

Revenue (1897) Department.

CONFIDENTIAL.

G.O., No. 3298.

Confidential No. 952

DATED 30th June 1897

[Despatch Abstract.]

Passing orders on P.S. communicating to the Collector of Malabar Govt Pleader's opinion in regard to Bar Hajis claims for the hills situated in the Poria & Kanoth forests & adjudged to him by the High Court.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

As the Bd has not a
case when advantage should
be taken of the limitation bar
& if so, I submit there is
no reason why Govt should
continue to be in possession
of these forests & that they
should be finally relinquished if
the Hajis will not come to
terms.

24/6/97
24/6/97

If Govt has continued in
possession of any part of Periya,
the whole of it was amicably
devised to belong to Bavathi
Hajis & should be surrendered, but
I do not see how orders to that
effect can be issued about
Kanoth (with regard to which
only Mr. Batten issued orders)
part of it belongs to Govt &
it is uncertain where that
part is situated.

29/6/97

8,000
10-12-96



Proceedings of the Board of Revenue

(Land Revenue)

Forest No. 332 Mis. dated 8th April 1897.
Conf. No. 11

Read letter from G.W. Dance Esq., Ag. Collector of Ma-
labar to the Secretary to the Commissioners of Land Revenue Madras
through the Conservator of Forests Southern Circle Ref. on C. No. 11
F. 97
Conf. No. 11, dated 18th February 1897.

-----:O:-----

Resolution.

The Government Pleader will be requested to favor -
the Board with his opinion and advice in the following case:-

2. Two blocks of land named Periya and Kanoth, in the -
Malabar District were notified under sec. 4 of the Madras Forest -
Act V of 1882, in the Fort Saint George Gazette of the 28th October
1884 and 12th May 1885 respectively. One Bavathi Haji claimed to be
the owner of certain Hills in the 2 blocks in question. The Forest
Settlement Officer after due enquiry disallowed the claims. Bavathi

No. 108 of 1885 relating to Kanoth
96 do. do. do. Periya
*A.S. No. 418 of 1887 ----- Periya
Do. 374 of 1887 ----- Kanoth

Haji appealed to the Dis-
trict Court. The District -
Judge reversed the deci-

settlement
sion of the District Forest Officer. The Government then ~~appealed~~
preferred ~~app~~ second appeals in both cases to the High Court with

S.A. No. 831 of 1888 -- Kanoth
----- 833 ----- -- Periya

the result that the decisions -
of the District Judge were con-

firmed on 22nd. February 1892 and 30th April 1890 respectively. The
High Court however, modified to some extent, the decree of the Dis-

Confidential

Revenue (1897) Department.

CURRENT No. 5130

Confidential No 60

See

From Mr G. W. D. C. G.

From

The Board of Revenue, Land
Revenue, Madras.

For Order S.

No. Forest 555 Mis

craft: No 1

Mean see the R.P. (H.A.)

The Govt Pleader is of
opinion that section 5

of the Forest Act would
bar a suit against

Govt of the nature
threatened by the Haji

apparently however as the
notification under section 16

cannot be in definite delayed
Govt ought to have nothing

more to do with these forests
(Kanoth & Periya) if the Haji

would not come to terms about
them. Submitted that, after since

these lands were enclosed by the
order of the F.S.O in 1894, it is not

clear why possession of them
is retained by Govt. vide para 2 of R.P. H.A.

+ vide para 6 of opinion.

Dated

15th June 1897.

Received

19 June 1897

Registered

19th

Enclosures

Three

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SUBJECT.

Communicating to the Collector
of Malabar Government Pleader's
opinion in regard to Bavathi Haji's
claim for the Hills situated in the
Peria and Kanath forests and ad-
judged to him by the High Court.



Proceedings of the Board of Revenue

(Land Revenue)

Forest No. 532 Mis. dated 8th April 1897.
Confl. No. 11

Read letter from G.W. Dance Esq., Ag. Collector of Ma-
labar to the Secretary to the Commissioners of Land Revenue Madras
through the Conservator of Forests Southern Circle Ref. on C. No. 11
Confl., dated 18th February 1897.

