

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 3104

DATED 18th June

[Despatch Abstract.]

Recording P.P. sanctioning Rs 100 to the
Govt. Pleader Madras being his fee for having
argued on behalf of Govt. second appeal No 1341
of 1895 in the file of the High Court of Madras

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 DEPARTMENT.

1897.

Board of Revenue
(Land Revenue),
MADRAS.

Printed June 9th.

Proceedings, Forest No. 188, 6th May 1897.

Leey

Order misc no. 3104 of (18th June 97).

Recorded

17/6/97

MAY.

18/6/97

There was no special object, it is submitted,
in awaiting the decision in ~~the~~ as no 1341 of 95
before action was taken with reference to no. 4210, flayed

Perhaps, but submitted that it was necessary to 25-10-95

16/6/97

Sanctioning Rs. 100 to the Government Pleader, Madras, being his fee for having argued
on behalf of Government second appeal No. 1341 of 1895 on the file of the High Court of Madras;
withdrawing Board's proposal to issue a combined notification under sections 4 and 33 in respect
of the leased forest in Malabar, and requesting the Collector to forward the necessary notifi-
cation.

16/6

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

READ—again the following Proceedings of the Board of Revenue (Land Revenue), Forest Mis. No. 1197, dated 19th August 1895:—

Read—the following letter from H. MOBERLY, Esq., Acting Collector of Malabar, to the Secretary to the Commissioners of Land Revenue (through the Conservator of Forests, Southern Circle), dated Malappuram, 11th June 1895, Ref. on C. No. 675-F. 95:—

With reference to the Board's Proceedings, Forest Mis. No. 42, dated 16th January 1895, I have the honour to request the orders of the Board in the following case.

2. In second appeal No. 45 of 1894, the High Court has set aside the decree of the District Judge, South Malabar, in appeal suit No. 371 of 1892, and has remanded of the appellant Nilambūr Tirumalpad under section 10 of the Forest Act. Copies of the judgments of the District and High Courts are submitted for reference and return.

3. The Uralan of Trikalur Devaswam, who has similarly leased forest lands to Government, is likely to prefer an appeal against the decision of the District Judge in appeal suit No. 372 of 1892 and to obtain a favourable decree, as the grounds of appeal in both cases are alike.

4. The total area of land leased to Government by the above janmis is about 12,126 acres, of which 4,439 acres contain valuable Government teak plantation. The land cannot, therefore, be excluded under section 10 of the Forest Act. The Acting District Forest-officer, Mr. Eber Hardie, had several interviews with the brother of the Nilambūr Tirumalpad and the Agent of the Trikalur Devaswam Uralan to ascertain whether the lessors were willing to come to any amicable settlement with Government. He writes as follows:—

"The former has stated in writing that he has no objection to the lands leased by him being declared reserved forests on the understanding that none of the rights vested in him by his karar with the Government is in any way alienated. The latter says he will not consent to the land being made a reserved forest unless some concessions are made by Government to him in the way of a *quid pro quo*, the principal item of which being the payment to him of a percentage on saplings resulting from thinnings under 3 inches quarter girth on, which nothing is paid at present.

"This of course we cannot consent to."

5. As regards the janmam title of the two lessors, the District Forest-officer states that they are unwilling to part with it and that several lakhs of rupees will be demanded if they are forced to do so under the Land Acquisition Act. He therefore deprecates the purchase of janmam title either by private arrangement or under the Land Acquisition Act, and suggests that a fresh notification, under section 33 of the Act, may be issued as the lease coupled with the control that can be exercised under that section is nearly as good as the janmam title itself.

6. The matter was held over for an expression of the opinion of the permanent District Forest-officer, Mr. Hadfield, who was then on leave. Mr. Hadfield now informs me that he quite agrees with the views of Mr. Eber Hardie and recommends the issue of a fresh notification under section 33, making sections 20 to 24 of the Forest Act applicable to the forests.

I concur with the District Forest-officer's views.

