Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 2945

DATED 15th July 98

REGISTERED No. 96
8-2-1901

[Despatch Abstract.]

Expressing the opinion of Govt that all the
14 Suits on the file of the Dt Munsiff of
Rajamundry filed by the Ryots of certain
lands in the Godavari District for the re-
fund of the amount of Village Cess levied from
them by Govt, should be contested, and appr
roving the Draft written statements subject
to certain alterations &c.

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 (1898) Department.

CURRENT No. 2344

From

The Board of Revenue,
Land Revenue, Madras

Order

Rf. No. 755.

Dated 25rd March 1898

Received 23 —

Registered 24 —

Enclosures 6

Spare copies

SUBJECT.

Submitting to Govt. certain papers relating to the defence of O.S.Nos. 755 & 754 of 1897 on the file of the Dt: Munsiff, Cocanada by lessees of lankas instituted for the refund of village cess levied from them with the request that they may be referred to the Advocate General for favor of advice, calling for certain information from the Collr. in connection therewith & requesting him to [illegible] for a long adjournment for [illegible]

BACK PAPERS.

G.O.	No.	Department.	Date.
20	532-2	5-1	97
"	357-2	5-13-2	11
"	2833-2	5-4	97
"	2521-2	2-2	97
"	2321-2	2-8	97

6994 29-8-97

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Reference on *No.* *of* 1893.

In replying the above should be quoted.

(LAND REVENUE.)

REVENUE BOARD OFFICE. MADRAS.

118

Read letter from V.A.Brodie,Esquire,Collector of Godavari,to the Secretary to the Commissioners of Land Revenue,Madras,Ref.on G.O.No.139 & 140 / Rev. of 1898,dated 8th March 1898.

-------:0:-------

Reference No.555,dated 25rd March 1898.

Submitted to Government with reference to the correspondence ending with Government Order No.5635 Rev., dated 5th November 1897.

2. In para 5 of its Proceedings recorded in the above Government Order,the Board instructed Collectors to continue to levy cesses on Lands Leased out for cultivation for a term of years,pending authoritative decision of the question by the Civil Courts.The Collector of Godavari now asks for sanction for the defence of two suits instituted by certain Lessees of Lankas for the refund of village cess already levied from them in respect of faslis 1504, 1505 & 1506 after the new Village Act IV of 1895 had come into force,and adds that twelve other suits involving the same question have been filed against Government in the Civil Courts.

3. In the two suits now reported on,the Collector proposes to plead that the Plaintiffs,being lessees of Lankas, are in the same position as ryotwari holders.It is open to argument that they are"holders of Land on ryotwari tenure"

within the meaning of Section 7 of Act IV of 1903,as they hold lands directly from Government under a "settlement with individual cultivators for a given term" the expressions used in sections 2 & 3 of the repealed Act IV of 1864 were " all holders of Land" and "land holders" and it was only to limit their application to myouroi villages that the words "all holders of land on myouhami tenure" were inserted in section 7 of the new Act of 1903.(vide para 4 of the statement of objects & reasons appended to Government Order No.699 Rev.,dated 20th August 1906.)

4. The Board is further of opinion that the plea of limitation should be raised in the written statements.In para 7 of his opinion communicated with Government Order No. 2623 Rev.,dated 22nd May 1907,the Advocate General stated that certain suits for refund of land cess filed in Ganjam would seem to be governed by articles 2 & 16 of Schedule II to the Indian Limitation Act XV of 1877,if Section 59 of Act II of 1864 were not applicable.The Collector does not state whether the amounts claimed in the present suits were recovered by coercive process under the latter Act (vide para 7 of the above opinion);but even if they were not so realised,it is a question for consideration whether the oral demand by the Head of the Village or other Revenue Officers for payment of assessment & cesses,followed by the collection thereof,does not amount to a Proceedings under Act II of 1864 within the meaning of section 59.

5. In view of the importance of the question involved and of the fact that these are test suits,the Board recommends that the papers may be referred to the Advocate-General for favor of advice as to whether the suits can be successfully defended on the above lines and for revision of the draft written statements submitted by the Collector.

6 The Collector is requested to report whether the amounts sought to be refunded were recovered from the Plaintiffs by actual issue of coercive process & if not,whether they were paid voluntarily or under protest.

7. The Collector is further requested to apply for a long adjournment of the hearing of the suits and to instruct the Local Government Pleader to move the District Court to transfer the suits to its own file in view of the importance of the issues involved.

