collector proposes to remedy the grievances of the two planters, named above, by allowing them to shoot Sambhur found within a belt of 300 yards round the boundaries of their properties. For this purpose, it is proposed to exempt the tracts in question from the operation of the Nilgiri Game and Fish Preservation Act 11 of 1879, and to slightly amend the Game Rules sanctioned for the District under sections 21 and 26 (f) of the Madras Forest Act.

These two Estates do not stand alone in the matter of damage from Sambhur, but the owners of other properties do not appear to have, as yet, pressed for any concession, and the Collector proposes to deal separately with each case which may subsequently be brought to notice. Mr. Tremeneere does not anticipate very many applications.

4 The proposal to submit to the Board and Government a fresh notification in each case does not, however, commend itself to the Board. The necessity for some concession in favour of owners, who suffer considerable loss of property in this manner, appears to be proved, but the Board would prefer to allow the Collector some discretion in the matter, such as that granted in respect of Officers and men of Her Majesty's Forces under rule 2 of the Game rules under section 21 of the Forest Act applicable to other Districts. The Collector should be authorised to grant free licenses to owners or their agents to kill sambhur in cases where such a course is considered absolutely necessary for the due protection of property. The grant of all such free licenses should at once be intimated to the Game Association who can then remonstrate if they consider that the concession is being unduly applied.

5 The necessary draft notification amending the existing rules, so as to invest the Collector with the required discretionary power is accordingly submitted for approval and publication in the Fort Saint George and District Gazettes. A further notification exempting from the operation of Act 11 of 1879 the areas in which free licenses to shoot are granted, is also submitted for approval and publication, as otherwise holders of free licenses will be liable to prosecution under that Act for shooting during the close

season prescribed under section 3 thereof.

(True Copy and Extract)

Neelan
Secretary

To

The Secretary to Government, Revenue Department with the

Collector's letter and its enclosures and Mr. Tremeneere's

D.O. (all in original to be returned) *with two draft notifications*

The Collector of Nilgiris thro. the Conservator, Southern Circle.

C.M.N

ad. writ

189 .
Board of Revenue
(Land Revenue),
MADRAS.

To

Subject.

liable to prove

Re G.O. No.1509 Mis: dated 18th March 1897, Revenue.

Queliam
OPINION

1. In my opinion, the course proposed by the Board of Revenue - of the issue by the Local Government of a notification withdrawing from the operation of Madras Act II of 1879 portions of the Nilgiri District to which the said Act has been applied, by a notification issued under Section 1, is not legal. The power to apply an Act to any local area, does not imply a power to withdraw such local area or any portion thereof from the operation of that Act, after it - has once been applied to it. There is nothing either in the said - Act, or in the Madras General Clauses Act, conferring the latter - power upon the local Government.
2. The object in view may be fully attained by exercising the - power conferred on the local Government by Section 3 of Madras Act II of 1879. The said Section, though not very happily worded, is sufficiently elastic to admit of Government fixing, from time to time, by notification, a close season either in the whole of the tract to which the Act has been applied, or any portion thereof. After applying the Act by notification under Section 1 to a local area, the Government is not bound to fix a close season under - Section 3, but is only authorized to do so, and it can, therefore, fix, from time to time, a close season in portions only of such - local area.
3. It will, however, be irregular to carry out the object, as - suggested in the G. O., by issuing a notification cancelling, so far as relates to certain specified areas, the previous notification - issued under Section 3 of the Act. The very notification which fixes a close season under Section 3, should define the local area by - excepting therefrom such portions as are intended not to be affected by the notification; and whenever the excepted portions have to be changed, or the season has to be varied, a fresh notification - should be issued under Section 3, in supersession of the former - notification. Under the law as it now stands, this seems to be the

only legal and regular course, though it may be somewhat inconvenient.

V. Bhashyam Iyengar

Acting Advocate General.

M a d r a s

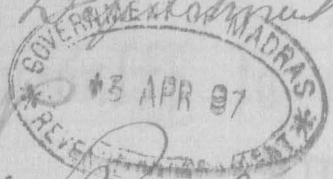
1st April 1897.

(True Copy)

Ernest Barclay

Government Solicitor.

(1897) *Departmental*
101
From Ernest Barclay
Government Solicitor
Madras



To The Secretary to Government
Revenue Department
Madras

N^o 219

Date 2nd April 1897
Recd

Enclos.

Forwarded with enclosures
with reference to the Order
of Government Mis. dated
18 March 1897. N^o 1509.
Revenue
Ernest Barclay
Government Solicitor

Government {1897} of Madras.
REVENUE.

Recd.

Regd.