Endorsement by W. J. CHERRY, Esq., Conservator of Forests, Southern Circle, dated Coimbatore, 22nd June 1895, No. 1057.

Forwarded.

2. The action proposed by the Collector would now appear to be necessary.

Resolution—Forest Mis. No. 1197, dated 19th August 1895.

Submitted to Government.

2. In February 1888, the management of the Nilambūr forests which had been previously leased to Government in perpetuity by the Nilambūr Tirumalpad and the Trikalur Devaswam was undertaken by the Forest Department in virtue of a notification in the *Fort St. George Gazette*, dated 17th January 1888, No. 20, under section 33 (a) of the Forest Act. The provisions of chapter II of the Act were declared to be applicable to these forests and, on 24th January 1888, they were notified under section 4 in order that they might be constituted "reserved forests."

3. In the course of the enquiry by the Forest Settlement-officer the Nilambūr Tirumalpad and the Trikalur Devaswam, both of whom possess jenm title to the land, objected to Government assuming the position it did, on the ground that it was contrary to the terms of the lease and particularly to the provisions of section 33 which, they contended, did not contemplate the land being constituted a reserved forest. The Forest Settlement-officer's order which was adverse to both the claimants was upheld on appeal in the District Court, Malabar. Against this a second appeal was taken to the High Court by the Nilambūr Tirumalpad so far as his jenm land was concerned. The Honourable Judges set aside the lower Courts' decision holding that while under the lease the Government possessed only a limited interest in the land its action in applying the whole of chapter II of the Forest Act leads to its assumption of the proprietary right of the jenmi which under the existing circumstances it cannot acquire without payment of compensation to the jenmi. The case was accordingly remanded to the Forest Settlement-officer for disposal.

4. In the letter read above the Collector states that the Uralan of Trikalur Devaswam is also likely to appeal to the High Court with the same result and that the acquisition of jenm right on payment of compensation is out of the question owing to the prohibitive amount that will be demanded. He suggests that a fresh notification under section 33 may be issued, making sections 20 to 24 of the Act applicable to the forests, and adds that the lease coupled with the control that can be exercised under section 33 is as good as the jenmi's title itself. The proposal is also supported by the Conservator.

5. The Board observes that the notification as issued was for the express purpose of defining the rights of third parties. The course now proposed would extinguish the claims of third parties without enquiry, which is certainly not contemplated by the Act. Before any one can be punished for an offence in a reserved forest under section 21 of the Act, the land must first be constituted as such. In fact, section 21 cannot be applied in practice to forests managed under section 33 unless the sections relating to the constitution of reserved forests are also applied. Some of the remarks in the appellate judgment of the High Court certainly seem to support the view taken by the Collector and the Conservator but the point was not before it.

6. In its judgment the High Court has held that the notification under section 4 superseded that under section 33 and that the Government "declared the intention to treat the land as completely at its own disposal and not as land in which Government had merely a limited interest." Under this decision there is no use going on with the proceedings under the existing notification as, with this interpretation of the notification binding on him, the Forest Settlement-officer can do nothing but exclude the whole of the notified land.

7. Although the view taken by the High Court may be a reasonable interpretation of the notification as issued, nothing can be more certain than that Government had no such intention, and the only course now open seems to be to issue a fresh notification

modifying the original one in such a way as to leave no room for doubt that the Government does not propose to do anything more than manage as a reserved forest the land in which it has a limited interest. As chapter II deals only with reserved forests, it is clear that the intention of the Legislature in authorising the extension of the provisions thereof to such forests was to enable Government to formally constitute them reserved forests. As observed in paragraph 5 *supra*, it cannot have been intended to extinguish the rights of third parties without enquiry, by summarily extending penal provisions with no prior formal constitution of the land as a reserved forest. A draft notification has accordingly been prepared and is submitted for approval and publication by Government.

