

Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 4149

DATED 25th October 1898.

[Despatch Abstract.]

Requesting the Joint Pleader to appear on behalf of Govt and defend the suit No. 24 of 1898 on the file of the Sub Court, Madurai, regarding the raising of a Calingula and the construction of a sluice to a certain tank in the Madurai Taluk.

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

Financial (1898) Department.

CURRENT No. 7260

Urgent

From
25/10/98

The Board of Revenue,
Land Revenue,
Madras.

No. 3001 Misc.

Order Misc No 4149 of 25 Oct 98.

The Govt Pleader with
instructed accordingly

23/10/98

Dated 22nd October 1898

Received

Registered

Enclosures

Spare copies

Due to L.R.

Govt Pleader

25/10/98

SUBJECT.

Commg. to the Collector
of Madura with remarks letter from the
Govt. Pleader Madras forwarding the revised
written statement to be filed in O.S. No.
24 of 1898 on the file of the Sub-Court
of Madura and recommending to Govt. that
the Government Pleader may be instructed
to appear on behalf of Govt. and defend
the suit.

Recd
25/10/98

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Revised Written Statement.

1. The ~~Mandalai~~ ^{TK} Tank referred to in the Plaint has two surplus weirs or calingula; the larger marked A carries off the surplus water to the Govt. Kolamangalam tank and the smaller marked B similarly carries the water to the Plaintiff's ^{TK} tank called Vadugapatti marked V in the plan.
2. Owing to the action of the river Sathiar which empties it ~~self~~ ^{TK} into the ~~Mandalai~~ ^{TK} tank the latter gradually became silted up and its usefulness was very much impaired and its capacity to hold water for irrigation purposes very much reduced.
3. Many years ago the Calingula referred to in the Plaint was -- raised by half a foot in order to keep up a proper supply of water in the tank and the Plaintiffs who merely have a right to the surplus water in high floods when the tank is full are not injuriously ^{TK} affected thereby.
4. The raising of the said Calingula was not objected to by the Plaintiffs at the time of its construction, nor have they ever hitherto complained that they were injuriously affected by it.
5. The excavation of the Peryar ^{TK} Mandalai offtake and the ~~conf~~ -- struction of the sluice was undertaken by Government at its own -- expense in order to have a constant and uniform supply of water in the ^{TK} Mandalai tank.
6. The intention and effect of the said work is to carry off by means of the sluice and channel the ~~Per~~ Peryar water brought into the tank and it is so arranged that the water going out of the tank can never exceed the water brought into it.
7. It is ~~at~~ ^{any} Peryar distribut^{TK} and the Plaintiffs have no claim whatever to any of the water passing through it.
8. The Plaintiffs are in no way injuriously affected by the -- above arrangement, but on the other hand they are distinctly ~~benef~~ -- fitted because, by the tank being continually ^{TK} continuously full owing to the introduction of the Peryar water any heavy rain will certainly cause it to surplus whereas formerly the tank had to -- fill first before it could surplus.
9. The object of the Plaintiffs in bringing the present suit is to get a supply of Peryar water to their tank without having to -- pay water rate to Government.
- 10.

10. The prayer for an injunction against the Secretary of State for India will not lie.
11. The defendant therefore prays that Plaintiff's suit may be dismissed with costs.

/sd/ E.B. Powell
 Government Pleader
 /True Copy/
 L. W. Davidson
 Asst. Secretary.

C.B.

J. S. S.

Rec No 1948 399
 General

Madura Collectors of file.
 Dated 10th October 1898

From

J. G. D. Partridge Esquire,
 Acting Collector of
 Madura

To

The Secretary to the Commissioner of
 Land Revenue,
 Madras.

Sir,

In forwarding herewith a translation of the plaint filed in Original Suit No 24 of 1898, on the file of the Sub Court, Madura West, in which the Secretary of State for India in Council has been made the defendant, I have the honor to report as follows: —

- There are two surplus weirs to the Government Shandalai tank marked T in the enclosed sketch; the larger weir marked A feeds the Government Holamangalam tank and the smaller one marked B feeds the Enam Vadugapatti tank marked V in the same plan. Between these two weirs a sluice has been built at the point marked C to take out of the tank the Periyar water which flows through the Shandalai off take a distributary which branches at the point G from the Periyar 4th Branch.

