

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 1279

DATED 28th March 97

[Despatch Abstract.]

Sanctioning the transfer of -
certain land at Pondicherry to the
Madras Municipality for temporary use
as a segregation camp.

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 (1899) Department.

CURRENT No. 2074

From

The Board of Revenue,
Land Revenue, Madras.

Order (un) No 1279728th March 1899

Sanctioned.

No.

REF. B. No. 100

Dated 21st March 1899

Received

Registered

Enclosures 1

Spare copies

SUBJECT.

Requesting the sanction of Govt.
for the transfer of certain land
at Tondiarpet to the Madras Muni-
cipality for temporary use as a -
segregation camp.

24/3/99

The Board of Rev (L.R.) No. 21-2-99

24.5.99

11/11/11

11/11/11

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

OFFICE OF THE BOARD OF REVENUE
(LAND REVENUE),

Madras, 21st March 1899.

READ— letter from Herbert Bradley Esq., Ag. Collector of Madras to the Secretary to the Commissioners of Land Revenue, Madras, Ref. No. 161, dated 28th February 1899.

Reference ^BNo. 100 dated 21st March 1899

The Collector of Madras proposes to transfer to the Madras Municipal Council 4.46 acres of land in survey Nos. 54 & 56 of Tondiarpet for temporary use as a segregation camp. The whole of this land is or will shortly be at the disposal of Government. The Collector states that a portion of it measuring 1 kani-7 gds. - 320 sq. ft has lately been resumed from a trespasser named P. L. M. Muttaiyan Chetti and made over to the Municipal Commissioners and that a further extent of 2 kanis-1 gd-1923 sq. ft which was also in the occupation of the same trespasser is being cleared and will shortly be handed over to the Commissioners.

2. A detailed account of the steps by which the trespasser was ousted would be foreign to the present application -- but briefly it may be stated that prohibitory assessment was first imposed by the Collector and then continued at the suggestion of the Board. This action was upheld by the High Court in a suit brought against by the trespasser and he was consequently compelled to vacate. (Vide Board's Proceedings No. 329, dated 2nd December 1898.)

3. The Board requests the sanction of Government for the proposed transfer which does not amount to an alienation of Government land but merely to a permission to use it temporarily

for

for a specified purpose (Vide item (6) of cases to be excluded from --
statement No. I enumerated at page 4 of Board's Proceedings No. 67, dated
22nd February 1897).

Lonel Davidson

Ag. Secretary

To the Secretary to Government, Revenue Department, with copy of Board's
Proceedings No. 329, dated 2nd December 1898.

Q.B.

Jala

1898.

Board of Revenue

(Land Revenue),

MADRAS.

Printed January 2nd, 1899.

Proceedings, No. 329, 2nd December 1898.

DECEMBER.

Recording letter from the Collector of Madras forwarding, for perusal and return, a copy of
the High Court judgment in Original Suit Appeal No. 23 of 1898 regarding imposition of penal
assessment on certain land at Tondiarpet.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

READ—the following letter from J. N. ATKINSON, Esq., Collector of Madras, to the Secretary to the Commissioners of Land Revenue, dated 23rd November 1898, Ref. No. 1774-Gl. :—

Adverting to the correspondence ending with Board's Proceedings, Mis. No. 1231, of the 9th May last, I have the honour to forward, for perusal and return, a copy of the High Court judgment in Original Suit Appeal No. 23 of 1898—P. L. M. Muthiah Chetty *versus* the Secretary of State for India.

ENCLOSURE.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

THURSDAY, THE TWENTY-NINTH DAY OF SEPTEMBER, ONE THOUSAND EIGHT HUNDRED AND NINETY-EIGHT.

Appellate Jurisdiction.

PRESENT :

The Hon'ble Mr. H. H. SHEPARD, *Officiating Chief Justice* and

" " Mr. Justice MOORE.

Appeal No. 23 of 1898.

P. L. M. Muthiah Chetty	...	...	...	...	Appellant (Plaintiff).
The Secretary of State for India in Council	...	...	...	...	Respondent (Defendant).

Appeal from the decree of the High Court of Judicature in the exercise of its ordinary original civil jurisdiction made in Civil Suit No. 303 of 1897.

This appeal coming on for hearing on Friday and Monday, the 23rd and 26th September 1898, and having stood over for consideration till this day, the Court delivered the following :

JUDGMENT.

The Officiating Chief Justice.—I see no reason whatever to think that Mr. Justice Boddam has come to a wrong conclusion on the facts of the case. The appellant's counsel has failed to convince me that the learned Judge misappreciated the evidence of title adduced on the appellant's behalf or indeed that any fact has been established in his favour except the fact of recent possession. It was argued on behalf of the appellant that, notwithstanding want of proof of title in himself, he is entitled to a declaration, unless it is proved that the land is the property of Government and *Asher v. Whitlock*, L.R. 1, Q.B. 1, was cited. It was further contended that in any event the appellant was entitled to recover the sums exacted from him by the Revenue authorities under the name of penal assessment.