} 1897.

Enclosures

Spare copies

G.O., No. 250, 14th April 1897.

APRIL.

Nilgiri Game and Fish Preservation Act II of 1879.

Agreeing with the Advocate-General in considering that it is not legal to withdraw by a notification portions of the Nilgiri district from the operation of the —, and requesting the Board of Revenue to submit a revised draft notification on the lines suggested by the Advocate-General.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—again the following G.O., Mis. No. 1509, Revenue, dated 18th March 1897:—

Read—the following Proceedings of the Board of Revenue (Land Revenue), Forest Mis. No. 89, dated 27th January 1897:—

Read—the following letter from J. H. A. TREMENHEERE, Esq., Acting Collector of Nilgiris, to the Secretary to the Commissioners of Land Revenue (through the Conservator of Forests, Southern Circle), dated 20th November 1896, Cur. No. 61-B. of 1896-97:—

The Board is doubtless aware that among a section of the planting community in the Nilgiris there has, for some time past, been an agitation against the game laws interests. It is urged that the deer emerge at night from the shelter of reserved shade or shelter belts.

2. On taking charge of the district in August last I found this agitation in full effect. I observed, however, that the representation of grievances had not proceeded from the planters' association, and that the association had not been consulted in the matter. By my advice, therefore, a reference was made to it and it issued a circular

3. A precis of the replies will be found in the game association's circular of 19th October 1896, copy of which is herewith forwarded as enclosure No. I. These were considered at a meeting of the planters' association held on the 26th September 1896, when the following resolution was passed, viz.: "That in the meantime any damage done should be reported to the game association and that the District Forest-officer or a commission appointed by the game association be asked to report on such damage and on his or their report that the damage has been done, the game association be asked to take steps to remove the evil in such way as it can best be effected."

4. Soon after the date of this meeting, I received official letters from two of the chief malcontents Mr. Mullaly of the Droog and Mr. Grey of the Leighwood and Northern Hay estates, asking for free permits for themselves and some of their servants to shoot sambhur in the reserves surrounding their estates.

5. At this stage of the controversy it appeared advisable that I should inspect an estate where there might be evidences of the depredations of sambhur, and accordingly I went over parts of those near Coonoor belonging to Mr. Mullaly.

6. On these estates there is no need of shade, but shelter trees are absolutely necessary on account of the exposed position of the locality. Grevillias had been put down for this purpose, planted among the coffee in the manner of shade trees. I found that a very large number of such grevillias had been absolutely destroyed, and that nearly all had been seriously injured, and Mr. Douglas, the District Forest-officer, and myself have no doubt that this is attributable to sambhur.

7. We considered the question whether any reasonable precautions had been omitted by Mr. Mullaly, and on the whole were obliged to answer this in the negative. Indeed, he had put down some miles of barbed wire fencing, but to no purpose.

8. We were forced to the conclusion that the estates had suffered severely from sambhur. We observed, however, that there was an exceptional circumstance in the fact that the estates were surrounded by extensive reserved forests, inaccessible for various reasons to the generality of sportsmen.

9. It was within our knowledge too that Mr. Grey's estates were more or less similarly surrounded and we believed that in such accidents of position might be found an explanation of the varying opinions held by different planters.

10. We conceived therefore that it might be possible to introduce for such exceptional estates certain relaxations of the game laws which would afford a fair relief for the proprietors and yet at the same time do no material harm to game on these hills.

11. We consulted therefore Mr. Mullaly and Mr. Grey on the one hand and some of the keenest and most experienced sportsmen on the other. I am glad to say that both sides displayed a conciliatory spirit, and that a *modus vivendi* appears to have been found. It consists, in a word, in permitting the destruction of sambhur within a narrow margin round an estate which suffers to any considerable extent from their depredations, when the proprietor has in vain exhausted all reasonable efforts in prevention; such permission to be temporary until the shade or shelter trees shall have grown up, and to be guarded by proper precautions.

12. It is believed that the number of estates to which such concessions will be recommended will be few; but it is intended to inspect each case separately, as the circumstances will vary. It is not possible therefore to ask for a general concession; and in this letter I shall take orders on Mr. Mullaly's estates alone.

13. In the letter of the 10th November 1896, which I forward (*vide* enclosure No. II), Mr. Mullaly asks for free licenses for himself and six of his men to shoot sambhur throughout one year within a limit of 300 yards round his *Upper Droog* estate in the Halihal Droog and Pakasuraimalai forest reserves. To the east of the *Ibex Lodge* estate there is in the Pakasuraimalai reserve some shola and grass land harbouring numerous sambhur, and on this one side he asks for a similar permission within a limit of 600 yards. Though these concessions are asked for for only one year, a yearly extension is contemplated in case necessity may still exist.

