

# Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 1224

DATED 24<sup>th</sup> March 99

[Despatch Abstract.]

Agreeing with the Board of Revenue  
in considering that no appeal need be preferred  
against the decision of the Madras Ad. Court, directing  
the separate regulation and assessment of the  
Kudayur village in the Sivagangai Taluk.

# BACK PAPERS.

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## Revenue (189 ) Department.

CURRENT No. 17/5

Dr 24/3.29.

From

The Board of Revenue,  
Madras Revenue, Madras.

No. 846 L.R.

Order No. 10/2248/24 1<sup>st</sup> March 1899

The Government agrees  
with the Board of Rev.

23/3/99

Dated 8th March 1899.

Received 9<sup>th</sup> March

Registered 10<sup>th</sup> March

Enclosures 7

Spare copies

To the Board of Rev. L.R. with encs.  
No. 28-3-99

## SUBJECT.

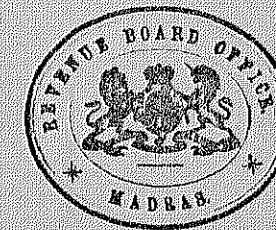
Submitting to Government with  
remarks judgment and decree in Mr.  
Fischer's suit for the partition  
registration of the Kondasai vil-  
lage in the Sivasaiga Zamindari,  
Madura district.

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## Proceedings of the Board of Revenue

(Land Revenue).

No. 846 Misc., dated 8th March 1899

Read Report from J. C. D. Partridge Esquire, Acting Collector of Madras, of the Secretary to the Commissioners of Land Revenue, Madras, R.O.C. No. 422/C.W. of 1898, dated 21st February 1899, reporting the result of O.S. No. 50 of 1897 on the file of the Sub-Court Madras East.

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### Resolution

The Judgment and Decree in Mr. Fischer's suit for the ~~Separat~~ registration of the Kondaghal village in the Sivaganga Zamindari, received with the letter from the Collector of Madras read above, will be submitted to Government with reference to Government Order Misc. No. 147 Revenue, dated 10th January 1898.

2. The Sub-Judge has declared the Plaintiff (Mr. Fischer) to be entitled to the separate registration and assessment of the plaint village of Kondaghal and directed the Collector to register and assess the village in the plaintiff's name. He has further ordered the defendants (Government, the Zamindar of Sivaganga and the Lessees of the estate) to pay the plaintiff's costs and to bear their own costs. As it appears from the Judgment printed at page 1 of the Supplement to the Hindu of the 11th February 1899 that the Privy Council has, in the appeal referred to in Government Order No. 4428 Misc. dated 24th August 1897, declared as

with and by an effect Government Order No. 1088 Rev. dated 14th Novem-  
ber 1891 directing the cancellation of the separate registration and  
assessment of the Koudaghal village originally made by the Collector  
on the 19th January 1891 and has thus virtually ordered the restoration  
of the original entry in the Register of transfers, the Board consi-  
ders it useless to prefer an appeal to the High Court on the merits.

(True Extract)

*Lancelotti*

As. S. Secretary.

To

The Secretary to Government, Revenue Department, with Privy Council,

Judgment, Sub-Judge's judgment and decree, plaint and

written statement and copy of Board's Proceedings No.

2334, /10th August 1883.

M. R. H.

*John*

Vide para 20  
of letter  
from the  
H.C. Secy.

BOARD OF REVENUE, 10th August 1883, No. 2334.

## PROCEEDINGS OF THE BOARD OF REVENUE.

READ—the following letter from C. S. CROLE, Esq., Acting Collector of Madura, to the Secretary to the Board of Revenue, dated 20th June 1883, No. 288:—

I have the honor to submit the following for the orders of the Board.

2. One Alagirisami Nayak and his brother, Appasami Nayak, have applied to me for the separate assessment of Tirupuvanam Taluk in the Sivaganga Estate, stating that their father, Venkatasami Nayak (since deceased), obtained it under a deed of perpetual lease executed to him by the present Zemindar of Sivaganga.

3. Under the provisions of Section 2, Act I of 1876, the Collector is required to publish a notice in the District Gazette in three successive issues, "that the application has been made and that, unless cause is shown to the contrary within sixty days from the date of notice, such separate assessment will be made." When the Act was passed in 1876, the District Gazette was published every fortnight, and by fixing the period at sixty days for the presentation of objection petitions, the legislature, I presume, intended to give the objectors a month's time after the last of the three issues of the Gazette containing the Notification. Now that the District Gazette is published monthly, the least possible time required for three Gazettes to issue is two months, and any person who happens to learn from the third issue of the application for separate assessment will not be able to put in the objection motion in time, as the period fixed by law would have expired on the date of the publication of the last and third issue of the Gazette. Thus the notice published in the third issue is rendered useless.

4. Under these circumstances, I beg to request the Board's instructions whether, to satisfy the provisions of the law, the notice should be published as a special supplement to the District Gazette in three successive issues, allowing an interval of a fortnight between each.

RESOLUTION—dated 10th August 1883, No. 2334.