Branch channel marked E.7 in the said plan? The said Mandalai tank became silted up several years ago and in order to keep a proper supply of water in the tank, the level of the smaller Kalingulah was raised by half a foot. The plaintiffs who are the Hakdars of the Enam Vadugapatty village allege that the level of the smaller Calingulah has been raised by $1\frac{1}{2}$ feet and that by this action and by the construction of the Periyar Sluice at C the usual supply of water to their tank is diminished and have therefore filed this suit (1) for a declaration that they have an absolute right to take the water of the Mandalai tank, to their tank without any obstruction on the part of the Defendant through the Surplus weir marked B. and (2) for an order to the effect that the level of this Surplus weir should be lowered to its original height and that the new Periyar head Sluice should be removed.

3. It is true that the Public Works Department raised the level of the smaller Calingulah marked B by half a foot; but it is reported that this was done several years ago; and as the larger Calingulah of the left flank of the plaintiff tank has always been on a lower level than the smaller, the plaintiffs can have no reasonable grounds of ~~appeal~~ complaint. They are entitled only to the Surplus of the Mandalai tank during

during high floods and when the tank is full the arrangements made by the Public Works Department in excavating the Periyar Mandalai off-take and constructing a sluice in the tank are merely intended to carry down the channel ~~thru~~ through the Mandalai off-take whatever Periar water is received into the Mandalai tank. It is a Periyar distributary and the plaintiffs cannot have any claim to water passing through it. The plaintiffs' object in this suit is to get a supply of Periyar water to their tank without paying the water tax due to Government. It is reported by the Public Works Department that the Surplus-arrangements of the tank were not interfered with by the Mandalai off-take and its sluice that the arrangement made by Government is intended to take a continuous and uniform supply of water in the off-take and that the water going out of the tank through the Periyar Sluice will generally be either equal to or less than the supply received through the portion of the channel higher up and never larger. The special Executive Engineer says that the petitioners have, by the present arrangements, been only benefited, as the tank being kept full by Periar water any heavy rain will certainly cause it to surplus, whereas formerly, the tank had to fill up first before it could surplus. In these circumstances, I request the favour of the Board's sanction to defend the

Suit

Suit at the cost of the State and to file the enclosed draft written statement on behalf of Government.

5. The Value of the Suit is estimated at Rs 7500-⁰⁰ and it stands adjourned to the 27th instant for settlement of issues.

6. The usual statement is appended.

Date of the plaint	Date of service of summons upon collector -or-	Date of collect or letter	Date of hearing	Explanation for delay in case a clear fortnight is not allowed to the Board for the consideration of the case.
29-4-98	11-7-98	10-10-98	27-10-98	

I have the honor to be,

Sir,

Your most obedient servant,

Bini nraochar

For acting Collector

10-10-98

CB
9. file

In the Court of the Subordinate Judge, ^{Madura} ~~West~~
original suit No 24 of 1898.

1. Srinivasa Nambigal, aged 33, Son of
Krishna Nambigal residing in
Perumal Koil Street, Madura 1.

Paramasami Thirumalai Nambigal,
aged 22, Son of Gnanabirandhira-
malai Nambigal, residing in Vani-
damarathur, Madura Taluk, 2

} Plaintiffs

The Secretary of State for India in
Council through the Collector of Madura } Defendants.

Plaint put in by the plaintiffs under Sections
48 and 50 of the Civil Procedure Code: —

1. The Plaintiffs are the ~~Hakdars~~ holders of the tank
marked E in the plan attached to this plaint
and the wet lands under its aqqut in the
village of Jari Vadugapatti (in the Madura
Taluk) which is subject to the jurisdiction
of this Court.

2. The said E tank in the said Vadugapatti village
and the lands (marked E) under its aqqut,
belong to the plaintiffs hereditarily, —
having been granted as Manipams for the
service of Parichorakam (Cook) in the Kalla-
lagan Dec^t Devasthanam of Madura District,
to the ancestors of the plaintiffs and after
them

them to the plaintiffs themselves, by the Carnatic Kings and in virtue of it, by Mr Hardis, on the advent of the British Government.

3. The ancestors of the plaintiffs and after them, the plaintiffs themselves have been subletting the said lands to their tenants, collecting from them the rents due on due exchange of putta and muchilika, paying out of the rents so collected the poruppu and road cess due to the Government, on the village, every fasli and enjoying the balance of the rents, duly rendering the said Paricharam Service.

4. From long before the year 1802, the said E tank of the Padugapatti village was being filled with the water of the Ayanthandalai tank marked A (that lies just north of the E tank) which found its way into its surplus channel through its Chinnakalingula (marked C) and which was thence taken through the Holoipatti odai (marked E) to the said E tank, and the lands marked R were being cultivated with the aid of this water.