Secretary

To

The Secretary to Government,Revenue Department, with the Collector's Letter & Enclosures in original to be returned.

The Collector of Godavari (paras 6 & 7)

M.R.H.

O. M. No 90

Before passing final orders on B. P. no 335 §23.3.98 requesting that the opinion of the Hon'ble the Advocate General may be taken as to the manner in which certain suits brought against Govt questioning its right to levy village cesses on lands held on temporary tenure ~~such as Banka Cesses~~ should be defended, the Govt desires to have information as to the amount of village cesses involved, taking into consideration the total Banka assessment, the whole terms of the existing leases and other cases involved in similar doubt. The undersigned has the honour to request that the reply to see this reference may be submitted with the least practicable delay.

KD
19/4/98

D.C.T.
19/4/98

Cuttacamund
19th April 1898

To

The Sec. to Govt (A. R.) Dept

CURRENT No. 2763

14 Recd. Telegram from the Collr. Rajahmundry Copy to be forwarded to the Board of Revenue

12 Recd. to Postage Bd. of Rev. 532 do. 17/4/98

From the Board of Revenue (Land Revenue) Madras.

Order Inio. Telegram 17/4/98

No. 403

Dated 5th April 98

Received 6th

Registered

Enclosures 16

Spare copies

Ordered that the following deferred telegram be despatched to the Collector of Godavari:—

15 "Your letter to Board 28 March last regarding Suits nos 2 to 13 Rajahmundry file. Apply for long adjournment and transfer to District Court file as in suits nos. 733 and 734 Cocanada file."

17/4/98

To

The Board of Revenue

Copy to the Collr. of Godavari

Abstract

SUBJECT.

Submitting to Government in continuation of Board's reference No. 335 dated 23-3-98 letter from the Collector of Godavari regarding defence of certain suits for the recovery of the village ceded by Government from renters of Lankavaram in the Godavari Dt.

4/16/4/98. 16

Rec'd. 16/4

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Reference on *No.* *of* 1898.

In replying the above should be quoted.

(LAND REVENUE.)

REVENUE BOARD OFFICE. MADRAS.

Read — letter from the Collector of Godavari, R. C.
№ 631 to 642 / Rev: of 98, dated 28th March 1898.

Reference — № 403, dated 5th April 1898.

Submitted to Government in
Continuation of Board's Reference № 335
dated 23rd March 1898.

Recd
Secretary.

To
The Secretary to Govt., R.D.
with Coll'rs & 11 Enclosures
in original to be returned

Ltr. Endd. 111

Revenue (189 8) Department.

CURRENT No. 4301

178 Acdg. the follows Ord
Dy B.R. G.O.
No. 1508, Revenue
14th June

From The Board of Revenue,
Land Revenue, Madras.

Order No. 1508 Revenue

Dated 14th June 1898

Received 16 —

Registered 17 —

Enclosures 5

Spare copies

SUBJECT.

Submitting to Govt. with remarks a statement showing the village cess leviable on Lands held under Govt for a term of years during the currency of the existing leases and requesting the Collector of Godavari to apply to the District Munsiff of Rajahmundry for an adjournment of the hearing of the suits for refund of village cess on his file for one month.

15

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

2000
25-4-98.

REVENUE BOARD OFFICE MADRAS

Proceedings of the Board of Revenue

(Land Revenue).

No. 1500 Annual., dated 14th June 1898.

Read the following :-

1. Official Memorandum, from the Ag. Under Secretary to Government, Revenue Department, No. 90, dated 19th April 1898, And Reference No. 457, dated 22nd April 1898

2. Letter from V.A. Brodie, Esquire, Collector of Godavari, to the Secretary to the Commissioners of Land Revenue, Madras, Ref. on No. 631 to 642-Rev., dated 13th May 1898. And Reference No. 583, dated 26th May 1898.

3. Also replies to the above two References.

4. Also Letter from V.A. Brodie, Esquire, Collector of Godavari, to the Secretary to the Commissioners of Land Revenue, Madras, Ref. on Cur No. 139 & 140 Rev. of '98, dated 26th May 1898.

