

Confidential

Revenue (1898) Department.

G.O., No. 452

Confidential No. 1010A

DATED 28th January 1898

[Despatch Abstract.]

Transferring to the P.W. Dept. Pro. of the Board of Revenue requesting the for. Pleader to file an appeal in the High Court against the decision of the Sub. Court Nellore in regard to a claim for compensation.

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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18 4,000-19-7-97.

Revenue (1898) Department.

CURRENT No. 727
Confidential No 7.

From The Board of Revenue (L.R.)

Order Mds No 452 of 28 January 1898

Transferred to the P. W. Deptt
(sd) G. S. Forbes.
as Secretary to Government

No. 228 Mds
confd. No 9.

Dated 25th January 1898

Received 27th

Registered 27th

Enclosures True

Spare copies.

Let Mds. f.p. No 3470 of 27-8-95
I enc. in original to be returned.

SUBJECT.

Requesting the Government Pleader
Mds to file an appeal in the
H's Court against the decision of
the Sub. Court, Nellore in regards
a claim for compensation and
submitting copy of these proceedings
for the Confirmation of Govt.

CP
28/1/98

BACK PAPERS.

G.O.	No.	Department.	Date
	Ms 3470	Rev.	27.8.95

FURTHER PAPERS.

G.O.	No.	Department.	Date
	C No 1318		

Nellore Collector's Office
Dated 20th January 1898

N^o 150
Ver

From

C. Scott Esq.

Ag. Collector of Nellore

The Secretary to the Board of Revenue
Land Revenue, Madras.

Sir,

I have the honour to forward herewith a certified copy of judgment and decree passed by the Subordinate Judge of Nellore in O. S. N^o 35 of 1897 on his file, and request that, should the Board consider it necessary, the Government Pleaser, Madras, may be instructed to file an appeal in the High Court at Madras.

2. The Suit relates to compensation claimed by one Gundala Pichireddi for lands alleged to have been taken up by the D. P. W. for the Buckingham Canal in the village of Kottapattam, Gundur Taluk.

3. The original records have all been filed in Court. The facts are, however, succinctly detailed in Board's Proceedings N^o 3969 Ms, dated 10th August 1895. The only important point that has transpired during the inquiry is that in the lands alleged to have been occupied by the Canal Department in the year

year 1881 there exist an
embankment and a canal
as proved by the report of

	Length feet	Height feet	Breadth feet
Embankment —	1782	2 to 5 1/2	3 to 1 1/4 (top) 30 to 60 (base)
Canal —	495	"	40

a Commissioner appointed at the instance of the plaintiff.
The Sub Judge considers that these works could only
have been made by Government, and concludes there-
-from that the assertion contained in the written
statement filed on behalf of Government that the
land were never taken possession of by the Canal
Department is not true. It is a pity that this point
was not reported upon by any of the various officers
who had to deal with the case. I sent a copy of the
judgment to the Executive Engineer, Buckingham
Canal Division, on the 15 December 1897 for his
remarks, but no reply has been received and as the appeal
time will expire by the 28 Instant, I cannot delay
placing the papers before the Board for such orders
as it deems fit.

4. The Court has however I think, in any
case taken a wrong view as to limitation. In
para 6 of the opinion already recorded by the Govern-
-ment Pleader in this case, it has been stated
that the suit is clearly barred whether it be
viewed as a claim for compensation for not
completing an intended acquisition or as a
claim for damages for trespass. The Judge holds
that the cause of action dates from 12 February
1894, when the plaintiff's claim for compensation
was finally rejected by the collector. But the case
reported

reported at page 1, Vol. II of the Weekly Reporter clearly
lays down that the cause of action in such cases arises
from the time when the party was dispossessed of his
land and not from the date on which the Government
rejected his application. The Sub Judge, however,
held that this case was not to the point as there the
case in the Courts below was one of dispossession,
and the Land Acquisition Act was set up for
the first time only in High Court. I do not
myself understand the Sub Judge's argument
and the two cases seem to me in every respect
similar. In para 15 of the judgment the Sub Judge
dwells upon the various incidents of the transaction
and concludes that occupation of the land by the
D.P.W. was neither by trespass nor under the pro-
-visions of the Land Acquisition Act, but that "the
entry on the plaintiff's land was under an implied
promise of payment of compensation." The facts do not
in the least bear out this finding. The Government
Pleader, Madras, has already dwelt fully on all
these points. In para 8 of his opinion he stated that
if the D.P.W. officials did not take possession of the
land under the provisions of the Act, then they were
trespassers. I presume there is no doubt this opinion
is correct. In a case reported in page 18 of the Weekly
Reporter - Full Bench (Jeyaram Pillai - Versus - Collector
of 24 pergunnahs) where Government took possession
of land for an embankment without any legal
formalities it was held that Government was in
possession

possession as a trespasser. The following passage occurring in the last para of the decision in Vol. XI of the Weekly Reporter quoted above is reproduced. "The mere fact of his having applied to Government for compensation did not in any way prevent his making use of the remedy provided by Law which was to institute a suit against the wrong-doer; and as he has failed to institute that suit within proper time, he is not entitled to any consideration on account of the long time spent by him in useless applications." The reasons given by the Sub Judge for holding that possession was not obtained by trespass, at the beginning of para 15 of his judgment, are absurd.

5. The Judge adds that there was no denial of the plaintiff's right until the 12 February 1894. This is true enough, but there was no admission of the right which is much more to the point.