8. The Board considers that it will be impossible to interpret a notification thus worded as one superseding the notification under section 33 and declaring any intention to treat the land as at the disposal of Government to the exclusion of the owner. It was also clearly not the intention of the Legislature that it should be open to the owner to prevent Government reserving lands in which it had a limited interest, for if it had been intended that lands should be "reserved" only with the consent of the owner the provisions of section 32 (a) would have been sufficient. That section enables Government to reserve any forest with the consent of the owner, and section 33 (a), with the authority to apply chapter II, was obviously meant to empower Government to reserve, even without the consent of the owner, forests in which it had an interest.

(True Copy and Extract.)

(Signed) L. M. WYNCH,
Secretary

To the Secretary to Government, Revenue Department,
with two enclosures, in original, to be returned and a draft notification.
" Collector of Malabar (through the Conservator of
Forests, Southern Circle).

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the seventeenth day of October one thousand eight hundred
and ninety-four.

PRESENT:

The Hon'ble Sir ARTHUR J. H. COLLINS, *Kt.*, Chief Justice.
and

The Hon'ble Mr. JUSTICE PARKER.

Second Appeal No. 45 of 1894.

Nilambúr Thacharakovil Manavikramen Tirumalpad ... Appellant (Claimant).

The Secretary of State for India in Council ... Respondent (Defendant)

Second appeal against the decree of the District Court of South Malabar
appeal suit No. 371 of 1892, modifying the decision of the Forest Settlement-officer
Nilambúr, in claim No. 15 of 1888.

This second appeal coming on for hearing on Wednesday, the 3rd October 1894,
and having stood over for consideration till this day, the Court delivered the following

Judgment.—The appellant is the jenmi of certain land in Malabar. By karars, predecessors had granted to Government perpetual permission to fell timber on karars further stipulated that no permission to fell timber should be granted to any one else, but that Government should not object to the jenmi washing for gold or digging pits for the capture of elephants.

On the 17th of January 1888 Government published a notification in the *Fort St. George Gazette*, under section 33 (a) of the Madras Forest Act, declaring that the Governor in Council was pleased to undertake, from the 1st of February 1888, the management of these forests accounting to the persons interested in the same for his or their interests. This notification was published under chapter IV of the Madras Forest Act which deals with the control over forests and lands not at the disposal of Government, or in which Government has a limited interest.

This notification was followed by a second on the 24th of January 1888. In this latter notification Government intimated, under section 4 of the Forest Act, that it was proposed to constitute these lands 'a reserved forest,' and appointed the Special Assistant Collector of Malabar to be the Forest Settlement-officer to inquire into and determine the existence, nature and extent of any rights claimed and to deal with the same as provided in chapter II of the said Act.

It is clear that by this notification Government intended to acquire complete rights in the land under chapter II, for in order that land should be constituted a 'reserved forest,' it is necessary that it should first be at the disposal of Government (I. L. R., XI Mad., p. 309). In effect, therefore, the latter notification superseded the preceding one since Government, by applying all the provisions of chapter II, declared the intention to treat the land as completely at its own disposal and not as land in which Government had merely a limited interest.

The Forest Settlement-officer was therefore a Court with special jurisdiction and was bound to determine claims arising under section 10 as well as under sections 11 to 13 of the Forest Act. The Forest Settlement-officer, however, first laid down that any claim be admitted on the part of the present appellant was to be binding upon a rival claimant who apparently was not before him and who was entitled to notice under section 6, and he next refused to consider whether the land was at the disposal of Government, as to do so would be to question the authority of Government to appoint himself. He refused to offer any commutation for the jenm right and only considered claims to compensation for the rights of washing for gold, of digging elephants pits and rights of way, pasturage, &c.

By this procedure Government, who under the karars had only the right to fell and plant timber upon the land, has taken the whole proprietary right of the jenm without any compensation whatever. The ownership of the land did not pass to Government under the karars, nor was the jenm right and title mortgaged; and, if at any time the Government had seen fit to abandon the rights of felling and planting timber which the karar gave, the right to the soil would still vest in the jenm and not in the Government.