Resolution :- -------:0:-------

With reference to the Official Memorandum from Government read above, the Board submits herewith a statement showing the total Lanka assessment payable under the existing leases in the Godavari district, and the village cess leviable thereon as well as the amount of cess involved in the case of other lands held under leases for a term of years in that and in other districts. The delay in the submission of the statement is due to the fact that, though the Board in its reference No. 457, d/22-4-1898 specially requested Collectors to despatch their replies to it before the 5th May if possible, the statements were not received from several districts until after the issue of telegraphic reminders and the reply from the

Collector of Godavari to whose district the reference specially related came in only on the 11th instant.

2. It will be seen from the statement that the amount of cess payable on the Lanka assessments in Godavari during the currency of the existing leases which commenced in fasli 1205 is by itself Rs. 50,072 and that the cess payable from the same fasli on other lands and villages leased out for a term of years in that and in other districts approximates to only Rs.15,000. All Collectors have not furnished particulars of the village cess levied on lands and villages leased out annually or permanently, and in the few instances in which such particulars have been given the Board has excluded them from the statement appended to these proceedings as such lands and villages do not come within the scope of the present reference. The Board has further excluded the cesses payable but not hitherto charged on lands held under leases for a term of years, as the object of Government in calling for the statement is presumably to ascertain the amount of the deduction from the present normal receipts of village cess which would be caused by compromising the suits now in question. The sums excluded are however quite insignificant.

3. Adverting to para 6 of Board's reference No.335, dated 23rd March 1898 the Collector of Godavari states in the last paper read above that the amounts of village cess sought to be refunded in the two suits dealt with therein were recovered, together with the Lanka assessments with which they are clubbed in the D.C.B. statements, partly without the issue of process and partly after the issue of demand notice No.1 and that the sums recovered without the issue of process were paid voluntarily and not under protest. He promises to furnish similar information in regard to O.S.Nos.2 to 13 of 1898 on the file of the District Munsiff of Rajahmundry on receipt of reports from Tahsildars.

4. In reply to para 7 of the Reference dated 23rd March 1898, quoted above, the Collector states that the District Judge has rejected his applications for transfer of the two suits pending in the District Munsiff's Court at Cocanada to his own file but has transferred them to the District Munsiff of Rajahmundry in whose Court 12 similar suits are pending and that the latter District Munsiff has posted all the 14 suits to the 23rd instant and refused to grant a further

335 & R.
207

adjournment. As it will hardly be possible for Government to pass orders on Board's references Nos. 335 & 407 / 23-3-98 5-4-98 in consultation with the Advocate General before the date fixed in the District Munsiff, the Collector will be requested to p sent an application to him for the adjournment of the hea for one month with an explanation of the circumstanc s whi cause the filing of the written statement to be delayed.

(True Extract)

Ag. Secretary.

To

The Secretary to Govt. Revenue Department, with a statemen and two Letters & Enclosures in original to be retd
The Collector of Godavari.

Md.R.H.

Cus. 2347 — B.P. 336 L.R. 28-3-98

To Secretary

The lessees of certain banks (islands in the Godaveri), from whom village Cess was levied, have filed two suits to obtain a refund of the amount paid by them; and it is added that twelve other suits have been filed against the Govt. bearing on the same subject. The Board recommends that the Advocate-General may be requested to advise Govt. as to the chance of a successful defense and to revise the Collector's draft written statement.

2. The Cess was levied under S.7 of Act III of 1893 which runs as follows:— "Government in Council may ... impose ... a money "cess upon all holders of "land on ryotwari tenure upon

Para 1 of Current.

Para 5 of C

Agree with X

To the Hon Sir H. Stokes

Cus. 16/98

Cus. 2/4/98

"upon the holders of inams
"situated within the limits
"of a ryotwari village" and
"upon the holders of inam
"villages which, for purposes
"of village administration,
"are grouped with ryotwari
"villages". The kankhas
do not fall under "inams"
or "inam villages" and cannot
be brought under "lands
(held) on ryotwari tenure",
unless it is decided that
they are held on this tenure.
The Govt. has the Advocate-
General's views on this
point — (para 18 of his
opinion dated 2-8-97). —
He said "The expression
"ryotwari settlement denotes
"that the settlement for re-
venue is with a ryot, that
is, a person who as
between himself and Govt.
is entitled to cultivate the
land. Of another essential
feature of the ryotwari
settlement be that the
assessment

* The fact that these
suits cannot be dismissed
on the ground that the lands are
held upon ryotwari tenure — for
I think it might be dangerous to
defend them on this ground — On the
other hand, I do not agree with
him that it would be usually found
a clause in the contract that the
renters shall pay village
cess — The cess is about 4% and a
man bidding above rental might
very properly not be allowed indemnity
to throw him off by the fact that an addl.
liability of 4% attached. Indeed, the
renters might themselves, have bid the
same they did under the impression
they would have to pay the village cess also.
But the best course would no doubt be
to amend II of 93 so as to make it
clear that renters of lands & they must
be village cess as well as the owners of
the lands.