14. I have the honour to request that the concessions may be granted. In my opinion such a course is required in the interests of planting, and that it is not expected to injure sport is shown by its unanimous acceptance at the annual meeting of the game association held on the 14th instant, a copy of whose resolution is attached together with the resolution passed at its committee meeting of the 28th October (*vide* enclosure No. III). I may add that, so far as I can judge, the proposed solution of the difficulty has met with general approval.

15. It remains to be suggested how the concession can be legally made. I would propose that a notification in the *Fort St. George Gazette* under sections 1 and 3 should exempt the marginally-noted lands from the Nilgiri Game and Fish Preservation Act II of 1879, enclosure No. IV, that the notification of 10th January 1894 issuing rules under sections 21 and 26 (f) of the Madras Forest Act, enclosure No. V shall be amended by the insertion at the beginning of rules 1 and 2 of the words "unless with the sanction of Government;" and that the sanction of Government be given to the concession now proposed.

16. I hope that the Board will be pleased to recommend Government to accept these proposals at an early date, for it seems desirable in the best interests of the district that the agitation should be dealt with at once promptly and considerately.

P.S.—I have delayed sending this letter until I could inspect in the last few days Mr. Grey's estates, Northern Hay and Leighwood. These are contiguous estates situated at the foot of the hills, to the north of the Pykara cinchona plantations, and bounded on the north by the Moyar (13,000 acres) and Kalmale (900 acres) reserves.

and on the south and west by the Northern Hay (4,000 acres). Except for a narrow piece on the east they are entirely surrounded by an immense tract of forest and are quite out of the ordinary beat of sportsmen. The shade trees planted out are chiefly a solanum, a fig and the grevillia; and it is undoubtedly a fact that the two latter have suffered from sambhur, though the loss is certainly less than that sustained by Mr. Mullaly. Mr. Grey will be satisfied with a concession similar to that proposed above in a belt of 300 yards round the two estates. The District Forest-officer and I consider that this should be granted. I beg therefore that to the lands marginally noted in paragraph 15 may be added, in the Moyar, Kalmalai and Northern Hay reserved forests a margin of 300 yards round the limits of the coffee estates known as Leighwood and Northern Hay.

Endorsement by E. D. M. HOOPER, Esq., Acting Conservator of Forests, Southern Circle, dated 18th December 1896, No. 2252.

Forwarded. If the proposal meet with the approval of Government and be put into force, the vexed question at issue should be solved.

It will still be within the power of the Collector to protect, if expedient, the forest interest in the minor produce consisting of the horns and skins of the animals shot under these free licenses and to register the names of the servants who are authorised to shoot on behalf of their masters. It will probably happen that the result of the concession will be the early migration of the animals to more distant cover. It is noted that the Collector proposes to secure the separate sanction of Government for the same exemption in each case where similar well-founded complaint is made.

Resolution—Forest Mis. No. 89, dated 27th January 1897.

Submitted to Government.

2. In the letter read above, the Collector of Nilgiris submits proposals for affording relief to two planters, Messrs. Mullaly and Grey, who with some others have been agitating against the over-preservation of sambhur in the forest reserves surrounding their estates. The Collector, after a personal inspection, reports that in the two cases, for which relief is now recommended, considerable damage has been done to the plantations by the sambhur breaking in from the forests.

3. It is understood that the agitation is not directed against the game laws generally, but against the over-preservation of game in certain localities. The Collector proposes to remedy the grievances of the two planters named above, by allowing them to shoot sambhur found within a belt of 300 yards round the boundaries of their properties. For this purpose, it is proposed to exempt the tracts in question from the operation of the Nilgiri Game and Fish Preservation Act II of 1879, and to slightly amend the game rules sanctioned for the district under sections 21 and 26 (f) of the Madras Forest Act.

These two estates do not stand alone in the matter of damage from sambhur, but the owners of other properties do not appear to have, as yet, pressed for any concession, and the Collector proposes to deal separately with each case which may subsequently be brought to notice. Mr. Tremenheere does not anticipate very many applications.

4. The proposal to submit to the Board and Government a fresh notification in each case does not, however, commend itself to the Board. The necessity for some concession in favour of owners, who suffer considerable loss of property in this manner, appears to be proved, but the Board would prefer to allow the Collector some discretion in the matter, such as that granted in respect of officers and men of Her Majesty's Forces under rule 2 of the game rules under section 21 of the Forest Act applicable to other districts. The Collector should be authorised to grant free licenses to owners or their agents to kill sambhur in cases where such a course is considered absolutely necessary for the due protection of property. The grant of all such free licenses should at once be intimated to the game association who can then remonstrate if they consider that the concession is being unduly applied.