6. Coming to the amount of damages awarded the Judge's award is excessive. For the 1881 block, he has adopted the rates proposed by the Deputy Tahsildar at Rs. 6 per acre; and for the 1884 block he has adopted the rate claimed by the plaintiff's father in his petition dated 11 September 1890. If the lands had been permanently acquired the utmost ^{that} would have been paid to the plaintiff's father would have been

been Rupees 1010 as shown in the margin. If to this

* The total extent alleged to have been occupied is $\begin{array}{r} 35.67 \\ 65.32 \\ \hline 100.99 \end{array}$

The rate awarded to Gundala Ramachandra Reddi (Plaintiff's father) and others in Kottapatnam in the year 1884 for lands permanently acquired for the Buckingham Canal is Rs 10 an acre for all dry numbers and Rs 15 an acre for wet numbers. Therefore the compensation that would be payable on the dry extent of 100.99 or 101 acres = Rs 1010

The interest for 13 years in respect of the 1881 block (35.67 acres) = Rs 278

Do. for 9 years — 2nd block — 35.2

Total Rs 630

Therefore the gross amount = 1010 + 630 = Rs 1640

interest is added at the rate of 6 per cent per annum, the maximum amount payable to him would be Rs 1640. Again, in respect of the 1884 block the Judge has awarded damages for 9 years,

though the plaintiff's father in his petition, claimed it for only one year.

7. I enclose copies of depositions and depositions of witnesses in the case. The remarks of the Executive Engineer, Buckingham Canal, will be communicated immediately on receipt.

8. With reference to para 2 of Board's Proceedings N^o 3969 M^s, dated 10 August 1895, the Sub Judge has recorded the following observations regarding the Tahsildar and the Deputy Tahsildar concerned. I cannot for a moment believe that the Tahsildar, the Deputy Tahsildar, and the Village officers entered into a conspiracy to defraud Government of a very large sum of money. I do not say that it is impossible to conceive of such a case, but I say that such a case has not been made out. I cannot myself accept this view of the matter. Had the Tahsildar and the Deputy Tahsildar been acting, as they should

should have been, with honest regard to the
interest of governments they could not possibly
have estimated the compensation at such
large figures as they did.

I have &c.
Wm E. Scott
Agolbr

True Copy

Receiv
Secretary

Adm L
Copy B

Judgment

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Page No 1344
95

In the Court of the Subordinate Judge
of Nellore.
Monday, the 30th August 1897

Present: M. R. Ry. S. Achutan Nair Esq. al
Acting Subordinate Judge

Original Suit No. 35 of 1897.

(O.S. No. 14 of 1895 on the file of District
Court Nellore).

Gundala Pichi reddy Plaintiff
Versus.

The Secretary of State for India in
Council Defendant

This cause coming on for hearing the
Court delivered the following.

Judgment. — The suit is to recover Rs 21,000 being
compensation for loss of produce of the
lands mentioned in the plaint for the
period during which the Plaintiff
was kept out of possession of the
said lands.

2. Plaintiff sets forth that the Buckingham
Canal Officers took possession of No. 4, $\frac{95}{2}$
and $\frac{95}{3}$ lands belonging to Plaintiff's
family and measuring 35 acres by
cents in the village of Kothapattanam
Gudur Taluk in the year 1881, raised
an embankment in lands No. $\frac{95}{2}$ and
 $\frac{95}{3}$ and dug channel in land No. 4,
that

that the said officers took charge of Plaintiff's No. 52 land measuring 65 acres 32 cents in the year 1884 and marked a line for the diversion of the Canal; that the collection of the assessment of the said lands was suspended from the time the said officers took charge of them; that in Fasli 1299 an order for the collection of the assessment till then suspended having been issued by the Collector and the moveables in Plaintiff's house having been attached Plaintiff's father presented several petitions to the Collector stating that the lands were in the possession of the Canal Officers and requesting that the lands with compensation for loss of produce might be restored to him and the order for the collection of assessment might be cancelled that there upon the Collector passed an order that the arrears of rent should be paid and that the amount of loss of produce would be settled thereafter; that relying on the above order Plaintiff's father paid the assessment and presented several petitions claiming land and loss of

of produce; that after Plaintiff's father's death in 1892, Plaintiff also applied for settlement of the amount and the grant of other lands in lieu thereof, but the Collector merely held out promises; that in 1893 the Collector issued an order to the Tahsildar of Gudur to make over possession of the lands to Plaintiff and to submit proposals for the grant of compensation and in accordance with the above order the Dy. Tahsildar of Kota to whom the matter was referred by the Tahsildar made over possession to Plaintiff on the 30th August 1893 and after due enquiry settled the amount payable to Plaintiff; that when the amount was found to be pretty large the Collector with the intention of evading payment passed an order on the 12th February 1894 to the effect that the lands had always remained in the enjoyment of Plaintiff and that he was not entitled to compensation for loss of produce or to the refund of assessment; that though the amount of profit derivable from the lands for the period during which he was

law

was out of possession is 30,738, yet from inability to pay stamps duty Plaintiff is content with Rs 21,000, the amount estimated by the Revenue authorities. The cause of action is said to have arisen on the 12th February 1894 the date of the Collector's order refusing compensation and the suit is said to have been brought after the notice prescribed by section 424 of the C. P. Code

3. The Defendant denies that the Officers of the Buckingham Canal took possession in 1884 of Plaintiff's lands Nos 4, $\frac{95}{2}$ and $\frac{95}{3}$ and raised a bund in Nos $\frac{95}{2}$ & $\frac{95}{3}$ and dug a canal in No 4 and states that in connection with the proposed Swarnamuki diversion, Plaintiff's No. 52 land was entered upon and the line for the diversion was marked through it, but the line having been changed in 1885 the proposal to acquire that land fell through; that Plaintiff or his father was never kept out of possession of this or the other lands; that the Plaintiff's father having withheld payment

of

of cist and having claimed compensation on the false plea that he was kept out of possession; correspondence went on between the Collector and the Public Works Department; that in the meantime the Collector passed orders directing the immediate payment of cist and promising payment of compensation in case the Plaintiff had a valid claim; that similarly in order not to prejudice the Plaintiff's right to get land in lieu of money compensation, if any, due to him the Collector postponed the sale of certain lands in Viswanadhapuram Land rika that when these orders were passed the Collector was not aware whether Plaintiff's allegations were true or false and that they do not therefore amount to an acknowledgment of Plaintiff's right; that Plaintiff's father having represented that he was out of possession, the Collector ordered the Sahildar of Gudur to formally put him in

in

in possession and to submit a report as to what compensation the Plaintiff would be entitled, if his claims were valid; that from facts which subsequently came to the Collector's notice it appeared to him that a careful investigation regarding Plaintiff's claim was necessary and he accordingly deputed the Head Quarters Deputy Collector to make a thorough and searching enquiry the result of which was that the Collector was satisfied that the Plaintiff's allegations were untrue; that Plaintiff and his father were in possession of the lands for which compensation was claimed and that Plaintiff was attempting to perpetrate a fraud on Government at the instance of Mallappa Reddy Subbareddy, a rich and influential resident of Kota and accordingly rejected his application for compensation; that the suit is barred by limitation and that the amount claimed is extravagant.