If the second publication be made in one special Supplement to the District Gazette published a fortnight after the Gazette in which the notice first appears, the third publication will appear in the next ordinary Gazette and the difficulty will be overcome. The Collector will accordingly adopt this course.

2. From the Collector's letter, it appears that the Tirupuvanam Taluk of the Sivaganga Zemindari has been leased out under a permanent deed of lease. If this be so, Section 8 of Regulation 25 of 1802 and Act I of 1876 do not apply and separate registration is not necessary (IV, M.H.C.R., page 396).

(A true Copy and Extract.)

(Signed) J. A. DAVIES,  
Acting Secretary.

To the Collector of Madura.

Exd. A. F. Aaron.

1883.  
Board of Revenue,  
MADRAS.

Printed August 17th.

Proceedings, 10th August 1883, No. 2334.

Passing orders on question raised by the Collector of Madura regarding the publication in the District Gazette of a notice for the separate assessment of Tirupuvanam Taluk in the Sivaganga Estate under Section 2, Act I of 1876.

Revenue Department.

Read B.P. 646 this d/ 3-5-99 (C.No.1715)

re: the separate registration of the  
Kondagai village Madura District.

To the Under Secretary:-

The judgment and the decree  
forwarded by the Board relate to a suit  
instituted by one Mr. Fisher in the  
Madura Sub-Court for the ~~separate~~ <sup>separate</sup> regis-  
tration in his name and <sup>separate</sup> assessment of the  
village of Kondagai in the Zamindari  
of Sivaganga.

2. The Collector originally register-  
ed the village in Mr. Fisher's <sup>name</sup> but on a  
petition from the lessees of the zamin-  
dari the Government set aside the Col-  
lector's Proceedings in G.O. <sup>1018</sup> <sub>14.11.91</sub> Mr.  
Fisher thereon filed a suit for a dec-  
laration that the order of the Madras  
Government was ultra vires and illegal.

The suit was dismissed with costs by the

Subcom

Subordinate Court, Madras, and the decision ~~was~~ <sup>was</sup>

was upheld by the High Court on technical grounds, which observed. "If ~~the~~ <sup>the</sup> suit is really for a bare declaration that the order of the Madras Government is ultra vires and illegal it is clear that the suit is not sustainable with regard to the provisions of section 43 of the Specific Relief Act. ~~Mr. Fisher~~ <sup>Mr. Fisher</sup> therefore, when he filed the suit ought to have asked for substantial relief and not for a mere declaration ~~Mr. Fisher~~ <sup>Mr. Fisher</sup>

We are of opinion that the Collector ought to have refused registration and left the party aggrieved to his remedy by suit under section 6 of the Act. (I of 1876 B) The Collector however granted separate registration and assessment but afterwards under the orders of Government cancelled the registration. This cancellation must be regarded as a final refusal by the Collector to grant the separate registration applied for by Mr. Fisher. If the latter was aggrieved by this refusal his

*vide H.C. Judgment at  
M. 174-175 in the printed file of  
papers connected with the appeal  
to the Privy Council.*

remedy was by a suit under section 6 of the Act against the Secretary of State as the authority in whose name the Collector acted and against the Zamindar and lessees as persons whose interests would be affected by the declaration to be asked for". Mr. Fisher preferred an appeal to the Privy Council against the High Court's decision and also filed in accordance with the advice of the High Court a suit in the Subordinate Court of Madras praying for a declaration that he was entitled to the separate registration and assessment of the village in question.

3. The Sub-Judge has declared Mr. Fisher to be entitled to the separate registration and assessment of the village and has directed the Collector to register and assess the village in the Plaintiff's (Mr. Fisher's) name accordingly. He has further ordered the defendants (Government, the Zamindar of Sivaganga and the Lessees of the Estate

Rs 1063-12/

to pay the Plaintiff's costs and bear  
their own costs. The Privy Council having  
also allowed the plaintiff's appeal and  
that declared the order of Government of the  
14th November 1891 was "void and of no  
effect", the Board of Revenue says that the  
effect of the Privy Council decision is  
virtually to order the restoration of the  
original entry in the register of transfers  
ordered by the Collector and that it is  
therefore useless to prefer an appeal to  
the High Court against the Subordinate  
Court's decision on the merits. This may  
it is submitted, be concurred in. A draft  
order to this effect is put up on the docket.

4. The Solicitor, India Office has  
already intimated to Government the result  
of the Kondagai appeal and has written to  
say that on receipt of a copy of the order  
of Her Majesty in Council, the result will  
be officially reported by the Secretary  
of State. This has ~~not yet~~ since been received.

And may it be submitted, be communicated  
Board of Revenue for the issue of the

for detail vide Memorandum  
of costs.

vide Des No 231 24.2.99.  
Ind No  
(Enc 2016. Lin. Ind.)

the necessary instructions to the  
Collector of Madura.

Rs  
22-3-99

Secy  
Hlu  
22/3/99

Yes  
8/4 23/3/99

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189

RECAP ASSETS G.O., No.  
189 .

, DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH LITTO

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