The question of limitation raised
in para 4 of the B. P. is a separate
Page 5 of B.P. under one; but
No. 5685
5-11-97 before entering on
that I should
like to see what reply the Collr.
makes to para 6 of the B.P.

BS
15/4/98

I think it might be proper to consult, before
ing whether or not to fight these cases,
the amount involved, taking into
the total kankha assessment, the whole
of the existing cases,

Please draft urgent

2

"Assessment is on the fields
"with reference to survey numb
"and that the ryot can relin-
"quish any such field at
"the beginning of a cultivati
"season, & lessees trees o
"forest produce for a defi
"nite term of years. Can
"have no such privilege,
"and the lease will be binding
"upon the lessee for the whole
"term under the general law
"of contracts, and it is doubt
"ful whether even a lessee
"of land under a special
"contract for a term of
"years x x x x can be
"regarded as a holder of
"land under a ryotwari
"settlement". In the cases
under consideration, the
kankas were leased out
for quinquennial periods
and the lessees were therefore
"lessees of land under special
"contracts for a term of
"years". Hence they cannot
be regarded as holders of
land

land on a ryotwari tenure.
The Advocate-General expressed himself cautiously; but reference to any book on ryotwari settlement will show that a right to hold the land as long as the ryot pleases subject only to the payment of assessment and freedom to relinquish any portion thereof are essential features of that mode of Settlement. Page 121 of the Manual of Administration published under the authority of Govt. states "The Govt. "allow a ryot, who has "once acquired possession, "to remain in possession "as long as he pays the "Govt dues. x x x. The "ryot has the power of "yearly increasing, decreasing, "or entirely abandoning "his holdings." And Sir Thomas Munro, the great advocate of the ryotwari

Life of Munro. Page 106.

3

ryotwari settlement, stated "Every ryot, who is like- "wise a cultivating proprie- "tor of the land which he "holds, is permitted to hold "that land at a fixed assess- "ment as long as he pleases, "he holds it for ever without "any additional assessment. The lessees of the Carikas, hold- ing only under a contract for five years, cannot retain them for ever, and they cannot, it is submitted, be regarded as holders of land on ryotwar tenure."

3. The result is that the Govt must fail in this suit. Orders are solicited whether it is necessary to make any reference to the Advocate- General.

KD.
30/3/98. Hon.

Originally the remuneration of vill. officers was not "partly by fees or other contributions "payable by landholders, for

by a cess imposed in lieu thereof
partly by contributions for
general recs." (Preamble of IV of 1893 M.)
In the old days everybody in the village
paid something towards the
remuneration of the village officer;
even those who were not "ryots"
doubtless gave their mite.
The Act of 1893 however
declared that on its coming into
force "all fees contributions & allowances
collected or demandable ... shall
absolutely cease & determine" (Sec 2. ibid)
and for the future the cost was to be met
a "money cess" leviable only from
the three classes mentioned in Section
of the Act (quoted para 2 supra). These
classes are all holders of land which
at the present or in the past had been
ryotwari, actually or potentially; all persons
holding land on any other
tenure in the village are exempt
from the liability. A leaseholder is not a
ryot, & accordingly he is
not liable to village cess. The lease
for five years; & as for the wished
benefit the village cess the means
of doing so would be by a term in the contract. But

4

the payment so stipulated would be
not nothing more than in ai
of the contribution from gene
revenues. Govt would however
gain nothing whatever by
such a stipulation for the
price of the lease is what the
man is willing to give, &
he will give no more because
he is told that a portion of
the price is to be ear marke
in a particular way.

It is evident therefore
that where a tenure transport is n
based on a permanent
ryoti tenure but is
the subject of ordinary contra
the imposition of a statutor
liability would be useless

I dont see that there
can be any defence to the
suit. Whether having regard
to the construction of the act
or looking to the reason of
the thing; one may so unfav
the Act.

