

21-2-10

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 3760

DATED 21st July

[Despatch Abstract.]

with remark
Ordering (R. A. coming to all collect certain Govt orders regarding
the disposal with reference to the Madras Acts III of
1896 and II of 1897, of suits and appeals under Regulation
VI of 1831.

BACK PAPERS.

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

FURTHER PAPERS.

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

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REVENUE DEPARTMENT.

1897.

Board of Revenue

(Land Revenue),

MADRAS.

Printed June 15th.

Proceedings, No. 188, 2nd June 1897.

JUNE.

Communicating to all Collectors certain Government Orders regarding the disposal, with reference to the Madras Acts III of 1895 and II of 1897, of suits and appeals under Regulation VI of 1831.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

Read—again the following Proceedings of the Board of Revenue (Land Revenue),
Mis. No. 3278, dated 18th July 1896 :—

Read—the following Government Order, No. 276, Revenue, dated 22nd June 1896 :—

Order—No. 276, Revenue, dated 22nd June 1896.

Miscellaneous.

Madras Act III of 1895 which came into force on the 1st October 1895, provides for no appeal to the Board (except in certain cases) and for none whatever to Government in any case, against decisions in suits and orders passed under the Act; and section 19 declares that "all suits brought and appeals made under Regulation VI of 1831 shall, after the commencement of this Act, be heard and disposed of, as if they had been preferred under this Act." Under an impression that this section gave power to apply the provisions of the Act retrospectively, *i.e.*, even in the matter of limiting appeals against decisions in suits and orders passed under the repealed Regulation VI of 1831 to the extent provided in Act III of 1895, the Government, and it would appear the Board also, have been rejecting such appeals under section 23 of the new Act (III of 1895) which repealed the aforesaid Regulation. But the correctness of these orders having been impugned the question has been considered at length by Government.

2. One rule of construction of statutes is that no right, which is conferred by a law and which has already accrued, can be taken away by the mere repeal of the law unless there are words in the repealing enactment expressly taking away such right.

- (1) I.L.R., Cal., Vol. III, page 662.
- (2) " " " XIII, page 86.
- (3) " " " XVI, page 267.
- (4) " Allahabad, Vol. I, page 663.

This principle is recognized in the Madras and the India General Clauses Acts of 1891 and 1868 (*vide* sections 8 and 6, respectively), and there is also a current of legal decisions to the same effect.

Under sections 5 and 7 of Madras Regulation VI of 1831, every party affected had a *right* to appeal to the Board and this *right* has not been expressly taken away by any provision in the new Act (III of 1895) which repealed the old Regulation. It is true that in generally criticising the draft Bill which subsequently became Act III of 1895, the Board suggested that "provision should also be made for appeals to be decided as if the Bill had retrospective effect at the time the suits were filed" and the Government approved the suggestion. The Legislature also certainly intended to adopt the suggestion and inserted what is now section 19 of the Act. But this section is defective in that it does not specifically exclude the operation of Chapter II of the Madras General Clauses Act I of 1891, and as it is worded at present, it can apply to *procedure* only. The result is that in suits filed under Regulation VI of 1831, the law as regards appeals remains as laid down in that Regulation.

3. In the foregoing circumstances, His Excellency the Governor in Council is of opinion that all decisions which have been arrived at since the 1st October 1895 on the assumption that retrospective effect could be given to section 23 of Act III of 1895, are invalid, and accordingly directs that all cases so disposed of by the Board shall now be re-opened by that authority *suo motu* and decided upon their merits. The Board should also instruct Collectors to take similar action in regard to any orders which may have been passed by them on the foregoing assumption.

(True Extract.)

(Signed) LIONEL DAVIDSON,
for Ag. Secretary to Government.

To the Board of Revenue (Land Revenue).

Resolution—Mis. No. 3278, dated 18th July 1896.

Before proceeding to carry out the orders of Government embodied in the Proceedings read above, the Board would respectfully request that the matter may be reconsidered.

2. The effect of the Government order in question will be to overwhelm the offices of the Board and Collectors with possibly thousands of appeals which it was, admittedly, the intention of the Legislature to disallow. On a rough calculation the number of cases in the Board's office alone exceeds 500. The Board will not presume to question the correctness from a legal point of view of the present decision, although it may be noted that the same question was carefully considered in this office in October last, immediately after the introduction of the Act, and a contrary decision was arrived at. But the necessity for, and the desirability of, the action now ordered

* *Vide* Government Orders, No. 1004, Revenue, dated 21st November 1893, and Mis. No. 4775, Revenue, dated 20th December 1893.

by Government appear to be doubtful, and the Board would call attention to the fact that this is the third occasion * within the last three years on which the business of the Board of Revenue, and to

some extent of subordinate offices also, has been dislocated by the rehearing of large numbers of appeals.

