

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 1093

DATED 24th Feb. 97

[Despatch Abstract.]

Recording with remark that forwarding judgment
of the High Court ruling that water tax is not leviable
in cases where a ryot has no option in the matter of
excluding Govt water from his lands.

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

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

CURRENT No.

The Hon'ble Mr. J. P. C. J. P.
To return the
file to me
Ass
24/2
From

GOVERNMENT OF MADRAS
22 JAN 97
REVENUE DEPARTMENT

The Board of Revenue, Land
Revenue, Madras.

No. 237 Misc.

Order No. 1093424¹¹ Feb. '97

that the Govt. Recorder with the remarks
submitted for the spring of 1971 - action of Govt.

Dated 20th January 1897.

Received 2.2.1988

Registered 2.2.2017

Enclosures 2

Spare copies

SUBJECT

Communicating to the Collector of
Kistna & submitting to Govt. with 22
marks judgment of the High Court
ruling that water tax is not leviable
in cases where a ryot has no
option in the matter of excluding
Govt. water from his lands, sanction-
ing the payment of a fee of Rs. 1/- 8-10
to the Govt. Pleader & enquiring of
the Law Officer whether there is
any reasonable prospect of getting
the ruling reversed or modified

To The Board of Revenue (L.R.) } Dated
with original returned } 24-2-1907

Note (I am dealing with this question in my
note on the Godavari Resettlement)

The judgment has a far reaching effect and the result will be the loss of
large amount of revenue in the deltaic
tracts of Godavari and Krishna. The report
called for from the Govt. Pleader may
it is submitted be accepted. A final
case must be taken before the Full
Bench

Probably this ruling is a most
desirable one for ^{the} Govt

The finding that the sanction is
much further than Varkappaya
v. Ch. of Kistna. 12 M.S. 407.
Practically I do not think it
will have much effect. Such cases
will be chosen as set in the
Attorney Gen.

BACK PAPERS.

G.O.	No.	Department.	Date.
u	11446	M.D	7-4-96

FURTHER PAPERS.

G.O.	No.	Department.	Date.

19-1-97
in will be a paid answer
for or clearing them
22/2/97

In the High Court of Judicature at Madras.

Thursday, the twelfth day of November, One thousand, eight hundred and ninety six.

Present:-

The Honourable Mr. Justice Subramania Aiyar, C.J.B.

and

The Honourable Mr. Justice Boddam

Second appeals Nos. 973 to 977 of 1895.

Modali Sitharama Sastri -----Appellant in S.A.No.973 (Plaintiff)
Kuruganti Venkateswarulu -----Appellant in S.A.No.974 (Plaintiff)
Diara Subbaramaya -----Appellant in S.A.No.975 (Plaintiff)
Kuruganti Suriyanarayana -----Appellant in S.A.No.976 (Plaintiff)
Diara Suriyanarayana -----Appellant in S.A.No.977 (Plaintiff)
The Secretary of State for India in Council } Respondent in all ---
by the Collector of the Kistna District. } cases. (Defendant).

Second appeals against the decrees of the District Court of Kistna in appeal suits Nos. 250, 249, 251, 252 & 253 of 1894, reversing the decrees of the Court of the District Munsif of Guntur in O.S. Nos. 109, 112, 126 & 127 of 1893 respectively.

These second appeals coming on for hearing the Court delivered the following.

Judgment in S.A. Nos. 973 of 1895:- We think there was no "supply" by Government "or user" by the ryots within the meaning of Act VII of 1865. As pointed out by Shephard J in L.L.R. 19 Mad. 24 the mere fact that the plaintiff derives a benefit from the water does not render him liable if he had no option in the matter. The facts found in this case show that the plaintiff had no option and the finding of the District Court that they may have derived some benefit from the water is not sufficient to justify the judgment in favor of the defendant.

We allow the appeal, reverse the decree of the District Court and restore that of the District Munsif with costs in this and the

lower

Lower Appellate court. Second appeals Nos. 974 to 977 of 1895 follow.

By the Court

/sd/ J. T. Gillespie

Ag. Deputy Registrar.

Appellate side

(True Copy)

T. C. C.
Secretary.

D. J.

Proceedings of the Board of Revenue
(Land Revenue)
No. 237 Misc., dated 20th January 1897.

Read the following:-

1. Again Board's Proceedings No. 5229 Misc., dated 21st November 1896, communicating to the Collector of Kistna letter from the Govt. Pleader, Madras, reporting the result in S.A. Nos. 973 to 977 of '95 on the file of the High Court.
2. Also the following letter from E. B. Powell, Esqr., Government Pleader, Madras, to the Secretary to the Board of Revenue, Land Revenue, No. 30, dated 9th January 1897.

In continuation of my letter No. 993, dated the 16th November last, I have the honor to forward herewith copies of the Decree and Judgment in second appeals Nos. 973 to 977 of 1895 on the file of the High Court and to request that you will be so good as to obtain the Board's sanction for the payment of Rs. 11-8-10 (eleven rupees eight annas and ten pies) being my fee for opposing the same.

Resolution

Communicated to the Collector of Kistna in continuation of Board's Proceedings No. 5229 Misc., dated 21st November 1896

2. The payment of a fee of Rs. 11-8-10 to the Govt. Pleader is sanctioned.
3. A copy of the judgment will be submitted for the information of Government with reference to the correspondence ending with G.O. Misc. No. 1446 Rev., dated 9th April 1896. It will be seen that the High Court, consisting of the Honorable Mr. Justice Subramania Aiyar C.I.E. & the Honorable Mr. Justice Boddam, have followed Mr. Justice Shephard's dictum in I.L.R. 19 Madras 24 and definitely ruled that in cases where a ryot has no option in the matter of excluding Government ~~water~~ water from his lands and grows a crop, dry or wet, thereon, there is no "supply" by Government or "user" by him within the meaning of Act VII of 1865, and that the mere fact that the ryot derives a benefit from the water involuntarily flowing on to his lands does not render him liable to water tax.
4. The Government Pleader is requested to report whether any steps were taken at the time of hearing of the second appeals in question to have them referred to a Full Bench as he appears to have suggested in his letter No. 939, dated 25th September 1895 (submitted to Government in original with Board's Proceedings No.

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189

DATE

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On O. of signature

MINISTER OF GOVERNMENT

MINISTER OF GOVERNMENT

STATEMENT WITH DITIO

PAPER NOT FILED UP, BEING MEANT FOR DISPATCH
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N.B.—
A = Copy in full.
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1930 Misc., dated 2nd October 1930, and whether there is any res-
sponsible prospect of getting the ruling modified on review or
otherwise. He is also requested to state whether the plan of im-
position under Section 52 of Act II of 1924 referred to in his let-
ter No. 912, dated 20th September 1925, was urged at the hearing.

(True Copy & Return)

Secretary.

To
The Collector of Kistna, with copy of the High Court's judg-
ment
The Secretary to Government, Revenue Department, with copy of
the High Court's judgment & the Court's judgment in
original to be returned.
The Collector of Godavari, with copy of High Court's judgment
(Part 2)
The Accountant-General
The Government Pleader, Madras, with the judgment & reasons
to be returned.

Md. F. H.