

Revenue (1897) Department.

ROUTINE SERIES.

G.O., No. 587

DATED 22nd March 1897

[Despatch Abstract.]

Referring Gadiraju Narasimharaju late
village Munsif of Gollala Koduru, Pheemavaram
Taluk, Godavari Dist. to the orders already
passed & also to the provisions of Madras
Act II of 1897.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
3203	10-8-96						

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
CO-1499/95-96	466		25-2-97				

Revenue (1897) Department.

CURRENT No. 2029

Order R. No. 5874 22nd March 97

The petr is
referred to the orders
already passed and
also to the provisions of
the Madras Act II of 1897.
Goal cannot interfere
in the matter.

(A.P.)
20 March 97
1st
To the Secy
to the Govt.
11/4/97.
24-3-97

From
Gadiraju Narasimha Raju
Late Village Munsif
of Gollala Koduru
No. Bheemavaram
Taluk
Godavari Dt.

Dated 4th
Received 6th
Registered 6th
Enclosures
Spare copies
March 1897

SUBJECT.

Praying for restoration
to his former post.

24/3/97

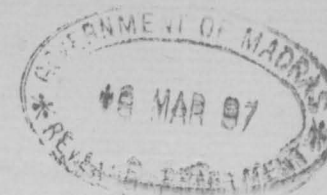
24/3/97

BACK PAPERS.

G.O.	No.	Department.	Date.
	3203		
	10-8-96		

FURTHER PAPERS.

G.O.	No.	Department.	Date.



To

HIS EXCELLENCY THE GOVERNOR IN COUNCIL,

Fort St. George,
MADRAS.

REVENUE DEPT.

The humble Review petition of Gadiraju
Narasimharaju, Gollalakoderu, Bhima-
varam Taluq, Godavari.

May it please Your Excellency in Council,

I, the petitioner, put in a petition in 1896 (printed copy enclosed marked as Exhibit A) and in reply received endorsement No. 3203 (Mis.) Revenue Department dated 10th August 1896, Enclosure B, stating that "the Government sees no reason to interfere on petitioner's behalf."

1 A—OLD ACT—It is needless to submit that my case as regards appeals to Government is governed by the old Regulation. Vide Bill to amend Section 19, Act III of 1895.

2. Perhaps that printed petition enclosure A having gone into the full details of points of FACTS, the most important QUESTION OF LAW involved in the case, had not been pressed upon the notice of Government so forcibly as the importance deserved.

3. LAW—QUESTION OF—The only issue of Law for decision is this—Does the Government possess power to reverse its own JUDICIAL decision passed under Section 6, Regulation VI. of 1831,

If so under what circumstances and conditions?

Is there no limitation for such revision of its own decision?

4. There was a suit (No. 17 of 1879) under Regulation VI of 1831 between my father and my opponent's (present holder's) mother's mother. It was decided in my favour in the Court of the 1st Instance and also FINALLY by the Government under Section 6, Regulation VI of 1831. Vide Exhibits C and D being the Judgment in the suit and the final Declaratory Decree of the Highest Court under that Special Law Regulation VI of 1831, viz., the Government.

5. This Declaratory Decree was put into Execution in 1894 when a VACANCY OCCURRED, against the opposition of the present holder of the office. He (the opponent) filed a suit under the Regulation.

It was in pursuance of this Suit that I have now been deprived of the benefit of the Declaratory Decree of the final Highest Court under the Regulation.

6. The Board of Revenue which at first decided in my favour was, I regret to have to submit with profound respect and deference, afterwards LED INTO A MISTAKE OF FACT and under that MISAPPREHENSION reversed its own order and also allowed the Final Judicial Declaratory Decree of Government to be set aside by the Collector.

7. MISTAKE OF FACT—The Collector represented in his Progs : No. 561 dated 19th February 1895, Exhibit E, that when the Government passed the Declaratory Decree, it was "not aware that Respondent was divided collateral."

The incorrectness of this representation is proved by the following quotations from the Judgment of the Collector dated 16th September 1880 Exhibit F.

1st Quotation.—"The plaintiff admitted before the Tahsildar that he and his brother the deceased Munsiff were DIVIDED."

It was decided on the merits

vide G.O. 3203 10-8-96

2nd Quotation.—“The family is admitted to have been divided, and the widow would therefore succeed her husband in preference to his brother.”

8. Now it must be prominently borne in mind that it was this very Judgment containing these words that had been upheld by the Board and then UPSET by the Government in the Declaratory Decree.

Is it conceivable then that the Government upset the Judgment WITHOUT LOOKING INTO IT?

Can such an irregularity be presumed for a moment? and that too on the part of the Government in a judicial capacity, when THE RECORDS ACTUALLY PROVE THE CONTRARY?

9. **Mistake of fact again.**—It will be seen that the Board was induced to reverse its own order by the Collector's letter ¹⁹²¹_{Ver.} dated 25th June 1895 para 2, which says: “The Government Order ¹¹⁹⁸₁₀₋₁₂₋₈₁ referred to appears to have been passed on the presumption that the family of Gadiraju Narasimharaju and Venkamma was undivided and the fact that the families were divided does not appear to have been before Government when it passed that order.” Vide Enclosure G. The Enclosure H. being the Board's proceedings No. 5477 dated 31st October 1895, cancelling its previous order passed in my favour is based on this INCORRECT representation of fact AGAINST CLEAR RECORDS.