5. The necessary draft notification amending the existing rules, so as to invest the Collector with the required discretionary power is accordingly submitted for approval and publication in the Fort St. George and District Gazettes. A further notification exempting from the operation of Act II of 1879 the areas in which free licenses to shoot are granted is also submitted for approval and publication, as otherwise holders of free licenses will be liable to prosecution under that Act for shooting during the close season prescribed under section 3 thereof.

(True Copy and Extract.)

(Signed) R. C. C. CARR,
Secretary.

To the Secretary to Government, Revenue Department,
with the Collector's letter and its enclosures and
Mr. Tremenheere's Demi-official (all in original to be
returned and with two draft notifications).
Collector of Nilgiris (through the Conservator of Forests, Southern Circle).

Order—Mis. No. 1509, Revenue, dated 18th March 1897.

Referred to the Honorable the Advocate-General for favour of opinion of the legality of the course proposed by the Board of Revenue and as to the best method of securing the object in view.

2. As it appears to Government the proviso to section 22 of the Madras General Clauses Act, 1891, bars the issue of a notification exempting specified areas from the operation of Madras Act II of 1879. It would, however, seem practicable to meet the requirements of the case by issuing a notification cancelling, so far as relates to certain specified areas, the orders passed under section 3 of Madras Act II of 1879 prescribing a close season. The drawback to this plan, however, consists in the apparent necessity of issuing a fresh notification on each occasion when circumstances arise, which, in the Collector's opinion, render expedient the grant of special exemptions from the provisions of the Nilgiri Game Act.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

To the Government Solicitor, with Board's Proceedings and
notifications, in original, also a spare copy of G.Os. No. 7, Revenue,
dated 10th January 1894 and No. 690, Public, dated 2nd May 1879.

READ—the following endorsement from ERNEST BARCLAY, Esq., Government Solicitor, Madras, to the Secretary to Government, Revenue Department, dated 2nd April 1897, No. 219:—

Forwarded, with enclosures, with reference to the order of Government, Mis. No. 1509, Revenue, dated 18th March 1897.

ENCLOSURE.

Opinion.

In my opinion the course proposed by the Board of Revenue of the issue by the Local Government of a notification withdrawing from the operation of Madras Act II of 1879 portions of the Nilgiri district to which the said Act has been applied, by a notification issued under section 1, is not legal. The power to apply an Act to any local area does not imply a power to withdraw such local area or any portion thereof from the operation of that Act, after it has once been applied to it. There is nothing either in the said Act, or in the Madras General Clauses Act, conferring the latter power upon the local Government.

2. The object in view may be fully attained by exercising the power conferred on the Local Government by section 3 of Madras Act II of 1879. The said section, though not very happily worded, is sufficiently elastic to admit of Government fixing, from time to time, by

notification, a close season either in the whole of the tract to which the Act has been applied or any portion thereof. After applying the Act by notification under section 1 to a local area, the Government is not bound to fix a close season under section 3, but is only authorized to do so, and it can, therefore, fix, from time to time, a close season in portions only of such local area.

3. It will, however, be irregular to carry out the object, as suggested in the Government Order, by issuing a notification cancelling, so far as relates to certain specified areas, the previous notification issued under section 3 of the Act. The very notification which fixes a close season under section 3 should define the local area by excepting therefrom such portions as are intended not to be affected by the notification; and whenever the excepted portions have to be changed, or the season has to be varied, a fresh notification should be issued under section 3, in supersession of the former notification. Under the law as it now stands, this seems to be the only legal and regular course, though it may be somewhat inconvenient.

MADRAS,
1st April 1897.

(Signed) V. BHASHYAM AIYANGAR,
Ag. Advocate-General.

ORDER—No. 250, Revenue, dated 14th April 1897.

Miscellaneous.

The Government agrees with the Advocate-General, and the Board of Revenue will be requested to submit a revised draft notification accordingly.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

To the Board of Revenue (Land Revenue),
with enclosures returned.

Exd. Shaik Karim.

20 Copies.

First copy sent to Press.

Returned for signature.

Despatched in print.

READ AGAIN G.O. No.

152

DATED.

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH DITTO.

PAVERS NOT FILED UP BRING WANT FOR DISPATCH
IN ORIGINAL.

S.S.—

A = Print in full.
B = Not to be printed.
P = Print abstract only.

NUMBER OF COPIES
REQUIRED.

Order complete.

Letter only.

Order complete with Letter.