3. In view of the serious public inconvenience certain to be caused by enforcing obedience to the present instructions of Government, the Board would respectfully suggest that an amending Bill be introduced into the Legislative Council embodying some provision similar to that suggested in Board's Proceedings, No. 719, dated 15th December 1892, paragraph 14, and No. 508, dated 4th September 1893, paragraph 3 (20), and the law as defined in Act III of 1895 may thus be brought into accord with what was the undoubted intention of the Legislature.

4. It may further be noted that not only do the orders in question entail a vast increase of work upon Government officials, but the stability of the village offices to which the Act applies will again be shaken. The main principle governing the new law in regard to the disposal of claims to these offices, is finality of decision. All the parties concerned have acquiesced in the decisions under reference. The rehearing of thousands of cases, some of which have been a closed book for more than six months, will destroy the feeling of security which Act III of 1895 has hitherto engendered.

(True Copy and Extract.)

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

To the Secretary to Government, Revenue Department.

READ—again the following Proceedings of the Board of Revenue (Land Revenue), Mis. No. 3777, dated 17th August 1896 :—

Read—the following Government Order, No. 406, Revenue, dated 12th August 1896 :—

Read—again Government Order, No. 276, Revenue, dated 22nd June 1896.

Read—Proceedings of the Board of Revenue (Land Revenue), Mis. No. 3278, dated 18th July 1896.

Order—No. 406, Revenue, dated 12th August 1896.

Miscellaneous.

In the circumstances stated, the Government agrees with the Board of Revenue in considering that it is desirable

to pass an amending Act to the effect that section 23 of Madras Act III of 1895 has retrospective effect, and thus bring the law into accord with what was the undoubted intention of the Legislature. Steps will accordingly be taken to introduce into the Legislative Council, at an early date, a Bill to amend Madras Act III of 1895.

2. In the meanwhile, the orders contained in Government Order, No. 276, Revenue, dated 22nd July 1896, may be held in abeyance.

(True Extract.)

(Signed) A. T. ARUNDEL,
Ag. Secretary to Government.

To the Board of Revenue (Land Revenue).

„ Legislative Department, with draft Bill and Statement
of Objects and Reasons.

Resolution—Mis. No. 3777, dated 17th August 1896.

Recorded.

(True Copy and Extract.)

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

READ—again the following Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1466, dated 22nd April 1897 :—

Read—the following Government Order, Mis. No. 1620, Revenue, dated 25th March 1897 :—

Read—the following Government Order, No. 26, Legislative, dated 13th March 1897 :—

Read—the following letter from J. M. MACPHERSON, Esq., Secretary to the Government of India, Legislative Department, to the Secretary to the Government of Madras, Legislative Department, dated Calcutta, the 8th March 1897, No. 507 :—

I am directed to return herewith, with the assent of His Excellency the Viceroy and Governor-General signified thereon,

To amend the Madras Act III of 1895 (the Madras Hereditary Village Offices Act, 1895). the authentic copy of the Law noted on the margin, which was received with your letter No. 11, dated the 15th ultimo, to the address of the Secretary to the Government of India in the Revenue and Agricultural Department.

Order—No. 26, Legislative, dated 13th March 1897.

The assent of His Excellency the Viceroy and Governor-General to the Act to amend the Madras Hereditary Village Offices Act, 1895, will be communicated to the Revenue Department, and the Act will be published in the *Fort St. George Gazette*; copies will also be sent to the Translators to Government who will furnish translations for publication in the Gazette at a very early date.

(True Extract.)

(Signed) G. S. FORBES,
Secretary to Government.

To the Revenue Department.

„ Superintendent, Government Press.

„ Translators to Government.

Order—Mis. No. 1620, Revenue, dated 25th March 1897.

Communicated to the Board of Revenue with reference to paragraph 2 of Government Order, No. 406, Revenue, dated 12th August 1896.

(True Extract.)

(Signed) LIONEL DAVIDSON,
Under Secretary to Government.

To the Board of Revenue (Land Revenue).

Resolution—Mis. No. 1466, dated 22nd April 1897.