10. Now my contentions are (1st) That the Government has not itself got power to revise its own judicial Declaratory Decree, even if it were now found to be based on incorrect data.
(2nd) That it has *a fortiori*, not got any powers at all to do so, when there is no incorrect datum as wrongly supposed by the Board on the incorrect representation of the Collector.
(3rd) That neither the Board nor the Collector has any powers to upset the judicial Declaratory Decree of the Government, on any REAL and MUCH LESS ON ANY SUPPOSED DEFECT IN IT.

Under these circumstances, I earnestly pray that your gracious Excellency in Council will be pleased TO UPSET THE BOARD'S ORDER No. 5477 dated 31st October 1895 based as it is on a MISAPPREHENSION OF FACTS and UPHOLD THE BOARD'S ORDER No. 2608 dated 22nd May 1895, Enclosure J.

11. **Another mistake of fact.**—There is another mistake of fact which the Collector has, I am constrained to have to point out with greatest reluctance and deference, fallen into, in this matter.

Against the well-known and well recognised legal maxim that SPECIFIC OVERRULES THE GENERIC the Collector in para 2 of his letter dated 25th June 1895 Enclosure G, says that the generic G. O. No. 215 dated 22nd March 1886 expounding the law, after a full decision, in favour of a daughter's son in preference to a divided collateral, went to modify a SPECIFIC JUDICIAL DECLARATORY DECREE of the Government passed about a half dozen years PRIOR TO IT, with the DELIBERATE PROTECTIVE clause “as a special case.”

I most earnestly solicit a perusal of G. O. No. 215 dated 22nd March 1886 to see whether it contains a single syllable to show:—

- (1st) GENERALLY that this G. O. No. 215, should have retrospective effect and undo all the previous Decisions.
- (2nd) SPECIALLY that the G. O. of 1881 passed as a special case in my favour so many years prior to it and as a judicial Declaratory Decree under Section 6 of Regulation 1831, was modified by this generic Departmental G. O. expounding the law.

12. In consideration of these two among other, MISTAKES OF FACT, I earnestly pray that your Excellency in Council will be graciously pleased to uphold the specific Declaratory Decree of Government passed as a special case in 1881 and restore me to my post from which I and my family had, in the words of Government itself, “by one means and another been kept” away “so long,” Vide G. O. No. 1198 dated 10th December 1881, Enclosure B.

13. **Res Judicata.**—It will be seen that when, I was actually put into the post in execution of this judicial Declaratory Decree of Government on the occurrence of a vacancy, my opponent filed a suit under Regulation VI of 1831. It was in reference to this suit that the Collector fell into the two-fold MISTAKES OF FACTS as already shown.

If the Collector had, I am constrained to have to submit with deference, looked into the records properly, he would have at once come to his decision that the opponent's suit was a Res Judicata and should have been dismissed as such.

Regulation suit No. 17 of 1879, of which the final decision was judicial Declaratory Decree of the Government exhibit D. was between my father versus the opponent's grandmother Venkayya THROUGH AND FROM WHOM, he now sought the post and WHOM he seeks to succeed. Under Section 13 of the Civil Procedure Code, regarding the Law of Res Judicata, “No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties UNDER WHOM THEY OR ANY OF THEM claim, litigating under the same title, &c.”

Thus my opponent's suit is a Res Judicata and for that reason too I pray that his suit, and the Collector's and Board's decisions thereon be set aside and the Government's Judicial Declaratory Decree of 1881 be restored and I be restored to my post

14. G. O. No. 215 OF 1886.—NO RETROSPECTIVE EFFECT.—It was only by G. O. No. 215 dated 22nd March 1886 that the Government made it a hard and fast rule that daughter's sons had preference over divided collaterals. For in B. P. No. 418 dated 15th February 1886 read in that G. O. the Board had adhered to their opinion that it was “very desirable that succession to the hereditary village offices should be in the direct male line so as to retain the office in the original family instead of allowing it to pass into a totally distinct family as would be the case if the son of a daughter of a deceased holder were preferred to the son etc.”

This notwithstanding the B. P. ²⁴⁹⁷₄₋₉₋₇₄ based on the Judgment of the High Court in special appeal No. 451 of 1868, page 23, Vol IV, M. H. R.

These rulings show that till the G. O. No. 215 of 22nd March 1886 was passed for general guidance, there was no hard and fast rule about the daughter's son being preferred. Hence this G. O. of 1886 cannot affect the special judicial decision of 1881.

Whether the Law in 1881 was understood to be this or that, the words “as a special case” used in the Judicial Declaratory Decree of Government in 1881 (Vide D.) shows that the Government deliberately passed that order having in their prominent view all the facts and law in their full details as they existed then.

Hence too, I earnestly pray that this Judicial Declaratory Decree of Government of 1881 be upheld and I be restored to my post.

15. The merits of the case having been fully set forth in Exhibit A, I pray for its perusal and for justice being done to me.

For this act of justice and favour, I shall ever prove grateful by a hard and honest discharge of my duties.

4th March 1897

Desd 5. 3. 97

నందింకలపాటి వేంకటాచలం

When given for copying _____
When copied _____
When examined _____
When signed _____

189 .

READ AGAIN G.O., No.
189 ,

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTERS OF GOVERNMENT

STATEMENT WITH DITTO

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—

A = Copy in full.
B = Not to be copied.
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