4. The following issues were framed on

on the 12th April 1897. viz:—

- i. whether the lands in question had been taken possession of by the Officers of the Public Works Department on behalf of Government and had remained in their possession till the 30th August 1893 as alleged by Plaintiff?
- ii. whether the suit is barred by limitation?
- iii. What amount, and if any, is due to Plaintiff as damages?
5. This is a claim for compensation for loss of produce of 3 lands in the Kothapatnam village of Gudur Taluk alleged to have been taken up, two in 1881 and one in 1884, by the officers of the Buckingham Canal and retained by them in their possession till the 30th August 1893, the date on which they were restored to the Plaintiff. I shall first deal with the lands said to have been

land

been taken possession of in 1881 - viz - Survey
No. 25 and 25 and No. 4. The defence
as regards these lands is that they were
not taken possession of by the officers
of the Canal Department. In the face
of the overwhelming evidence to the con-
trary, I am constrained to hold that
this defence is not true and that the
Collector has not been correctly in-
formed of all the facts connected
with the case. It appears that in the
year 1881 the officers of the Buckingham
Canal Department entered upon certain
lands in the Lemindatz village of
Siddavaram and in the Government
villages of Pamarji, Vagatru and Kotha-
patnam and did some work in connec-
tion with the Swarnamukhy diversion
without sending to the Sdms office a
schedule of the lands required for the
purpose and without settling the com-
pensation payable in respect of them.
The

The Rajah of Venkatajuri was the first
to complain of this act to the Collector
who on receipt of it wrote to the Exe-
cutive Engineer on the 18th June 1882 to
stop the work pending settlement of
disputes. On the 4th July 1882 the Engineer
reported that the work had been stop-
ped. It does not appear from this
whether the work was stopped on the
lands of those who did not complain
but it appears to me that it was not
stopped, for in October 1882 the Rajah
again complained that an extent of
58 cents was taken up by the Canal
officers. The Collector again wrote to the
Executive Engineer and the result of the
correspondence was that the latter sub-
mitted to the former a schedule of the
lands required for the Swarnamukhy
diversion which schedule included
among others the lands required in the
Government village of Kothapatnam.

This

This schedule is not forthcoming but it appears that it included the lands Nos. $\frac{95}{2}$, $\frac{95}{3}$ and 4 measuring 34 acres and 53 cents (vide paras 5 and 4 of Exhibit V).

After this schedule was sent to the Tahsildar of Gudri for the settlement of compensation the Executive Engineer wrote to the Collector on the 26th December 1882 not to take steps to acquire the lands in that schedule as he proposed sending a revised schedule. ^{This revised schedule} which however was not submitted till the 7th April 1884 (also not forthcoming) does not, it is said, contain the lands above referred to and it may be so. When it is found that the lands were once taken up the burden of proving that they were restored to the owner lies on the defendant. There is no evidence of such restoration before the 30th August 1893. On the contrary there is a good deal of evidence to show that they were not restored.

6. After the first schedule was counter-
7 manded and before the revised schedule was

was submitted by the Engineer, the Tahsildar of Gudri brought to the notice of the Collector, on the 16th March 1884 that certain tracts of Kothapatam including the Plain-tiffs' father withheld payment of land revenue from Fasli 1291 on the ground that their lands had been taken up by the Canal Department and submitted a statement prepared by the village Curnam showing the lands taken up with their extent and the arrears of revenue left uncollected with a request for orders to write them off.

Lands Nos. 4, $\frac{95}{2}$ and $\frac{95}{3}$ with their extent and the arrears of revenue are found in this statement. On the 22nd March a reference was made to the Executive Engineer to state whether the lands had been taken up but there is nothing to show what reply was received from him (see para 6 of Exhibit V). No order for permission was passed and the matter was lost sight of till 1890. If the lands had remained in the possession of

of Plaintiff's father it is most unlikely that the Sahildar and the village officials would have allowed the arrears to accumulate for a period of 9 years or asked for permission to treat them as irrecoverable.

7. There is another circumstance which most unambiguously shows that the Canal officers had taken possession of these lands. The Plaintiff asserts in the plaint that a bund was raised on Nos. 25 and 25 and a canal was dug in No. 4 by the Canal Department and that those permanent marks of their occupation still remain on the lands. At the instance of the parties a commission was issued to J. Narayana Sastri, a first grade pleader, to report on their existence. His report which is Exhibit E.L. shows that there is a bund in Nos. 25 and 25 which has a length of 1782 feet, a height varying from 2 ft. to 5 1/2 ft. and a width between 3 and 4 ft. at the top and between 13 and 60 ft. at the base. In No. 4 land he reports that there is a diversion canal the length of which is 495 feet and breadth 40 feet. Both the bund and the canal are marked in the plan S- produced by the defendant at the instance of Plaintiff. It is apparent that none but the Public Works Department could have executed such gigantic work. These works were indeed necessary to protect the old canal which is also marked in the plan. The land would be submerged when there was flood in the Swarnamukhi river owing to a large volume of water finding its way through the Challa Calwa also marked in the plan. The diversion canal was necessary to prevent the rush of water and ——— the

the bund was necessary to prevent the inroads of water on the old canal. They became however unnecessary when the old canal was abandoned and the new canal, also marked in the plan was opened. These permanent works of gigantic proportions lead me to think that the Public Works Department did take possession of the lands and keep them in their possession. Their works have also rendered the lands unfit for cultivation without repairs. The defence witness admits that the bund was raised by the Canal officers but deny that the canal in No. 4 was dug by them. They say that it is a breach caused by the river, but it is false, for it is described in S as the old silted diversion.