Even under the karar there is nothing to show that the janmi parted with the rights of pasturage or even rights of cultivation on lands not required for planting timber. If the Government merely intended to retain the management of property in which it had a limited interest, it was open to it under section 33 to apply such of the provisions of chapter II as might be suitable; but by applying the whole chapter and declaring the intention to constitute the land a "reserved forest," it is open to the claimant to demand that his jenm right shall be dealt with under section 10. The Forest Settlement-officer refused to deal with it, and though the point was taken in appeal, the District Judge has not gone into the question but has treated the case as though the only notification issued had been under section 33.

We must set aside the decree and remand the case to the Forest Settlement-officer for disposal. The appellant is entitled to the costs of this appeal, and the costs in the Courts below will be provided for by the order of the Forest Settlement-officer.

(By the Court.)

(Signed) A. T. FORBES,
Dy. Registrar, Appellate Side.

NOTIFICATION.

With reference to the Government notification No. 20, dated 17th January 1888, published in the *Port St. George Gazette*, dated 17th January 1888, and in modification of notification No. 23, dated 24th January 1888, published in the *Port St. George Gazette* of the 24th idem, the Right Honourable the Governor of Port St. George in Council is pleased to notify, under the provisions of sections 4 and 33 of Act V of 1882 (The Madras Forest Act), that it is proposed to constitute the lands, the property of the Nilambūr Tirumalpad and the Trikalur Devawam, specified in the schedule annexed to the notification last mentioned, "reserved forests" to be managed under the provisions of section 33 (a) of the said Act.

(Signed) L. M. WYNCH,
Secretary.

Read—again the following Proceedings of the Board of Revenue (Land Revenue), Forest Mis. No. 850, dated 12th June 1896:—

Read—G.O., No. 3715, Revenue, dated 13th September 1895.

Read—the following G.O., Mis. No. 4210, Revenue, dated 25th October 1895:—

Read—letter from the Government Solicitor, dated 9th October 1895, No. 578, forwarding, with reference to endorsement of this department, dated 13th September 1895, Mis. No. 3715, the following opinion of the Honourable the Advocate-General, dated Madras, 7th October 1895:—

OPINION.

It is said that the proposed draft notification cannot be construed as declaring any intention to treat the land as at the disposal of Government to the exclusion of the owner; but the notification proposes to constitute the land a "reserved forest," and before this can be done the land must "first be at the disposal of Government."*

2. The High Court pointed out in second appeal No. 45 of 1894 that "if the Government intended to retain the management of property in which it had a limited interest it was open to it under section 33 to apply such of the provisions of chapter II as might be suitable, but by applying the whole chapter and declaring the intention to constitute the land a 'reserved forest,' it is open to the claimant to demand that his jenn right shall be dealt with under section 10."

3. I do not agree with the Board as to the construction to be put upon sections 32 (a) and 33 (a). Those sections form part of chapter IV which deals with the control over forests and lands not at the disposal of Government, or in which Government has a limited interest.

4. The Government may regulate or prohibit certain acts in any forest or waste land not at its disposal, when such regulation or prohibition is necessary for any of the purposes mentioned in section 29, but if the owner of such forest or land decline to comply with the notification, Government, if they resolve to assume control of such forest or waste land, must obtain it on a lease (section 30) or acquire it under the Land Acquisition Act (section 31). If they assume control under a lease, they acquire a limited interest in the forest or waste land for the purpose of carrying out the objects for which the notification was published, and subject to giving such compensation to the owners, in case of dispute, as shall "be determined in accordance, so far as may be, with the provisions of the Land Acquisition Act, 1870." Government could not constitute the land thus obtained a "reserved forest," because (a) that is power is conferred by section 30, and (c) the land would not be "at the disposal of Government" within the meaning of section 3. If the land be acquired for public purposes, it is at the disposal of Government and chapter II is applicable thereto.