J.B. 2/4/08

B.P. 403/5-4-98 (Cav. 2763).

To Secretary

The Collector of Godavari requests the orders of Govt. for the defence of O.S. nos. 2 to 13 on the file of the Dt. Munsiff of Rajahmundry instituted by the lessees of Lankalakodurru for the refund of village cess levied from them by Govt. The Cases stand posted for hearing on the 22nd April 1898. In connection with two other suits (O.S. nos. 733 & 734 of 1897) on the file of the Dt. Munsiff of Cocanada which are on all fours with these, the Board of Rev instructed the Collector to apply for a long adjournment and for the transfer of the suits to the file of the Dt Court, and requested the Govt to make a reference to the Hon. the Advocate-General as to the possibility of a successful defence. The papers are now in circulation to the

Hon.

Cav. 2347 of 1898.

Hon. Sir Henry Bliss, and H.E.

Orders are requested whether in the present case also the result of the reference to be made to the Hon. the Advocate-General may be awaited, and the Collector instructed by telegraph to take the same action as in O.S. nos 733 and 734 of 1897 on the file of the Dt Munsiff Cocanada.

RS
16-4-98

Secy

It is submitted that this should be done

Mlle
16/4/98

Flag A

Flag B

h.c. 17/4 2.c. 9/7/98

1/4/98

Read B.P. 335/23-3-98 L.R. (Cus 2347)
" Dis. no. 90 & 19-4-98
" B.P. 403/5-4-98 (Cus 2763)
" Telegram to the Collector of Godavari & 17-4-98.
" B.P. 1500R/14-6-98 - (Cus 4301)

Note

In the first of the papers read above the Board of Revenue brought to the notice of Govt that the lessees of certain lands in the Godavari Dt had filed two suits in the Dt Munsiffs Court of Cocanada to obtain a refund of the amount of Village Cess levied from them by Govt, and requested that the advice of the Advocate General might be obtained as to the possibility of making a successful defence. The Collector was at the same time requested to get the suits transferred to the file of the Dt Court and to apply for a long adjournment. With the third of the papers read above the Board submitted the

fil

file connected with twelve other suits of the same nature filed in the Dt Munsiff's Court of Rajamundry. The Government then instructed the Collector to get these suits also transferred to the file of the Dt Court and to apply for a long adjournment. In the last of the papers read above, it is reported that the Dt Judge refused to have the suits transferred to his own file, but that he has transferred the two suits from the Cocanada file to that of Rajamundry where twelve others are pending, and that the Dt Munsiff of Rajamundry has posted all the 14 cases for hearing on the 23rd June '98 and refused to grant a further adjournment. As it would hardly be possible for Govt to pass orders before that date, the Board has called upon the Collector to present an application to the Dt Mun-

siff

Telegram on the Docket of the said B.P. flag B

Flag C

Flag D

7 3

Munsiff for the adjournment of the hearing for one month with an explanation of the circumstances which cause the filing of the written statement to be delayed.

2. As regards the defence of the suits, reference is solicited to the notes on C.no 2763 (2347) (the first of the papers read above) in which the question of the legality of the levy of village Cess from the lessees is fully discussed. It will be seen therefrom that the late Hon. Mr Grose held that a lessee stood in the same position as a ryotwari holder and was therefore liable to pay the Cess under the Act, and that the suits should be defended. The Hon Sir Henry Bliss K.C.I.E differed from him and was of opinion that it would be dangerous to defend the suits on the ground that the lease lands were held on ryotwari

tenure

tenure. H.E. the Governor, thought that before deciding whether or not to fight these cases, it might be useful to know the amount of cess involved, taking into consideration the total kanka assessment, the whole term of the existing leases and other cases of similar doubt. The Board was accordingly requested to furnish the information; in O.Ms. 90 19-4-98, Flag E and the last of the papers read above is the Board's reply thereto. It will be seen from this paper that there are nine districts in which village cess is levied on lands or villages leased out for a term of years, but that the amount of such cess is trifling except in Godavari, Kistna, Coimbatore, and S. Canara. The current quinquennial leases of kanka lands in Godavari which ~~begin~~ commenced in fasli 1305 expire by the end of fasli 1309, and the annual ~~amount~~ of cess leviable in respect of these kankas

Flag C

is about Rs 8459, the total for the five years being Rs 50,072. The cess in respect of other temporary leases (in this and in other districts) amounts to Rs 1248 during the current year, but will be only Rs 400 in succeeding years.