8. I shall now refer to No. 52 land as the evidence which I am going to set forth in the subsequent paras applies to all the three lands. When the abandonment of the old canal was decided upon, it was first proposed to open

the new Canal through No. 52 for it is admitted that No. 52 was entered upon with this object and locked up in 1884 (vide plans). It is also admitted that the first Schedule of lands required for the purpose forwarded by the Executive Engineer contained this land though that Schedule also is not forthcoming. In 1885 the line was changed and the revised Schedule forwarded by the Engineer on the 21st March 1885 in supersession of the first is said not to contain this land. It is therefore clear that Public Works Department did take possession of the land in 1884.

Q. Assuming that these lands were temporarily occupied by the Canal Officers it is argued on the Defendant's side that the moment they did not want them, the ryots of the village, who were aware of the change of the line being at liberty to enter upon them must be supposed to have so entered. It is doubtful whether this argument will hold good even in the case of private individuals.

But

Ans.

But when the Government enters upon the lands and executes works at a large outlay of labour and capital, the ryots will be afraid to go near them before they are formally reinstated in possession or a written order permitting them to enter on possession is given. In the present case it is not pretended that any permission to enter on the land was given to Plff. or his father before the formal delivery of possession on the 30th August 1893. Their conduct also affords the best evidence that they were out of possession. Exhibit A. Dated 11th March 1888 is the first petition presented by the Plaintiff's father to the Collector requesting remission of the assessment of No. 52 land from Rs. 1294 on the ground that it was wanted for the diversion of the Canal in that year and that he had not cultivated it since. The other lands were not included in this as the Tahsildar's report for treating their revenue as irrecoverable was then pending before the Collector.

This

petition is said to have been referred to the Tahsildar for report but there is nothing to shew what the report was. On the 4th October 1889 Plaintiff's father presented another petition (B) requesting delivery of possession of his lands taken up by the leauab department & subsequently relinquished by them. In this petition he waived his right to compensation, undertook to execute the necessary repairs to make the lands fit for cultivation & agreed to pay cist from fasli 1299 provided the arrears up to fasli 1298, were remitted. This was also referred for report to the Tahsildar who in July 1891 recommended the refusal of the assessment if Public Works Department admitted that they had held possession (R). The Deputy Tahsildar to whom this petition had been referred by the Tahsildar examined Plff's father & the village officials regarding possession & their statement leads to the inference that possession was not with Plff's father (M & N). In 1890 prompt measures were taken to collect the arrears of Revenue

Revenue and Plaintiff's father's moveables were attached. Exhibit C. dated 3rd June 1890 was then put in by Plaintiff's father representing the injustice of the order for attachment and requesting withdrawal of it. On the 6th June 1890 the Collector passed the following order:— "The petitioners must at once pay up the arrears held back on account of Compensation dispute respecting lands taken up for the Backing-ham leauab. If the Claims for Compensation are shown to be valid Petitioners will be paid the same." After the payment of arrears in compliance with the above order Plaintiff's father put in petition D, dated 10th September 1890 requesting the payment of Rs. 2149-0-0 for loss of produce from fasli 1291 to fasli 1299. This petition was forwarded to the Engineer for report whether the failure to cultivate was due to any action on the part of his department. The Engineer stated that the lands had always remained in the possession of Plaintiff's father except in the year 1884. This opinion it appears is

land

founded on surmises. This was followed by petition E for the refund of assessment collected from Plaintiff's father. On the 21st November 1891 he presented Exhibit F for permission to cultivate his lands & for the payment of compensation for loss of produce or at least refund of the Cist already collected by him. The Plaintiff's father having died in the meantime Plff presented petition G. requesting that certain lands in the Gistwanadhapuram Kondrika which were then being sold for arrears of revenue might be granted to him in lieu of the Compensation due to him for loss of produce. This petition was first rejected by the Collector but on a second application (H) by Plaintiff to reconsider the matter the Collector ordered postponement of the sale. In November 1892 a Communication was addressed to the Executive Engineer to state distinctly when Plff's lands were first occupied & when restored to him (Exhibit C). On the 25th February 1893 the Plaintiff put in petition I requesting an early Settlement of Compensation.
making

making specific reference to the lands taken up in 1881. This petition was also forwarded to the Executive Engineer with the plans for remarks. He replied as before that no. 52 land was entered upon and locked. pitted in 1884. and abandoned in 1885 when the line was changed, that there were no documents to show when the land was restored to the owner but that cattle presumably belonging to the owner of the land were grazing on it since 1885 and suggested that formal delivery of possession might be made (P). As regards nos. 4 and 95 he said that they were not required, that there were no records to shew the extent taken up and that the Revenue Inspector and village Karam might be deputed to verify the extent (Q). The Collector thereupon directed the Dahsildar of Gudur to take evidence as to possession and to submit a report. The Deputy Dahsildar of Kota to whom the matter was referred by the Dahsildar reported after examining the

Village officials ~~and~~ ryots that possession was not with Plaintiff and the Dahsildar submitted it to the Collector with his own report (Exhibits I. U. E. E. + E. E. 2). On receipt of this report the Collector ordered formal delivery of possession and the submission of proposals for compensation (W). Exhibit 2 is the Deputy Dahsildar's compensation statement G. G. 1, G. G. 2, and G. G. 3 the statements of Plaintiff the village officers and the ryots and A. A. the Dahsildar's report to the Collector enhancing the rate fixed by the Deputy Dahsildar. Not satisfied with the rate recommended by the Deputy Dahsildar and the Dahsildar the Plaintiff put in petition K. and L to the Collector for enhanced rates of compensation.

