

REVENUE DEPARTMENT.

1899.

Board of Revenue

(Land Revenue)

MADRAS.

CNo: 1459

Printed February th.

[Signature]

Proceedings, No. 43, 14th February 1899.

Order Ins. No. 1115 dt 16.3.99

FEBRUARY.

Recorded.

Communicating to all Collectors the decision of the High Court in Second Appeal No. 415 of 1897 that Revenue officers are not bound to restrict the area of wet cultivation or to grant remissions of assessment in seasons of short water-supply.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

READ—the following letter from C. H. MOUNSEY, Esq., Acting Collector of Coimbatore, to the Secretary to the Commissioners of Land Revenue, dated 5th February 1899, R. O. C. No. 892 (e)—Rev. of 1897:—

I have the honour to forward herewith, for the information of the Board, copies of the High Court's decree and judgment in Second Appeal No. 415 of 1897. The judgment contains a ruling of importance. The institution of Appeal Suit No. 7 of 1895, against which this second appeal was preferred, was sanctioned by the Board in its Proceedings, Mis. No. 7094, dated 23rd December 1894. The sanction of the original defence was given in Board's Proceedings, Mis. No. 654 (Land Revenue), dated 10th February 1894, on this office Reference, Mis. No. 131, dated 2nd February 1891.

2. A copy of the judgment in Appeal Suit No. 7 of 1895 is also submitted.

RESOLUTION—No. 43, dated 14th February 1899.

The judgments submitted by the Collector with his letter read above (Appeal Suit No. 7 of 1895 on the file of the District Court, Coimbatore, and Second Appeal No. 415 of 1897 on the file of the High Court) will be printed as appendices to these Proceedings and communicated to Collectors.

(True Copy and Extract.)

(Signed) LIONEL DAVIDSON,
Acting Secretary.

To all Collectors.

Copy to the Settlement Department.

" " Secretary to Government, Revenue Department.

APPENDIX I.

IN THE DISTRICT COURT OF COIMBATORE.

MONDAY, THE TENTH DAY OF AUGUST ONE THOUSAND EIGHT HUNDRED AND NINETY-SIX.

Present:

G. T. MACKENZIE, Esq., Acting District Judge.

Appeal Suit No. 7 of 1895.

The Secretary of State for India in Council by the
Collector of Coimbatore ...

Lakshmi Narasimha Aiyar ... Appellant (Defendant).

... Respondent (Plaintiff).

Appeal from the decree of the Court of the District Munsif of Coimbatore in Original Suit No. 578 of 1893.)

This appeal coming on for hearing on the 29th day of July 1896, and having stood over for consideration till this day, the Court delivered the following

JUDGMENT.—This is an appeal against the decision of the District Munsif of Coimbatore in Suit No. 578 of 1893.

2. Plaintiff is a ryot in Kumarapaliem village in Coimbatore taluk. He sued the Secretary of State for damages, because water was not supplied to his fields. The District Munsif gave a decree for portion of his claim. Against that decision the Secretary of State appeals and plaintiff files an objection memorandum.

3. The lands under discussion are fields Nos. 703, 749 and 750, wet lands in Kumarapaliem village; No. 703 is inam land; Nos. 749 and 750 are ryotwari fields. These lands usually receive irrigation from the Narasampadhi tank and can also be irrigated from the Chithrachavadi channel. In fasli 1300 the supply of water was defective. The tank received a slight supply, which was exhausted in a few days. The water in the channel was all taken by villages higher up. Plaintiff, fearing that the supply of water would be short, made early application for permission to cultivate dry crops and, in reply, received an answer from the Tahsildar of Coimbatore that he could cultivate wet crops. This answer was dated 12th November 1890. The supply of water, which reached plaintiff's fields, was inadequate. The attempt to cultivate fields Nos. 703 and 750 failed entirely. On field No. 749 there was a very poor outturn, some straw and a small quantity of grain, so little that plaintiff would not harvest it but let it rot in the field. The Collector gave remission for No. 750 but charged the full wet assessment on field No. 749.

4. Upon these facts the District Munsif holds that when water is insufficient, the Board's orders lay upon Collectors the duty of restricting the area to be irrigated, that this duty gives to ryots a corresponding right to have timely warning of a deficiency, that plaintiff's application was made with reference to these orders, and that the Tahsildar's answer of 12th November 1890 was a refusal to restrict the irrigated area. The District Munsif further holds that the very small outturn in field No. 749 did not justify the Collector in levying full assessment on that field. The District Munsif refused to give any damages for the inam field No. 703 but awarded Rupees 78-14-10, the cost of cultivating Nos. 749 and 750 with Rs. 14, the assessment on No. 749.