3. The questions now for consideration are:—

(a) whether a lessee of land under a special contract for a term of years is a holder of land on ryotwari tenure within the meaning of section 7 of Madras Act IV of 1893, and whether the fourteen suits now on the file of the District Munsiff of Rajahmundri are to be defended.

It will be noted here that in his opinion (para 18) founded in G.O. 5685 5-11-97 the Adv. Genl expressed a doubt as to whether lessees under special contracts can be regarded as holding on a ryotwari tenure, and that the Board thereupon instructed the Collectors to continue to charge cesses in such cases until the question was authoritatively decided. An opportunity has now arrived for obtaining such an

Para 3 of the BP.

authoritative decision (Vide also D ii below)

If it be decided to defend the suits, the next question for consideration is whether it is desirable that the suits should be tried by a Dt Munsiff. In his petition to the Dt judge for the transfer of these of the cases to the District Court, the Collector urged that as the issues at stake were of considerable importance and intricacy, the suits should be disposed of in the initial stage by a higher tribunal than the Court of a Dt Munsiff. and that it was desirable that the appeals from the initial decision should lie to the High Court. The Dt judge (Mr Walter Benny Bell) has rejected the petition without recording any reasons.

(C) (i) In this connexion orders are solicited as to the question of limitation referred to in para 4 of B.P 2 335 13-3-98. The provisions of law relating to limitation are articles 2 and 16 of Schedule III of Indian Limitation Act XV of 1877 and section 59 of Madras Act III of 1864. The one year limitation prescribed by article 16 of schedule applies where money is paid to Govt under

Copies of Mo Dt judge's orders attached with the current

C. No 2347. Pg A

Pg 7

a protest and the three months' limitation of art 2 applies when it is paid without protest. Both these articles are, however, superseded by section 59 of act III of 1864 in suits brought by persons aggrieved by proceedings under this act. (Vide section 6 of Indian Act XV of 1877). In the proceedings of the 23rd march the Board stated that the plea of limitation should be raised in the Collector's written statements, and expressed the opinion that, even when the amounts claimed were not recovered by coercive processes under the Act, "it was a question for consideration "whether the oral and legal (?) "demand by the Head of the Village "or other Revenue officer for payment of assessment and cesses, "followed by collection thereof does "not amount to a Proceedings "under Act III of 1864 within the "meaning of section 59"

(ii) In regard to the above it has to be noted in the first place that Act III of 1864 does not prescribe any oral demands by the Head of the Village. Under section 3 of the

of his own accord.
Act every land holder is to pay the
Revenue due on his land on or be-
fore the day on which it falls due;
failing which the Collector is to proceed
(under Section 5) to recover the
arrear in the manner laid down
in Sections 8 and those that follow.
The ~~only~~ demands contemplated by the act
are the written demands referred to
in Sections 8 and 25. Village ~~Heads~~ Headmen
and Munsiffs do, as a matter of fact,
go about making oral demands, but
such demands are not contemplated
by the act and will not amount to
a proceedings under the Act even
when followed by payment.

(iii) Next it is doubtful whether ~~having~~
regard to the contention in the present
suits, the cases in which the cesses were recovered by
coercive processes ~~in the~~ will be governed by Section
59 of Act II of 1864. In the case
reported at pp 168-170 of I.L.R XII
Madras, which was a suit to set aside
~~a~~ a revenue sale, it is observed
by Justices Muthusami Aiyar:- "It
may be an open question whether the
proceedings contemplated in Section
-9 are those which are initiated
by mere errors of procedure—

page 176 I.L.R. Madras XII

10 7

" or include those taken without
" jurisdiction and, therefore, not
" within the purview of the Act. For
" instance there may be a sale when
" there are no arrears of revenue, or
" the land sold may not be included
" in the patta or holding liable to be
" sold for the purpose of liquidating
" them" In the cases now under con-
sideration the liability of the lessee
to pay village cess is denied, and
if the courts uphold this contention
the proceedings taken by the Collector for
the recovery of the cesses will have
been taken without jurisdiction and
Section 59 may not be held to apply
to the cases in which the cesses have
been recovered without the issue of coer-
cive processes the payments will be
held to have been made voluntarily
under a mistake, and the limi-
tation in such cases will be that
prescribed for the recovery of amounts
paid ~~by~~ and received
under a mistaken impression on
the part of both payer and receiver
that the amounts were due.