5. When Government is "jointly interested in any forest or waste land, or in the whole or any part of the produce thereof," it may undertake the management under section 33 (a), and, in order to manage effectually, may "declare that any of

the provisions contained in chapters II and III shall apply to such forest, waste land or produce." The Legislature were not dealing with the power of constituting a "reserved forest." That power had been previously dealt with, and had been confined to the case of lands at the disposal of Government within the meaning of chapter II. The section merely empowers Government "to apply such of the provisions of chapter II as might be suitable."* The land is not at the disposal of Government within the meaning of chapter II, and therefore Government cannot constitute it a "reserved forest."

Section 32 (a) empowers the owner, or the majority of the owners, of any land who desire to form or conserve a forest thereon, to apply to the Collector "that such land may be managed on their behalf by the District Forest-officer as a reserved forest" and it empowers Government to "apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants." The notification would not constitute the land a "reserved forest" under chapter II, but would, under the powers conferred by section 32, apply specific provisions of the Act to such land in order that its management as a reserved forest may be properly carried out. The difference between managing a forest as a reserved forest and constituting lands a "reserved forest" under the Act seems to me to be illustrated by the two notifications approved of in the Government Order, No. 26, Revenue, dated 11th January 1888. The first was right and within the powers conferred by section 33 (a). The second was held to supersede the first because, as Government therein declared the land "reserved forests under the said Act," and could do so only after the land was at the disposal of Government, it must have been the intention of Government "to acquire complete rights in the land under chapter II and to treat the land as completely at its own disposal."

6. By the proposed notification, Government "is pleased to notify under the provisions of sections 4 and 33 . . . that it is proposed to constitute the lands . . . reserved forests to be managed under the provisions of section 33 (a)." For the reasons given above, I am of opinion that the draft notification is *ultra vires* so far as it professes to constitute the lands not at the disposal of Government "reserved forests."

Order—Mis. No. 4210, Revenue, dated 25th October 1895.

The Board is requested to submit a revised notification with reference to the opinion now expressed by the Hon'ble the Advocate-General.

(True Extract.)

(Signed) E. GIBSON,
Secretary to Government.

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

Resolution—Forest Mis. No. 850, dated 12th June 1896.

Recorded pending result of the second appeal No. 1341 of 1895 on the file of the High Court, referred to in Board's Proceedings, Forest No. 716-R., dated 23rd December 1895.

(True Copy and Extract.)

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

* Second appeal No. 45 of 1894.

READ—the following Proceedings of the Board of Revenue (Land Revenue), Forest Mis. No. 132, dated 10th February 1897:—

Read—the following letter from E. B. POWELL, Esq., Government Pleader, Madras, to the Secretary to the Commissioners of Land Revenue, dated 28th January 1897, No. 103:—

With reference to the Board's Proceedings, Mis. Nos. 1614 and 1714 of the 29th October and 12th November 1895, I have the honour to state that second appeal No. 1341 of 1895 on the file of the High Court came on for hearing on the 27th instant and stood over for consideration till this day when the decision of the Lower Court was set aside and the case was remanded to the Forest Settlement-officer for disposal. The appellant was allowed the costs of the appeal.

2. I pressed upon the Court that Mr. Justice Parker must have misunderstood my argument in the other case, as Government had no intention of depriving the claimant of his jenm right, or of acquiring it. The Judges, however, considered they were bound to follow the decision in second appeal No. 45 of 1894.

3. Mr. Justice Davies expressed a strong opinion that the notification under section 33 (a) applying suitable sections of chapters II and III was the proper course for Government to pursue in order to protect the forest as if it was a reserved forest.

4. I have applied for copies of the decree and judgment which will be forwarded on receipt.

Resolution—Forest Mis. No. 132, dated 10th February 1897.

Communicated to the Collector of Malabar through the Conservator of Forests, Southern Circle.

2. Separate orders will issue as regards the question of a combined notification under sections 4 and 33 in respect of the leased forests (Board's Proceedings, Forest No. 1197, dated 19th August 1895).