5. The said E tank of the plaintiffs never had any other source of supply of water except the one which ^{way} being taken from the Chinnakalingula of the said A ayanthandalai tank as soon as it was filled with the Sathian water through the said C Holoipatti odai

Supplemented

Supplemented by the drainage water of the wetlands marked D in the plan.

6. This was going on absolutely and prescriptively. Moreover, in every fasli in which there was yield on the said D wetlands of the said A Thandalai Village, the plaintiffs' said tank E of the Padugapatti village was filled up and there was yield on its ayakut lands.

7. While such is the case, the plaintiffs came to understand about 1893, that the defendant some years before, prejudicially to the rights of the plaintiffs caused the level of the said C Chinnakalingula of the said A Thandalai tank to be raised by $1\frac{1}{2}$ feet and thereby obstructed the usual flow of water to the plaintiffs' said tank E.

8. Besides, about October 96, one of the Periyar channels (marked H) has been let into the A Thandalai tank and in order to prevent the tank from holding more than 2 feet water and to provide egress for the surplus, a head sluice called Thandalai offtake marked F has been constructed to the north of the said C Chinnakalingula. The above mentioned acts are prejudicial to the rights of the plaintiffs.

9. Not only was the water that found its way into the said A Thandalai tank in the rainy and other seasons, obstructed from

from flowing as usual into the plaintiffs' tank by the raising of the level of the said C Chinnakalingulah by $1\frac{1}{2}$ feet, but also the plaintiffs' tank ceased to receive any supply at all by the Defendants having, with a view to prevent the said tank from holding more than 2 feet water, constructed the said J. off take, and allowed water to run through it to other tanks.

10. The Defendant has no right to do any act which is prejudicial to the prescriptive right of the plaintiffs for the water in question.

1. As the usual flow of water to the plaintiffs' tank which has no other source of supply except the water from the said surplus channel (C) and the drainage water from the said wet lands (D), has been obstructed by the raising of the level of the said C Chinnakalingulah by $1\frac{1}{2}$ feet, and the construction of the said off take (J) the tenants object to the payment of the rents as usual, to the plaintiffs, the hukdats.

The plaintiffs have been put to enormous loss by the above said acts of the Defendant.

12. Notice under section 24 of the civil procedure code, on the subject was duly given by the plaintiffs to the Defendants on 28th July 1897. But the Defendant has not given any proper reply but is simply protracting

protracting it.

13. The cause of action arose at Radugapatti, in 1893, the date on which the plaintiffs came to know that the Defendant has prejudicially to the plaintiffs' rights caused the level of the said C Chinnakalingulah of the said A aigan Mandalai tank to be raised by $1\frac{1}{2}$ feet, and in October 1896, the date on which the Defendant has constructed the said J off take to the north of the said C Chinnakalingulah.

It is therefore prayed that the Court will be pleased to pass a decree declaring that (1) the plaintiffs ^{shall} have absolute right to take water from the said C Chinnakalingulah of the said A aigan Mandalai tank through the said surplus channel and the said C Kkoipatti odai to their tank, without any obstruction and interference on the part of the Defendant;

ordering (2) that the level of the said C Chinnakalingulah of the said A Mandalai tank, which has been recently raised by $1\frac{1}{2}$ feet by the Defendant, shall be lowered to its former level.,

(3) that the said (Head Sluice) off take (J) which has been constructed by the Defendant and prejudicially to the interests and rights

of

of the plaintiffs shall be demolished and its site formed again into the tank bund.

(4) that a permanent injunction be issued to the defendant, restraining him from ever interfering with or obstructing in any way the prescriptive right of the plaintiffs for the usual supply of water to their tank (2) from the said surplus channel, or

(5) that such other reliefs as are in the opinion of the Court in perfect accordance with the circumstances of the case and not prejudicial to the rights of the plaintiffs, ^{may be granted} and (6) that the plaintiffs' costs of the suit together with interest thereon shall be borne by the defendant. and granting such other reliefs as the Court may in the circumstances of the case deem fit to adjudge

Valuation for purposes of jurisdiction

Stamp for establishing the right of the Plaintiffs

Cost for lowering the level of the Kalingulak

Estimated cost of demolishing the offlake and forming the site into the tank-bund

Estimated amount for the issue of a permanent injunction

Total 110

Net annual income accruable to the plaintiffs from the plaint Vadugapatti Village Rs 500

15 times that amount Rs 7500

which is within the jurisdiction of this Court.