(iv) In these circumstances it seems
unnecessary to ~~point out that~~

modify the written statements ~~in~~ ~~[illegible]~~ the manner prescribed by the Board, especially in view of the fact that the objection on the score of limitation can be taken at any stage of the proceedings. It seems, however, necessary to ascertain definitely from the Advocate General what is the period of limitation in ~~[illegible]~~ cases (1) in which the cess was paid voluntarily, (2) in which the cess was recovered by coercive processes supposing section 59 did not apply. The Collector's reply does not state whether there was any forfeiture in cases in which coercive processes were used.

(D) (b) If, however, it be decided that the lessees do not hold on regulation demise and that the suits cannot be defended, or, granting that the suits could be defended, that "it might be dangerous to defend them on that ground", the question for consideration is what should be done for levying and collecting cesses on lands held on temporary lease. Two courses are considered in the notes under C. No. 2347:— (1) to insert a term [illegible] as provided

Sir Henry Bliss's note under C. No. 2347.

in the special contract that the cesses shall be paid in addition to the amount of the contract or (2) to amend Act VI of 1893 so as to make it clear that the renters of lands and trees must pay village cess as well as the amounts of their rents. But as pointed out in the Secretary's note of the 2nd April, in cases in which the lease is sold by auction and forms the subject of a free contract, the imposition of an additional contractual or statutory liability will not benefit Government for the principle of an auction sale is that it secures the maximum price that it is possible to secure in the then state of the market and competition, and the bids will be reduced by the amount of the additional liability thus imposed. If, as surmised by Sir Henry Bliss, the renters have bid the sums they have, under the impression they would have to pay the village cess also, they would no doubt gain an undue advantage (during the currency of the lease) if it should turn out that such cess

is not legally leviable on their ~~rents~~ cess; but as soon as the fact of such non-liability becomes known competition will raise the rents at the next auction to the maximum amount realizable

Minor the value of the limitation plea if it were valid.

(ii) In connexion with the suggestion ~~of~~ to amend Act IV of 1893 attention is invited to the argument in para 3 of the B.Pdg 23-3-98 which requires to be emphasized ~~[illegible]~~.

Section 2 of the repealed Act IV of 1864 authorized the levy of the cess on all "holders of land"; holders of temporary leases of land (for cultivation were apparently "holders of land" within the meaning of this section and as such were liable to the village cess. The repealed act was intended to apply to ryotwari villages only, but this was not expressly stated in the Act, and it was found necessary to issue a notification excluding from its operation permanently settled estates, unsettled palayams and enfranchised villages; when the act was repealed and reenacted care was taken to remove the defect and to make it clear

yes: but the zamindari village cess would not gain anything. The land revenue of such villages will get all.
MR

para 18 of the Addl Govt's opinion in G.O No 5685 5-11-97

Para 4 of the statement of objects and reasons appended to G.O No 699 29-8-90

16

Exactly. The act was amended to make it clear that such leases are not exempt.
MR

that the cess act applied only to ryotwari villages; hence the restrictive words "on ryotwari kerguire" in the first sentence of section 7 of act IV of 1893. That the intention of section 7 was nothing more than to indicate that the act applied only to ryotwari villages and that it was not intended to make any change in the scope and extent of the old act will be apparent from para 4 of the statement of objects and reasons appended to G.O No 699 29-8-90. In these circumstances can it not be argued that the intention of the act is not to exempt holders of temporary cultivation leases, and is it necessary to amend the act so far as these lessees are concerned? This argument, based on the intention of the framers of the act, will, of course, prevail only when the wording of the act is ambiguous or doubtful, but not when there is no room for doubt. Is the wording "holders of lands on ryotwari kerguire" sufficiently clear and definite to exclude holders of temporary leases?

DTD
RS
1-9-98

This is back because it was omitted

Secy

The decision in these suits, must turn (if no limitation ~~plea~~ bar prevails) on the question whether such lessees are "holders of lands on ryotwari tenure". This may provoke a decision from the Courts as what is a "holder of land on ryotwari tenure". Would it be advisable to press for a decision on the point?

The question of limitation might be referred for the H.Gs opinion. If his opinion is that the plea wont avail Govt, the suits might be compromised. If ~~it would~~ be thinks it will, we may as well get the money which, the Hon Sir H Arnd has noted, the lessees probably committed on paying when bidding at the auction.