10. While the matter was pending before the Collector, he received certain anonymous petitions to the effect that the lands had all along remained in the possession of Plaintiff and had been used by him for grazing purposes.

Action was taken on these petitions and the Head Quarter Deputy

Deputy Collector was sent to make enquiries on the spot. He examined the Village Munsiff's father and the Karnam's Gu-mastah's brother and reported that the Public Works Department had not prevented Plaintiff's enjoyment of the lands, that his cattle had been grazing on the lands and that one Kallappa Reddy Subba Reddy an influential ryot of Kota village had put forward the Plaintiff to defraud Government. The anonymous petition writers seeing that their endeavour had met with success openly came forward and presented a petition (Exhibit N. N.) to the effect that the lands in question are pasture lands and had never before ~~him~~ been cultivated but had always been utilized as pasture ground, that Plaintiff and his father had grazed their cattle on them until Fasli 1303 (1893-94). Advantage was taken of this and the Head Quarter Deputy Collector was again sent to make another local inspection and to examine the petitioners who of course supported the allegations made in their petition (Exhibit IV).

It must be borne in mind that the enquiries by the Deputy Collector were conducted behind the back of the Plaintiff who when he heard of the Deputy Collector's report presented a petition to the Collector to the effect that his opponents were men of no position and that they had been set up by Komari Veeraghavulu his enemy and the chief among them. The Collector accepted the report of the Deputy Collector as true and rejected Plaintiff's claim for compensation on the 12 February 1894 (Exhibit B.B)

11. The persistent efforts made by Plaintiff and his father to obtain compensation and to recover possession conclusively show that they were out of possession. In Exhibit B. the plaintiff's father even undertook to waive his right to compensation and to execute the necessary repairs at his own expense provided he was restored to possession and the arrears of assessment from date of dispossession till fasli 1299 were remitted. From this it is evident that he had no intention to defraud the Government. The same request he repeated in Exhibit F and

get lost

Yet no notice was taken of it. It is contended that in exhibit D the Plaintiff's father having asked only for the profit of 1884 in respect of 52 land he must be supposed to have been in possession of that land since 1885. There is no room for this supposition when it is distinctly stated in that and the other petitions that he was out of possession. He claimed the value of the produce of 1884 because the crop raised by him in that year was damaged by the Canal officers and did not claim Compensation for subsequent years because he had not raised crops and had not incurred expenditure. The fact that he was willing to make a large sacrifice to obtain an Amiable Settlement cannot be urged as an argument against him. In Exhibits B and F which preceded and followed D he went so far as to give up all claim for Compensation. It cannot be inferred from them that he was not divested of his possession.

possession also preponderates in
Plaintiffs favor. His first witness
who is his gunastah proves that
the Canal officers entered on Nov 4, 95,
and 52 lands, that a Canal was dug
in Nov 4 a bund was raised in Nov 95
and the diversion of the Canal was
marked in Nov 52, that Plaintiff and
his father were out of possession and
that they used to plant Casuarina
trees and raise ragi, indigo, green
gram &c on these lands while they
were in possession and that portion
of Nov 52 were let to tenants. The 2nd
witness who was the late Deputy
Tahsildar of Almor and Kofa states
that he inspected the lands, held an
enquiry, took the Statements E.E., E.E.2
and submitted the report T, and that
the statements made in T are true.
He also proves that the Compensation
Account G. was submitted by him
with reference to the Statements
G.G. 1 to G.G. 3 and the leases C.C., D.D.,
H.H. 1, H.H. 2 and that it is correct. The
3rd witness corroborates the evidence of the

1st witness and states that him self and
P. Pathareddy (Plaintiffs' 5th witness) were lease
of portions of Nov 52 land, that C.C. is the
Cowl to them and H.H. 2 is their mukhtia
and that he gave evidence before the
Dy. Tahsildar to this effect. The 4th
witness is the lessee of another portion
of Nov 52 with one Subbiah (15th witness)
and proves D.D. and H.H. 1. He is another
of the witnesses examined by the
Dy. Tahsildar and supports the
evidence of Plaintiffs 1st and 3rd
witnesses. This 5th witness gives the
same evidence as the 3rd witness
and the 6th witness, who is the Village
Munsiff, proves that plaintiff was
out of possession and that the
Canal officers were in possession.
The 7th witness is the writer of C.C.
and H.H. 2 and proves his handwriting.
The 8, 9, 10, 11, 12 and 13th witnesses support
the evidence of the 1st 3rd to 6th witnesses.
The 14th witness Polegadu who is
admitted by both parties to have
been a Maistri in the Canal
Department till

lik
recently proves the Plaintiff's Case
and states that under order of Mr
Endright he prevented men and
Cattle from trespassing on the
lands, and that before Government
took possession the Plaintiff's
father had raised indigo, oil seeds,
ragi and green gram on the lands.

The 15th witness supports the 4th witness
and proves D D and H H. The 16th witness
a neighbouring Cultivator says that
before the Government took possession
the Plaintiff's father had raised indigo,
ragi, oil seeds and green gram on the
lands and that himself had leased a
portion of No 52 from Plaintiff's
father. This is the oral evidence
for Plaintiff which supported as it
is by the documentary evidence,
I see no reason to disbelieve.