(s) H. Ramalingam Pakil.

(True translation)

Srinivasan
For collector

Co
He

In the Subordinate Court of Madurai (West)
Original Suit No 24 of 1898.
Between

Srinivasa Nambial and others Plaintiffs

And

The Secretary of State for India in Council .. Defendants.

The defendant above named states as follows: -

1. The Plaintiffs are not entitled to any of the reliefs claimed in the plaint.
2. There are two Marugals to the Thandalai tank, the larger which is the lower one going to Kola-mangalam Tank and the smaller which is the higher one going to Vadugapattz Tank.
3. The Thandalai Tank into which the river Sathia enters became silted up and in consequence the tank did not hold sufficient quantity of water to irrigate the lands under it.
4. The Kalingula referred to in the plaint was raised by half a foot several years ago in order to keep up a proper supply of water in the Tank, and the plaintiffs who have a right merely to surplus water have no ground of complaint and as a matter of fact have not suffered by the raising of the level of the Kalingula.
5. The excavation of the Thandalai off lake - and the construction of the sluice mentioned

Case: I to Madurai Collectors Office

Done No 1948 of 98
SF

Dated 10th October 1898.

in paragraph 8 of the plaint are in no way intended to affect and as a matter of fact do not affect the Plaintiffs' rights to the surplus water of the Chandalai Tank.

6. The sluice in question has been built to carry on down the Channel whatever water is received into the Tank through the Chandalai offtake which is a Periyar Distributary and to the water in which the Plaintiffs have no manner of right.

7. It is not true that the present arrangements affect the Plaintiffs' rights injuriously in any way.

8. The defendant submits on the other hand that the Plaintiffs benefit by the tank being continually full owing to the introduction of Periyar water into it so that any heavy rain causes the tank to surplus whereas formerly the tank had to fill up first before the Plaintiffs could receive any surplus.

9. The defendant denies that any losses have accrued to the Plaintiffs in consequence of the arrangements made in the Chandalai Tank.

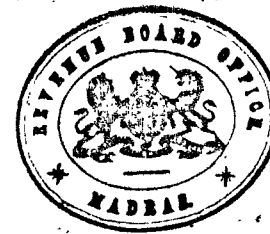
10. The object of the Plaintiffs in instituting the present suit is to get a supply of Perian water to their tank without having to pay water rate to Government and the defendant submits

Submits that the plaintiffs are not entitled to the same.

It is therefore prayed that the plaintiffs suit be dismissed with costs.

Amunachan
For acting Collector
10.10.98

Co
Jk



Proceedings of the Board of Revenue (Land Revenue).

No. 3001 Misc., dated 23rd October 1898.

Read the following :-

1. Again Board's Proceedings No. 2929 Misc., dated 18th October 1898, forwarding to Government Pleader for favor of revision and return the draft written statement proposed to be filed in O.S. No. 24 of 1898 regarding the raising of the level of a Calingulah and the construction of a sluice to a certain tank in the Madura Taluk and District and requesting him to state whether he considers it desirable to engage a Special Counsel for the defence of the suit.

2. Also the following letter from E. B. Powell, Esquire, Government Pleader, Madras, to the Secretary to the Board of Revenue, Land Revenue, No. 955, dated 21st October 1898

enclosures
returned With reference to the Board's Proceedings No. 2929/Mis. of the 18th instant I have the honor ^{herewith} to forward a Revised draft written statement.

2. The suit is certainly an important one and I think it would be desirable to engage special Counsel for its defence.

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

Resolution

The Government Pleader's letter will be communicated to the Collector of Madura.

2. The revised draft written statement ^{prepared} ~~proposed~~ by the Government Pleader should be filed in Court in lieu of the one submitted by the Collector.

Enc: III to Madura Collector's letter

Come to 1948-948

Subject 10. October 98

3. In view of the importance of the suit, the Board recommends that the Government Pleader may be instructed to appear on behalf of Government and defend the suit which is posted for first hearing on the 27th instant.

(True Copy & Extract)

Lowell Davidson

Ag. Secretary.

To

The Collector of Madura, with the revised draft written statement and one sketch.

The Secretary to Government, Revenue Department, *with the Collector's letter and its two enclosures and copy of the revised draft written statement.*

Id. R. 4.

J. S. S.

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

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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

A A A A A A A

N.B.—

A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.