Resolution.

The Government Pleader will be requested to favor -
the Board with his opinion and advice in the following case:-

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the owner of certain Hills in the 2 blocks in question. The Forest
Settlement Officer after due enquiry disallowed the claims. Bavathi

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96 do. do. do. Periya
* A.S. No. 418 of 1887 ----- Periya
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Haji appealed to the Dis-
trict Court. The District -
Judge reversed the deci-

sion of the District Forest Officer. The Government then ~~appealed~~
preferred ~~app~~ second appeals in both cases to the High Court with

* S.A. No. 831 of 1888 -- Kanoth
----- 833 ----- -- Periya

the result that the decisions -
of the District Judge were con-

firmed on 22nd. February 1892 and 30th April 1890 respectively. The
Hig' Court however, modified to some extent, the decree of the Dis-

istrict Court in regard to the claim in Kanoth and awarded to Govern-
ent four out of the twelve hills claimed by Bavothi Haji. As regards -
he remaining hills in Kanoth and 15 hills in Periya, the decrees of the
istrict Court declaring the hills to belong to Bavothi Haji were con-
firmed by the High Court as already stated. But the Government is still
in possession of the hills, Bavothi Haji not having yet taken legal steps
to enforce the decrees of the High Court. The point on which the Govt. -
Pleader's opinion is required is whether Bavothi Haji can have the dec-
rees executed at this distance of time.

3. On the 10th August 1896, Bavothi Haji sent the Collector a no-
tice under sec. 424 of Act XIV of 1882 threatening to sue the Government
for damages amounting to Rs. 20000 on account of the Acts and omissions
of the Forest officers in not allowing him the peaceful enjoyment of --
his forest properties, which he alleges were declared by the High Dis-
trict and High Courts to be his jenn and in his possession. The Board
requests the Government Pleader to state whether a suit will lie against
Government.

4. Shortly after the date of the High Court's decree in S.A. No.
833 of 1888 relating to the Periya Forests, negotiations were, from time
to time, made with Bavothi Haji by the Local officers (Collectors and --
District Forest Officers) for the purchase of the Periya and Kanoth --
forests on behalf of Government, but the Government decided that the --
forests were not worth purchasing either from a climate or commercial --
point of view. In the course of these negotiations Bavothi Haji claimed
the payment of mesne profits and damages for the period (both before &
after the institution of the suits) during which Government had with-
held possession of both the forests from him; and was paid a sum of Rs.
3140 on the 15th March 1893 in full discharge of all his claims to mesne
profits and damages. The receipt obtained from him was as follows:-
"Received from the District Forest Settlement Officer, North Mala--
bar by cheque Rs. 3140 being the payment in full for all claims to mesne
profits and damages for my Periya and Kanoth Forests".

5. The Collector having subsequently represented to the Board --
the impossibility of ascertaining the boundaries of the 4 hills in the
Kanoth forests decreed to Government and the desirability of securing --
a clearer boundary by offering to hand over the same and 3 other Govt.

forests in return for the Periya forests decreed to Bavothi Haji
In S.A. No. 833 of 1888, in view to avoid frequent disputes between --
him and Government, the exchange was sanctioned by Government in --
January 1894. On the supposition that this exchange would take place
eventually the Forest Settlement Officer (Mr. Batten) ordered on --
the 18th August 1894 the exclusion from the limits of the proposed
Kanoth Reserve of the whole of the lands adjudged both to Bavothi
Haji and the Government. This order was carried into effect on the
7th December 1896 in presence of the present Forest Settlement Of-
ficer (Mr. Mullins) accompanied by the Range officer, and of the ad-
hikari and menon of the amsam, from whom a statement on oath was --
taken to the effect that the line settled and cut by the Forest --
Department in the pre portion of the proposed reserve excluded all
land over which any private rights could be claimed. All attempts --
to bring Bavothi Haji to enter into an agreement with Government --
for the exchange of the hills have, up to date proved futile. While
the proposals for the exchange of forests were being carried out
negotiations were made for the purchase of the Periya forests for
Rs. 6000, but Bavothi Hajireceded from the engagement.