13. The defendant has examined 13th witnesses
of whom the Chief is Kamasa Keesa
Raghavulu (Defendant's 1st witness)
He who has voluntarily come forward
to protect the interests of Govt not from
any sense of duty as honest citizens
but from a desire to wreak their vengeance
on an old enemy and to get some

some reward for their services. The 1st
witness says that a flood embankment
was raised and Rs 95 and that similar
embankments were raised on other
lands also including his own that
No 52 was lockpitted, that no Canal
was dug in No 4, that the Govt told
the owners to take charge of their lands
when they were no longer required
that Plaintiff's lands are pasture
lands, that he grazed his Cattle on them
and that their rent is from 4 as to 1 Rupee
an acre. He admits that himself
and the people of his village and another
village held a Consultation and sent
the petition K K to the Collector and that
the Cause of it was Plaintiff's preventing
their Cattle from passing through his
lands. This is not the only Cause of
enmity, for he says that Plaintiff's
father had brought a Complaint
against him some 6 or 7 years ago.
It is evident from this that he and
his Colleagues were actuated by
malice in sending K K and giving
evidence before

before

before the Deputy Collector and in this suit.
Since the date of KK, it is admitted
there have been numerous Civil &
Criminal Cases between him and
Plaintiff and his men. Since the resto-
ration of the lands to Plaintiff it is
admitted that has planted Casuarina
trees over a portion of the 4 land and
that he raised gingerly and indigo over
the remaining portion in the year.
The 1st witness says that gingerly and indigo
did not take root, but this is falsified
by the evidence of the Commissioners who
saw stumps of indigo plants cut.

These are tanks in Nos 52 & 4 and I
agree with the Plaintiff's witnesses
that they are capable of being utilized
for purposes other than Cattle grazing.
The 2nd witness supports the 1st
witness because he and his
brothers are indebted to him and bear
ill-will towards Plaintiff. He
has moreover been convicted of theft.
His evidence that KK was sent at
the instance of the Lake Village Munsiff
is certainly false. The third

witness
H. 22

witness who is a resident of a different
village and owns no land near the ^{plaint} ~~plaint~~
lands says that he used to see them when
going from his village, that Plaintiff's
father was in possession because the Putta
stood in his name and because he saw
some cattle said to belong to Plaintiff
father were grazing on them. He admits
that he does not know whether the
Government kept possession of the
lands. His evidence is absolutely
worthless. The 4th witness also
knows nothing about the lands,
for he has no lands near them and
is not able to say who owned the
adjoining lands. He says that on
his way from his village he saw some
cattle grazing on the Plaintiff lands
which alone are known to him and
that he concluded them to be Plaintiff's
cattle, because the watchmen
who tended the cattle were Plaintiff's
men. He is indebted to the 1st witness
and is under his influence. The 5th
witness gives the same evidence
and betrays the same.

Gnosance

ignorance as the 4th witness. He is also indebted to the 1st witness. The 6th witness while stating that Government was not in possession admits that there was a Canal in N^o 4 and states that it was silted up by the flood in the Swarnamuki and that he does not know when it was dug by Government. He further admits that there is indigo raised on N^o 4. The 7th witness says that Plaintiff's father was in possession, that he does not know whether Government was in possession and that indigo is raised in N^o 4. The 8th witness says that Plaintiff's father was in possession and grazed his cattle because his cultivator told him that the cattle belonged to his master. The 9th witness says that they are pasture lands, that Plaintiff's father was in possession and that his cattle grazed on them. It is doubtful whether this witness has seen the lands, for he denies that there is any embankment in N^o 95. The witness admits that during the trial of this suit he

he sent another petition with the other witnesses to the Collector not to pay Compensation to Plaintiff. The 10th witness says that when tapping a palmyra tree he saw Plaintiff's father's cattle graze on the lands which are pasture lands and that he does not know whether Government was ever in possession. He is a relation of Defendant's 1st witness. The 11th witness who also gave the same evidence is indebted to the 1st witness. If possession had been with Plaintiff's father and not with Government much better evidence than that offered by this Veeraraghavulu and his colleagues would have been forthcoming. It is significant that neither the Canal officers nor any other officers of Government have been called to speak to possession.

14. My finding on this issue is that the Canal Department took possession of the lands in suit and did not restore possession to Plaintiff before the 30th August 1893.

15. 2nd issue:— It is contended that the Plaintiff's claim for compensation for loss of produce, if any is due to him

is barred by limitation. To decide this point it is necessary to discuss the mode in which the D. P. W. obtained possession of the lands. Their possession was clearly not as trespassers. If they had taken forcible possession the Plaintiffs' father would have come into Court at once. The omission of the Revenue officials to collect rent for a series of years, the promise by the Collector to pay compensation if the claim was valid the ascertainment of the amount of compensation through the Tahsildar of Gudur and the order for stay of sale of the Vishwanathapuram Kandrika lands to meet the Plaintiffs' request for a grant of lands in lieu of compensation should his claim be found good, show that possession was not acquired by trespass. Nor can it be said to have been acquired under the provisions of any law. Under section 4 of the Land Acquisition Act a preliminary notification is necessary for the purpose of entry and survey and under section 6 another notification for the

purpose of acquiring the land. ^{there} ~~As those~~ was no notification of any kind in this case the provisions of the Land Acquisition Act do not apply. I do not think that the only mode of acquiring land for public purposes is by enforcing the provisions of the Land Acquisition Act. Under the Act the owner is bound to part with the land whether he wills it or not. If the Plaintiff had resisted entry on his land the provisions of the Act would certainly have been enforced by the Collector. If the owner consents to give up his land the Collector or other officer concerned can make his own arrangement with the owner independently of the provisions of the Act. It is not said that the formalities required by the Act have been gone through in the case of lands acquired in the neighbourhood of the plaintiff land for the purpose of ^{diversion} ~~divers~~ of the Buckingham Canal. The entry on Plaintiff's land is therefore understood implied

implied promise of payment of Compensation. The Defendant's Pleader contends that it is not so alleged in the plaint but the Plaintiff has set forth the facts from which the promise may be implied and that is enough. There was no denial of Plaintiff's right until the 12th February 1894, the date of B. B. and the suit is therefore within time. The case at 1 p of 11 weekly Reporter is not to the point. There the case in the Courts below was one of dispossession and the Land Acquisition Act was set up for the first time only in the High Court.