In order to deal with these arguments, I must first determine whether the Government has made out its title to the land. The learned Judge answered this question in the affirmative and after a perusal of the evidence I have come to the conclusion that he was justified in that finding. It was admitted by the plaintiff's counsel at the trial before Mr. Justice Boddam that a search

had been made by the Revenue officials for the documents of title relating to this and the neighbouring lands and that those documents could not be found. This being so, secondary evidence pointing to purchases made by Government was admitted and this evidence shows that the land in question was bought by Government about 60 years ago. Until quite recently it should be stated, the land was left waste and unenclosed. There is, however, evidence that it was occupied for some time by sepoy lines and more recently as a famine camp. Later again, in 1852, it was included in lands let by Government to the witness Linga Chetty. During his tenancy it appears that the plaintiff, though he had not then acquired the title now set forward, laid claim to the land. No overt act was done by him as far as we can see, till he planted a hedge. That must have been between 1848 and 1891: the fact was reported by the karnam to the Tahsildar. It was in 1891 that the protracted inquiry before the Deputy Collector was opened. The ultimate result of this inquiry was that in May 1895 the notice was issued to the appellant charging him with the payment of Rs. 100 a month for the land as long as he remained in occupation. When this period during which the plaintiff's title was *sub judice* is deducted, there remains a very short space of time during which he can claim to have been in possession of the land. No doubt it is incumbent on the respondent even against an occupant who has held for a few years without any title to prove a title to the land. The Government cannot be placed in a better position because treating the appellant as a trespasser they have exacted from him the payment of impositions which, if they had not considered him a trespasser, they would not have demanded. I think, however, that the Government has made out a *prima facie* case and there is certainly no evidence on the other side to rebut it. It follows that the appellant must fail so far as the declaration is concerned.

The question then is whether the monies paid by the appellant in obedience to the notice, dated 24th May 1895, and the subsequent notices can be recovered. The appellant charges that the action of the Collector in this matter was illegal and alleges that the monies were paid under protest. He does not allege in the plaint that the payments were made under coercion and with regard to most of the payments there is no evidence that they were made in consequence of the distraint of the appellant's goods or any other form of coercion. In the absence of such evidence and there being no evidence of mistake on the appellant's part, I am unable to understand on what principle he can be entitled to recover the monies though he may have made payments under protest. That circumstance can, in my opinion, make no difference but it is said that with regard to one or two of the payments it is shown that it was in order to prevent distraint of his goods that the appellant paid the money. And though I doubt whether he is entitled to have the case treated on that footing I will assume that there is such evidence. It is incumbent on the appellant to prove not only that there was coercion, but that the coercion exercised was illegal. It is argued that if the land belongs to Government, no revenue could be charged against the occupant and that, therefore, the imposition which is called penal assessment must be illegal. If the Act of 1851 stood by itself and if land revenue only was dealt with in that enactment, there would be some force in the argument, for section 1 deals only with lands which are not the property of the company and section 3 declares in what manner the rate of assessment is determined. It would be difficult to justify the charge of Rs. 100 a month for the two cawles or so of land, if land revenue only in the proper sense had to be taken into account. There is in the two Acts relating to the town of Madras, no section corresponding to section 58 of Act II of 1864 precluding the civil courts from taking into consideration or deciding as to the rate of revenue. But in the Act of 1851 and more clearly in the supplementary Act of 1867, provision is made for the collection of other charges besides land revenue. In this latter Act it is declared to mean "assessment, quit-rent, ground-rent or other charge upon the land payable to Government." While in the former Act it is assessed or assessable land and land charged with or subject to a rent payable to the company that is dealt with, in the latter the comprehensive phrase used is "land subject to the payment of revenue." Since in the present case the Government was the owner of the land and the appellant was an occupant holding without title, it was competent to the Government as to any private landholder to charge rent and to exact payment of it in the manner ordained by law. I do not think it makes any difference that the Revenue officials called the charge by another name. Apart from the special provision made in favour of Government as a revenue collecting authority, I think there is a complete answer to the appellant's claim. He has no claim to recover rents voluntarily paid, monies which he need not have paid had he not chosen to remain in occupation, or to recover monies paid under pressure of lawful process. As to the greater part of the claim, moreover, the suit is barred by the six months' rule contained in section 31 of the Act of 1867.

I would dismiss the appeal with costs.

Moore, J.—I concur.

(By the Court)

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

4 BOARD OF REVENUE (LAND REVENUE), No. 329, 2ND DECEMBER 1898.

RESOLUTION—No. 329, dated 2nd December 1898.

Recorded.

(True Copy and Extract.)

(Signed) LIONEL DAVIDSON,
Acting Secretary.

To the Collector of Madras, with copy of the judgment returned.
Copy to other Collectors.

End Md. Pabliwari.

When given for copying _____
When copied _____ } 189
When examined _____
When signed _____

READ AGAIN G.O., No. _____, DATED
189 _____

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DUTY

PAPERS NOT FILED UP, BRING WANT FOR DETACH
IN ORIGINAL.

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