It may be noted

See note at end
EB

Hon Mr Arundel
Hon Sir D Bliss

15

See that a clause for securing payment of an amount equal to Land revenue cess on the yearly rental reserved, was entered in the Anamalai leases vide sep. note in file separately tied below.

Ally
28.6.98

Hon.

Probably the intention in inserting the words "holders of land upon ryotwari tenure" in sec. 7 of M. Act IV of 1893 was to include all holders of land directly under govt. as opposed to holders of Zamindaris. But however that may be the words must be interpreted as they stand and I think for interalia the reasons given in my note of 2/4/98 (vide Notes Appx D) these leaseholders are

not
ryotwari holders, & therefore
that the suits cannot be
successfully defended.

If these cesses are to
be made payable by such
lessees the best mode of
imposing the liability is by
a special clause as in
the Anamalai leases
para 29 (vide G.O. 1014 R.D. 4/12/97)
— "paying a further yearly
"rent or sum equal to the amt.
"of the land cess & all. Zemindari cess
"& any other cesses which might be
"imposed charged or assessed by
"land on the said piece of land if
"the same were held under
"a ryotwari settlement"

If this view is taken
then the Dt. may be instructed
accordingly to compromise
the suits.

If however the decision
is to contest them we may
leave the Collector & legal advisers
who will represent Govt. to take
the proper limitation pleas.

Not
Not

I think the cases should
be contested & that if
Govt. loses the law should
be altered to bring it
into accord with what
was the undoubted
intention of Govt.

A.G. 5.7.98

In my opinion it will be safer
to follow the course recommended by
the Collector. What I am afraid of is that, if
we admit these cases as duly

S.R. 11-10-98 "All" should be

*Cause of action may in this case be said to arise when the Govt. attempts to enforce the payment of the assessment, & not when the assessment is imposed, but this is a refinement which might have escaped the notice of the framers of the Limitation Act. Govt. is not likely to be sued in respect of the assessment, & the suits are in substance suits to recover money paid under compulsion.

7.7.98

Govt. agrees with the opinion of the Collector & the Govt. Pleader that the suits are not barred by limitation.

It will be difficult to defend them on the merits as a ground for resisting the claims.

A.G. 7.7.98

D.
6 — 500—25-5-97.

REVENUE DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read B.P. 335 / 23-3-98 L.R. C.C. No. 2347
Read again G.O. No. 90 dy 19-4-98.
Read B.P. 1103 / 5-4-98 (C.C. No. 276
Read Telegram to the Collector of Godavari dy 17-4-
Read B.P. 1500R / 14-6-98 (C. No. 430

To
Sir H. Bliss
as dissenting Member
S.R. 14/7/98

Yes
14/7/98

R.C. 14.7.98.

G.O. No. 2945 dy 15th July

The papers read above relate to certain suits filed by the lessees of certain lands in the district of Godavari to obtain a refund of the amount of village cess levied from them by Govt. The suits were originally filed in the court of the Dt. Munsiff of Cocanada but have since been transferred to the court of the Dt. Munsiff Rajahmundry where hundreds others are pending. All the fourteen suits originally stood posted for hearing on the 20th June last, but it is presumed that the Collector has, as directed by the Board of Revenue, applied for an adjournment of the hearing for one month

and that his application has been complied with. ~~The contention~~ in all these suits is the same — viz. that "kanikas" do not come under any of the descriptions of lands mentioned in section 4 of Madras Act IV of 1893, that there was no specific agreement on the part of the lessees to pay pullage cess and that the lessees are therefore not liable to pay that cess.

2. The Court has carefully considered the ~~matter~~ questions arising in those suits and is of opinion that the suits should be contested. The draft written statements submitted with the first of the Proofs read above are approved subject to the omission of the words, "are in the same position as ryotwari holders," occurring in para 2. thereof. The Govt Pleader should be instructed to raise ~~such~~ such pleas of limitation as may appear to him ~~feasible~~ proper

Flag X

The U.S. drafted the way under requisitions. The omission of these words will not affect the pleas in substance & will not directly raise the qu. of ryoti rights

S.V. 14/7

14/7/18

To the Bd of Rev LR and the Govt, Madras.

Received 16/7/18

Received 15/7/18

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STATEMENT WITH DITTO

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