16. 3rd Issue:— There is no evidence on Defendant's side as to the amount of damages. His witnesses simply say that the lands in question are pasture lands and had not been utilised for any other purpose but the cows produced by Plaintiff both in this Court and before the Deputy Tahsildar as also the oral evidence recorded by him and by this Court—

show that ragi, Casuarina, pulse, indigo &c had been raised on the lands. It is admitted that since redelivery of possession the Plaintiff has planted Casuarina trees in N^o. 4 and raised indigo and guigelly and the Commissioner also says that there are ~~there~~ Casuarina trees and stump of indigo plants cut on N^o. 4. It is useless to say that the Plaintiff raised them for the first time after redelivery of possession, to support his claim for a large compensation and that the idea of making such profitable use of the land had never before occurred to him or to his father. The Deputy Tahsildar who has since retired from the service after a careful enquiry and inspection of the lands fixed the rate of profits at Rs 6 per acre in N^o. 4 and 95 and Rs 25 per acre in N^o. 52 but he is suspected —

of being privy to the fraud which the Plaintiff wished to perpetrate and one half of his pension has been withheld on that account. The Tahsildar thought that the rate fixed by the Deputy Tahsildar was too low and raised it to Rs 8 and Rs 30 respectively per acre. It must be remembered that the rates fixed by the village officers was more than this, viz. Rs 8 and Rs 40 respectively. I cannot for a moment believe that the Tahsildar, the Deputy Tahsildar and the village officers entered into a conspiracy to defraud Government of a very large sum of money. I do not say that it is impossible to conceive of such a case but I say that such a case has not been made out. The Deputy Collector's enquiry was held behind Plaintiff's back and his report is one sided and based on the evidence of persons who are inimical to Plaintiff. His opinion that the lands bore no marks of having

been cultivated does not shew that they are pasture lands but shew that Plaintiff was out of possession. The fact that the father of the village Munsiff and the brother of the Karmam's gumastah gave evidence different from that given by the village Munsiff and the Karmam leads to the inference that the latter were not unwilling to support Government but being bound by their previous statements which they could not retract with safety to themselves were compelled to adhere to them. It must be noted that the village Munsiff's father's statement in Exhibit II is opposed to his previous statement N. It is contended that the Plaintiff's father himself had not claimed such a large amount. It appears from para 15 of Exhibit I that Plaintiff's father had put in a Schedule showing the details of his claim along with his petition D. That Schedule is now missing but its existence is proved by the Kuzur Sarishtedar and by Defendant's pleader Venkatramanayar. The Kuzur Sarishtedar further proves that the details as given in

that schedule are correctly stated in para 15 of D, and I fully believe him. From this it appears, that Plaintiff's father had claimed Rs 190 for Nos 4 and 95 per fasli or $5\frac{1}{2}$ Rs per acre in addition to the refund of assessment which is Rs 34-8-0. The rate of Rs 6 per acre recommended by the Deputy Tahsildar is therefore reasonable. For No 52 he had claimed only the produce of 1884 viz Rs 129-0-0 which is equivalent to Taram assessment. It is not explained why he was satisfied with a small sum while it is in evidence that this land is infinitely better than the other lands. The probability is ^{that} a greater portion of it had been used by him as a pasture ground. This is confirmed by the fact that Plaintiff also has used it as pasture ground for the last 3 years. The amount fixed by the Deputy Tahsildar is what he would have realized if he had cultivated the whole area. This ^{he}

he is not entitled to recover for neither he nor his father had cultivated the whole. I reduce this to Rs 129 per fasli being the sum claimed by Plaintiff's father. The fact that he claimed only one year's rent to obtain an amicable settlement does not debar him from asserting his full right when that settlement was not obtained and when the matter came to be litigated in a Court of justice. He is entitled to recover Rs 1161-0-0 in respect of No 52 at Rs 129 per year for 9 years and Rs 2691 in respect of Nos 4 and 95 for 13 years at Rs 6 per acre per annum or Rs 3852 in the aggregate.

I decree payment of Rs 3852 with 6 per cent interest from the date of plaint and proportionate costs with similar interest from this date till date of payment. The claim for the rest is dismissed and Plaintiff is directed to bear his costs and to pay Defendant's costs with 6 per cent from

this date till date of payment on the amount
disallowed

Pronounced in open court this 30th day
of August 1897

(30) N. Achutan Nair
Ag Subordinate Judge

Appendix: Plaintiff's documents

A 11-3-88. Petition of Gundala Ramachandra
Reddi to the collector of Nellore
claiming remission of assessment
for the lands for faslis 1294 to 1296

A₍₁₎ 6.12.89 Collector's order

B 4.10.89 Gundala Ramachandra Reddi's
petition to the collector of Nellore
claiming remission of assessment
till fasli 1298 and requesting to put
him in possession of the lands.

C 3.6.90 Petition of Gundala Ramachandra
Reddi and others to the collector
of Nellore requesting to release
the property attached and give
compensation of Rs 2149-0-0

D 10.9.90 Do. Do Reddi put in by pleader
R. Jagannadha Rao requesting to
pay him compensation of
Rs. 2149-0-0

E 20.8.91 Petition of G. Ramachandra Reddi to the
collector

F 21-11-91 Petition of G. Ramachandra Reddi to the
collector by pleader R. Jagannadha Rao
requesting to order him to cultivate his patta
lands and to be paid compensation or to
refund the cist already collected from him.

G 20.7.92 Petition of G. Picchi Reddi to the collector of
Nellore requesting to order the Head Quarter
Deputy collector to postpone the sale
of lands of Vishwanadhapuram Khandra
which he has asked for in exchange.