6. With reference to the Concluding para of the Forest
Settlement Officer's --
"I would call your particular attention to the Forest Settl. Officer" letter forming enclosure
to the letter read above, the Collector is requested to call upon --
his District Forest Officer, Northern Division to explain why --
maps have been supplied to the Forest Settlement Officer and to re-
port what he proposes to do.

7. The Collector is requested to inform the Government
Pleader direct whether the High Court's decrees in the two second
appeals referred to in para 2 supra have been registered. The Board
presumes that the Collector has satisfied himself that no applica-
tion for the execution of decrees was presented to the Court with-
in 3 or 6 years from the date of the decree (according as the dec-
ree was unregistered or registered) in either of these cases.

*The Collr. of Malabar
thru' the Consr., S.C.
The Govt. Pleader.*
Q.B.

(True Extract)
(sd) R.C.C. Carr
Secretary
(True Copy)

W. Brodie
Ag. Secretary

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

True Copy of Board's Proceedings
Forest No. 332/Confdl. No. 11
Dated 8th April 1897.

Subject.

Confidential



3,006
10-12-96

Proceedings of the Board of Revenue
(Land Revenue)

Mis. Forest No. 555 dated 15th June 1897.

Read again Board's Prop. No. 12
Read the following letter from E.B. Powell Esqre.,---

Government Pleader, Madras to the Secretary to the Board of Revenue,
Land Revenue, Madras, No. 423 Conf. dated 31st May 1897:-

With reference to the Board's Proceedings dated the
8th April 1897 No. Forest 332 Mis./Conf. No. 11, I have the honor to
submit the following:-

Opinion.

1 Before entering on the question as to the best course to be pursued under the circumstances stated in the Board's Proceedings I will clear away a misapprehension which I find in the Collector's letter which is apparently not noticed by the Board.

2. The Collector says in para 3 of his letter that the District Judge observed truly enough that all land in Malabar is private jemmoms unless the contrary is proved. Therefore it must belong to the Haji as it did not belong to Government. I can find nothing in the judgment which would warrant such a conclusion being drawn from it. He further says that "the mistake however does not appear to have been noticed and on appeal the High Court confirm the decision of the District Judge". I have already said that the mistake as formulated by the Collector does not exist but if the Judge's statement in para 2 of the judgment in O.S. No. 374 of 1887 is referred to where he says that in Malabar Government has no right to land except that founded on escheat or confiscation that statement merely contains an abstract proposition which does not

affect the decision of the High Court and which was ^{commented} ~~connected~~ upon at the time the appeal was argued.

The Lower Court found as a fact that the claimant had been in uninterrupted possession for more than 60 years of the Hills claimed.

The High Court held that such long possession raises a presumption of title and on that ground the appeal was practically decided.

3. In the other appeal 418/1887 the ~~the~~ High Court considered itself concluded by the question of fact found by the Lower Court that a rendition did take place as alleged by the ^{plaintiff to the} plaintiff's family in 1816 and that they had been exercising acts of ownership up to 1872. That finding was sufficient to dispose of the case.

4. As to the abstract ~~statement~~ proposition enunciated by the Judge the High Court endorse it to a certain extent by declaring that in Malabar there is a presumption that lands belong to occupants and not to the Government except in cases of escheat.

5. The principal question suggested by para 7 of the Board's Proceedings is whether the plaintiff or claimant has lost ^{his} ~~one~~ right to execute the decrees of the High Court. The answer to this is that the decrees are in their nature declaratory and incapable of execution. It is unnecessary therefore to consider the exact effect of such decrees. Under the Forest Act section 10 the Forest Settlement Officer must deal with an admitted claim in one of three ways:—(1) Come to an agreement & ca. (2) exclude the land from the limits of the proposed Forest (3) Acquire the land under the land acquisition act.