Before communicating the above orders of Government to Collectors, the Board would request definite instructions on the following points :—

2. On the 1st October 1895, the date on which the Madras Act III of 1895 came into force, there were pending in this office 128 appeals against decrees or orders passed under Regulation VI of 1831. Of these 96 were rejected as being inadmissible under section 23 of the new Act, while 31 were disposed of on their merits, the principles of the new Act being followed; one case is still pending. Of the appeals filed on or after 1st October 1895, 57 were disposed of on their merits under the provisions of Act III of 1895 and 99 have been kept over pending the passing of the amending Act II of 1897. Thus there are three sets of cases falling under two classes, as shown in the margin, which now require consideration with reference to the Madras Act II of 1897 and Government Order, No. 276, Revenue, dated 22nd June 1896, which has been kept in abeyance.

	Cases rejected as inadmissible under section 23.	Cases disposed of on the merits.	Pending cases.
1. Appeals filed before 1st October 1895 ..	96	31	1
2. Appeals filed after that date	..	57	99
Total ..	96	88	100
		284	

on their merits, as well as the 100 pending cases. But the questions which require orders of Government are—

(1) Under what law are the cases to be heard—Regulation VI of 1831 or Act III of 1895?

(2) If the provisions of Regulation VI of 1831 and the rulings thereunder are to be applied to these cases, the same course must be followed in regard to the 31 cases which were filed before 1st October 1895, and have already been disposed of under the provisions of Act III of 1895. The 57 cases filed after 1st October 1895,

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and so disposed of, must fall within the purview of section 19 of Act III of 1895 in so far as procedure is concerned, but it would appear that they should be reheard under Regulation VI of 1831.

(True Copy and Extract.)

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

To the Secretary to Government, Revenue Department.

READ—the following Government Order, Mis. No. 2573, Revenue, dated 20th May 1897:—

Read—Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1466, dated 22nd April 1897.

Order—Mis. No. 2573, Revenue, dated 20th May 1897.

Subject to the provisions of Madras Act II of 1897 which determines the right of appeal in cases disposed of under Regulation VI of 1831, all appeals from decisions and orders passed under the said Regulation, whether filed before or after 1st October 1895, should be disposed of in accordance with the provisions of that regulation and the rulings thereunder, so far as substantive law is concerned. As regards procedure, however, all cases disposed of after 1st October 1895 come within the purview of section 19 of Madras Act III of 1895. The Board of Revenue should deal with the cases referred to in its Proceedings read above in the light of the foregoing remarks.

(True Extract.)

(Signed) A. R. KNAPP,
for Ag. Secretary to Government.

To the Board of Revenue (Land Revenue).

RESOLUTION—No. 188, dated 2nd June 1897.

The orders of Government, No. 276, Revenue, dated 22nd June 1896; No. 406, Revenue, dated 12th August 1896; No. 1620, Revenue, dated 25th March 1897; and No. 2573, Revenue, dated 20th May 1897, will now be communicated to all Collectors for information and guidance.

2. The special attention of Collectors is drawn to the instructions contained in Government Orders, No. 276, Revenue, dated 22nd June 1896, and No. 2573, Revenue, dated 20th May 1897. They are requested to reopen *suo motu*, and decide in accordance with the instructions above referred to, all suits pending on 1st October 1895, and all appeals from decisions and orders passed under Regulation VI of 1831, whether filed before or after 1st October 1895, which have been disposed of on the assumption that retrospective effect could be given to Act III of 1895.

(True Copies and Extract.)

(Signed) N. S. BRODIE,
Acting Secretary.

To all Collectors.

Copy to the Secretary to Government, Revenue Department.

Code
Class.

INDIAN TELEGRAPHS. Monthly
Number.

To
(Office)

From
(Office)

Words.

Day.

Hour.

Minute.

Official
Instructions.

To
(Person)

From
(Person)

64 Word Form.

Signed copy of B.P. 188 dated
2nd June 97. Was sent to the Ag.
Secy on the 18th June last.

No signed copy of the
B.P. has been received

with the office at only the Madras

office is requested to
make a search in the bundle
of spare copies

From

By

Sent to

By

Recd.

Mts. by

At

Recd.

Mts. by

Telegraph Master.

Read @ N. 5886 of 1897

G.p. mis. 3760 of 21st July 97
Recorded.

2. No signed copy of
the B.P. has been received
in the Govt. office.

11/7/11

List

18.
19 July 97

To the B^d of Rev (L.A.) ✓
Desp'd 24-7-97.

Board
copy
Spore house

been carefully
examined but the signed copy of the B.P.
was not among them (19 July 97)