(True Copy and Extract.)

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

To the Collector of Malabar (through the Conservator of Forests, Southern Circle).
" Secretary to Government, Revenue Department.

READ—Proceedings of the Board of Revenue (Land Revenue), Forest No. 169, Routine, dated 26th February 1897.

ABSTRACT.—Requesting the Government Pleader, Madras, to state when copies of the decree and judgment in second appeal No. 1341 of 1885 on the file of the High Court may be expected.

READ—the following letter from E. B. POWELL, Esq., Government Pleader, Madras, to the Secretary to the Commissioners of Land Revenue, dated 28th April 1897, No. 368:—

In continuation of my letter No. 103, dated the 28th January last, I have the honour to forward, herewith, copies of the decree and judgment in second appeal No. 1341 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. 100, being my fee for the same.

ENCLOSURE No. 1.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Thursday, the twenty-eighth day of January one thousand eight hundred and ninety-seven.

PRESENT:

The Hon'ble Mr. JUSTICE DAVIES,
and

The Hon'ble Mr. JUSTICE BODDAM.
Second Appeal No. 1341 of 1895.

Vadakiniyadath Kirangat, Manakkal Ashtamurti Nambu- } Appellant
dripad, Uralan of Irikalur Devaswam ... } (Claimant).
The Secretary of State for India in Council ... } Respondent (Counter-petitioner).

Second appeal against the decree of the District Court of South Malabar in appeal suit No. 372 of 1892, confirming the decision of the Forest Settlement-officer of Nilambur in claim No. 26 of 1888.

This second appeal coming on for hearing on Wednesday, the 27th instant, and having stood over for consideration till this day, the Court delivered the following

Judgment.—In a precisely similar case this Court has decided the matter in question here, and as we entirely agree with the judgment in that case (second appeal No. 45 of 1894) we follow it here. The Government Pleader represents that the Government disclaims the desire to acquire the jenm right, but we are of opinion that the Government are bound to acquire that right when their action will result in depriving the jenmi of all enjoyment under it. We accordingly set aside the decree and remand the case to the Forest Settlement-officer for disposal. The appellant is entitled to the costs of this appeal, and the costs in the Courts below will be provided for by the order of the Forest Settlement-officer.

(By the Court.)

(Signed) J. T. GILLESPIE,
Ag. Deputy Registrar, Appellate Side.

RESOLUTION—Forest No. 188, dated 6th May 1897.

The payment of Rs. 100, to the Government Pleader, Madras, being his fee for having argued on behalf of Government, second appeal No. 1341 of 1895, on the file of the High Court, Madras, is sanctioned.

2. With reference to the Advocate-General's opinion recorded in the second of the Proceedings read above and following the result of the above appeal, the Board considers that its proposal to issue a combined notification under sections 4 and 33 in respect of the leased forests in Malabar must now be abandoned. The notifications under section 4, which have already issued in respect of these lands, have therefore to be withdrawn. Government does not wish to acquire the jenmi and is willing to leave to the jenmdar every right which has not been conveyed to Government by the lease, but under section 10 (1) of the Forest Act, a Forest Settlement-officer admitting a jenm claim must either acquire it or exclude the land concerned from the limits of the proposed reserved forest. The Collector is requested to forward the necessary draft notification and to direct the Forest Settlement-officer to suspend all further proceedings with regard to the settlement of these lands—unless on the matter being explained to the jenmdar, he is willing to withdraw the claim which he has preferred.

3. The Collector will, in communication with the Conservator, report what sections of the Forest Act can be suitably applied to the forests in question, and will submit the draft notification under section 33. Section 26 cannot be applied as it relates to lands at the disposal of Government.

(True Copies and Extract.)

Secretary.

To the Collector of Malabar.
" Conservator of Forests, Southern Circle.
" Accountant-General and Government Pleader (paragraph 1 only).
" Copy to the Secretary to Government, Revenue Department.