H 30.7.92 Do. Do - put in by Pleader K. Hanumantha Rao Do Do

J 25.2.93 Do - Do to the collector of Nellore

K 24.10.93 Petition of G. Picchi Reddi put in by Pleader
J. V. Venkatrama Iyer requesting to pay
compensation

L 25.12.93 Do - Do Do

M 25.10.90 Report of G. Ramachandra Reddi before
Katy Deputy Tahsildar

N. Do Do - Do of village officers - do

O 29.11.92 Letter from collector to the Executive

Engineer Buckingham Canal (615A
canal)

- P. 11.3.93 Executive Engineer's letter no. 2507 to
Collector
- Q 28.4.93 Do - Do -
- R 23.7.91 Gudur Tahsildar's arzi to collector
no. 4357.
- S - - - - - Plan of the proposed diversion of
the Buckingham Canal
- T 17.7.93 Deputy Tahsildar's arzi no. 396
to the Tahsildar of Gudur
- W 25.7.93 Tahsildar's arzi no. 5087 to the
collector
- X 7.8.93 Ref no. 404 A collector's Takid to
Tahsildar
- Y 30.8.93 Compensation statement sub-
mitted by Dy Tahsildar.
- Z Do Deputy Tahsildar's arzi no. 483
to Tahsildar
- A.A. 21.9.93 Tahsildar's arzi no. 6593 to the
collector
- B.B. 12.2.94 collector's order declining to pay
compensation
- C.C. 27.9.79 Deowl given by Ramachandra
Reddi to P. Pedda Reddi and
and Shik Imam
- D.D. 11.12.80 Do - Do - Pilli Subbiah &c
- E.E. 16.7.93 Statements from village officers
- EE₂ Do Do from Ryots.

- F.F. - List of papers sent by Dy Tahsildar with exhibit
- G.G. 29.8.93 G. Pilli Reddi's statement before Dy
Tahsildar
- G.G. 2 Do Statements of village officers - Do -
- G.G. 3 Do Do of ryots before the Dy Tahsildar
- H.H. 11.12.80 Muchilika given by Pilli Subbiah &c to
G. Ramachandra Reddi counter part of G.
- H.H. 27.9.79 Muchilika by Pedda Reddi &c to G.
Ramachandra Reddi counter part of C.C.
- J.J. List of lands in Talamanchi which
Plaintiff wanted to be given in lieu of
money compensation.
- K.K. 25.11.93 Petition to the collector of Nellore by
Komari Veeraragu and others
- L.L. 26.7.77 Commissioner's report
- M.M. 23.7.77 Collector's letter
- I no date Defendants documents
Petition of G. Ramachandra Reddi
and G. Subba Reddi to the Executive Engineer
Buckingham Canal
- L 9.6.93 Takid to the Tahsildar of Gudur
- H 18.11.93 Statement of Sikkakollu Veeraswami Setti
before the Dy collector

18.12.93 Kaifiat of the residents of Kothapatnam

12.2.94 office notes relating to Gundala
Pichi Reddi's claim for loss of
produce in certain fields of
Kothapatnam alleged to have been
taken up for Buckingham
canal

Plaintiff's witnesses

- 1 Kota Parasuramiah, 2
- 2 Bhagavantaraya Lala
- 3 Shik Imam Sahib
- 4 Komari Chennappa
- 5 Palipu Peddareddi
- 6 Likhakollu Gurumoorthi
setti
- 7 Bellamkonda Venkatachela-
miah
- 8 Dupudi Rama Krishnaiah
- 9 Nalamothlu Pakura
- 10 Khan Sahib
- 11 Mangigari Ramiah
- 12 Uppala Bolaya
- 13 Thota Venkatasami
- 14 Ingilata Polugudu
- 15 Pilli Subbiah

16 Rayapu Rayapuzadu

17 J. Nayana Sastri

Defendant's witnesses

- 1 Komara Veeraraghavulu
- 2 Jayantha Kothanda Ramiah
- 3 Natar Ragadu
- 4 Gudi Venkatramudu
- 5 Venni Swamigadu
- 6 Gudi Ramudu
- 7 Pudi Chinnire
- 8 Mulagani Achireddi
- 9 Gadimesi Pullaya
- 10 Komari Poliah
- 11 Natar Mathadu
- 12 Kasukhela Seethapathi Row
- 13 J. V. Venkatrama Iyer.

(Sd) U. Achutan Nair

Ag. Subordinate Judge

(True copy)

K. S. S.

Secretary

CONFIDENTIAL



200 copies
20-7-96.

Proceedings of the Board of Revenue
(Land Revenue),

Dated 25th January 1898

No. 228 His.
Const. No. 9.

Encl 2
P.W.D. 13/4/98

READ letter from E. Scott Esquire, Acting Collector of
Nellore to the Secretary to the Board of Revenue, Land
Revenue, Madras, No. 150 of 20th January 1898.
Ver.

Resolution.

*
Encl correspondence
ending with L. O.
3470 Const.
27-8-95

Having regard to the opinion already expressed
on this case by the Government Pleader, Madras, the Board
considers that an appeal should be preferred to the High
Court against the decision of the Sub-Judge.

2. The decree of the Sub-Judge, if confirmed on
appeal, will have to be satisfied from the P.W. Budget
and the orders of Government in the Public Works Department
are therefore necessary for the institution of the appeal. But
as the appeal time expires on the 28th instant, the Government
Pleader, Madras, will be instructed to file an appeal in
the High Court and a copy of these Proceedings will be
forwarded for the confirmation of Government.

3. The Collector should have submitted a state-
ment

1898
REVENUE DEPARTMENT.
Enclosure No. 2
to Current No. 727

ment in Form B, appended to Board's Proceedings, No 234,
dated 26th June 1896. The conduct of the Tahsildar and the
Deputy Tahsildar concerned should be reported upon when
the High Court has decided the appeal.

(True Extract)

Reel

Secretary.

To The Government Pleader, Madras,
with Collector's letter and enclosures in original,
a copy of B.P. No 3969 mi. d. 10-Aug-1895, & Collector's
letter, plaint and written statement in the above B.P.

Copy to The Secretary to Government,
Revenue Department,
with copies of Collector's letter and the
Sub-judge's judgment, & Govt Pleader's
letter disposed of in B.P. 3969 mi in original to be put
in The Collector of Vellore.

20 Dec 97
Copy to

First copy sent to Press.

Returned for Signature.

Despatched.

READ AGAIN G.O., N.

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