The effect of the High Court decree is by sub section II of section 10 to convert the rejection of the claim by the Forest Settlement Officer into an admission by him of the claim.

6. I understand the lands thus admitted to belong to Barotji were then excluded from the proposed reserve. The effect of the order of the 18th August ~~1894~~ 1894 was to restore these lands to the status quo. Then arises the question what was the status quo. The finding in 2nd. appeal No. 831 of 1888 is that Government were in possession from 1880 till date of claim—though that possession has been held to be wrongful. Bavoti Haji could therefore at any time after that order have brought a suit to recover the land. It looks however as if the order excluding the land had not been published in the Gazette or communicated to the ^{Haji} ~~Haji~~. Till the order excluding the land was communicated to him it was impossible for the Haji to take any steps to

recover the land because he would then be met with the objection—that under section 5 of the Forest Act no Civil Court could entertain a suit till the notification under section 16 is published.

It appears to me that section 5 of the Forest Act would enable Government to remain in possession of a Forest which had been adjudged to be private property for 20 years or indeed any length of time provided they refrained from publishing a notification under section 16. There is no provision in the act for compensating a man for so keeping him out of his land and any other ⁱⁿ remedy would probably be barred.

7. If the order of the Forest Settlement Officer excluding the land from the proposed Reserve has been communicated to Bavoti Haji and Government has nevertheless been in possession no doubt—the statute of Limitation would run against him from the date of the communication of the order. That would not however bar his right as he is entitled to 12 years and at the most Government has only been in possession for 6 years plus 3 years altogether 9 years. Even supposing that Government could take advantage of the Limitation Bar it does not seem to me a case in which Government could creditably do so.

-----:o:-----
Post Script. Mr. Hooper the Conservator of Forest of the Southern Division has shown me some correspondence with the Haji in which the latter offers to sell the Forest to Government at Mr. Hooper's valuation. He apparently wishes Mr. Hooper to act as arbitrator in the matter. If he really means what he says that seems to me the best course. If he does not I don't see how Government can be prejudiced by allowing Mr. Hooper to enter into negotiation with him.

Resolution.

The Government Pleader's letter read above will be communicated to the Collector of Malabar with an expression of ^{the} ~~the~~ Board's concurrence in the remark in para 7 of the letter that the case is one in which Government could not creditably take ^{advantage} of the Limitation bar even if it had the power to do so.

(True

(True Copy and Extract)

W. H. H. H.
Acting Secretary.

TO
The Collector of Malabar.
The Conservator, Southern Circle.
Copy to the Secretary to Govt., R.D., with Collr's & Forest Settlement
Officer's letters in B.P. 332, dated 8.4.97 in original to be
returned.

Q.B.

True C
Forest
Dated

Read Current No 5130 P

Ex. His 30 June 1897 No 3298

The Govt agrees with the Board
that the case is not one in which
advantage should be taken of the
limitation but even were it
possible to do so.

2. ~~From~~ From para 2 of
B.P. Forest no 332 his 7th Apr 97
the Govt observes that the Forest
Dept still hold possession of
all the hills in Periya & in
Kanth. As all the hills in
Periya have been declared
assigned by the courts to
Bavathi Haji they should, if
~~arranged to be~~ ^{relinquished} ~~arranged to be~~
Bavathi Haji with not come
to an agreement in respect of
~~them~~ ^{them} ~~to be~~ ^{relinquished} ~~arranged to be~~
3. With regard to the hills in Kanth
it would appear that four hills
have been declared to be Govt
property but that it is im-
possible to identify them. Until
^{this is} ~~they are~~ determined therefore it
will be the Govt's to relinquish possession
of the Kanth hills.

ad Rev (L.R.)

W. H. H. H.
25.6.97

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G.O., N.

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