5. Against this decision the Collector appeals on behalf of the Secretary of State and contends that water was supplied as far as was possible and that remission is an act of grace and cannot be claimed as of right. Plaintiff files an objection memorandum asking for damages, because water was not supplied to his inam field No. 703.

6. I am of opinion that the District Munsif is in error in holding that the Board's Standing Orders give any cause of action to plaintiff. It is true that a regulation passed at the beginning of this century throws upon Collectors a statutory duty of obeying the orders which they receive from the Board of Revenue, and there are English cases which show that an official can be compelled by *mandamus* to perform a statutory duty, but I know of no case which lays down that a ryot in India can obtain damages from a Collector who has failed to obey an order issued by the Board of Revenue. The duty laid upon Collectors is a duty towards the Government which employs them more than towards the public with whom they deal. The so-called orders issued by the Board of Revenue are often in the nature of instructions which leave discretion to Collectors. The District Munsif cites Order No. 146 about the restriction of irrigated areas in seasons of short water-supply. It is Order No. 184 in Chentsal Rao's edition of 1891. It is more suggestion or advice than an order and in no way gives a ryot any right to demand that the area be restricted or that, in the alternative, remission be granted.

7. It must be remembered that at the commencement of a cultivation season both Collector and ryot can only surmise what the rainfall is likely to be. Plaintiff called upon the Collector to restrict the area of wet cultivation, but the Collector is not bound to do so. The Tahsildar's answer of 12th November 1890 is at most a refusal to restrict the wet area under Board's Order No. 184, paragraph 4. Plaintiff contends that because of the Tahsildar's answer the Revenue authorities were bound to supply water to his fields. I cannot take that view. The season was bad and I find, as a fact, that the Collector supplied as much water as he could supply. I disallow the damages for cultivation expenses of fields Nos. 749 and 750 which the District Munsif has awarded, and I dismiss plaintiff's objection memorandum.

8. With regard to the assessment which the Collector has levied upon field No. 749, I find that there was some slight outturn, that the crop was not a total loss, and that the Collector's action is in accordance with the Board's Standing Orders. I am of opinion that ryots hold their lands at rates which have been fixed to be paid in bad seasons as well as in good seasons and that, although Government may in bad seasons grant remission as an act of grace, the ryot cannot claim remission as of right. This view was placed before the High Court in *Venkatappayya v. The Collector of Kistna* (I.L.R., 12 Madras, 407, page 411), and was not accepted only because the Court was there dealing with a water-rate levied under a special Act VII of 1865.

9. This appeal is allowed. The judgment of the Lower Court is set aside and plaintiff's suit is dismissed with costs throughout.

Pronounced in open Court this 10th day of August 1896.

(Signed) G. T. MACKENZIE,
Acting District Judge.

APPENDIX II.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

MONDAY, THE FIFTH DAY OF DECEMBER ONE THOUSAND EIGHT HUNDRED AND NINETY-EIGHT.

Present :

The Hon'ble Mr. Justice SUBRAHMANIA AIYAR, C.I.E.,
The Hon'ble Mr. Justice DAVIES.

Second Appeal No. 415 of 1897.

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| 1. Lakshmi Narasimha Aiyar (dead). | } Legal representatives
of the deceased, 1st
Appellant, <i>vide</i>
order on C.M.P.
No. 639 of 1898,
dated 17th August
1898. | } <i>Appellants</i>
(<i>Plaintiff</i>
and <i>Plain-</i>
<i>tiff's repre-</i>
<i>sentatives</i>). |
| 2. L. Lakshmi Narasimha Aiyar. | | |
| 3. L. Meenakshi Sundaram Aiyar. | | |
| 4. L. Subba Rao. | | |
| 5. L. Srikanta Aiyar. | | |
| 6. L. Krishna-sami Aiyar. | | |
| } Minors by their brother
and guardian L.
Lakshmi Narasimha
Aiyar. | | |

versus

The Secretary of State for India in Council by the Collector of *Respondent*
Coimbatore. (*Defendant*).

(Second appeal against the decree of the District Court of Coimbatore in Appeal Suit No. 7 of 1895 reversing the decree of the Court of the District Munsif of Coimbatore in Original Suit No. 578 of 1893.)

This second appeal coming on for hearing, the Court delivered the following

JUDGMENT.—If the claim is one brought against the Secretary of State for breach of alleged duty to supply water to the plaintiff's land in any event, the case must fail, as there is no authority for the view that such obligation exists. As to the claim for the recovery of the assessment paid by the appellant, the suit cannot be sustained as there is no obligation on the Government to make remission of land revenue.

The second appeal therefore fails and is dismissed with costs.

(By the Court.)

(Signed) J. T. GILLESPIE,
Deputy Registrar, Appellate Side,