

10-7-08 ✓

9-8-12 ✓

3-3-14 ✓

8-3-20 ✓

6/11/20 ✓

2/11/27 ✓

29.7.39 ✓

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y 8,800-17-12-88.

Revenue (1899) Department.

MISCELLANEOUS SERIES.

G.O., No. 1928 ✓

DATED

30th May. 99

[Despatch Abstract.]

Stating that Govt. sees no reason to interfere on behalf of Mr. Robert Fischer in the matter of his appeal against the Board's orders declining to modify its decision arrived at in 1892 re: the apportionment of Peishkush on the Village of Kondagai of the Sivagangam Zamindari.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Go. 4177		Rev. S	24-11-99				
Go 110		S	22-1-00				

18 7-97.

Revenue (1899) Department.

CURRENT No. 2535

Order

The Govt sees no reason
to interfere on the petitioner's
behalf

From Robert Fischer Esq.
Madura

No.

Dated 5th April 1899

Received 12th do

Registered 15th do

Enclosures 3

Spare copies.

to Petitioner's name R & O
Copy to the Bd of Rev R & O

SUBJECT.

appealing against the
Board's orders declining to
modify its decision arrived
at in 1892 regarding the
apportionment of parishash
on the village of Kondagai
of the Sivaganga Tammandam

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

ACT NO. 1 OF 1876.

PASSED on the 3rd of March 1876.

AN ACT to make better provision for the separate assessment of alienated portions of permanently settled estates.

Whereas it is desirable to make better provision for the separate assessment to land-revenue of portions of permanently settled estates alienated by sale or otherwise; it is hereby enacted as follows :—

1. The alienor or alienee of any portion of a permanently settled estate, or the representative of any such alienor or alienee, may apply to the Collector of the district in which such portion is situate for its registration in the name of the alienee and for its separate assessment in respect of land-revenue.

2. The Collector shall thereupon hold an inquiry as to who is the present owner of the property in respect of which the application is made.

For the purpose of such inquiry the Collector shall publish a notice in the local 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. He shall also cause notice of the inquiry to be given to any alienor or alienee who has not joined in the application.

If on such inquiry it appears that the alienation has taken place and that all the parties to such alienation concur in applying for the separate assessment of the portion alienated, and if objection is not taken by any person interested in the estate, or being taken is disallowed by the Collector, the Collector shall proceed to register the alienated portion in the name of the alienee and to apportion the assessment of such alienated portion in the manner provided in Section 45 of Madras Act II of 1864, subject to the sanction laid down in Section 46 of that Act.

3. Upon such assessment being declared, there shall be deducted from the land-revenue payable in respect of such estate an amount equal to the sum assessed on the portion so separately assessed.

4. Upon such assessment being made, the portion so assessed shall no longer be liable in respect of arrears of revenue due by the estate of which it formed a part; nor shall such estate be liable in respect of the portion so assessed.

5. Any person aggrieved by the fact of the separate registration of such portion may sue in a Civil Court for a decree declaring that such separate registration ought not to be made.

6. Any person aggrieved by the Collector's refusal to register may sue in a Civil Court for a decree declaring that such separate registration ought to be made.

7. Any person aggrieved by the apportionment of the assessment under Section 2 of this Act may appeal to the Board of Revenue within ninety days from the date of the declaration of such assessment; and the order of the Board of Revenue shall be final.

8. The Governor in Council may at any time, if it appears that there has been fraud or material error in the apportionment of such separate assessment, cause the same to be re-adjusted.

9. Regulation 1 of 1819 is hereby repealed.

Proprietors of land shall be at free liberty to transfer, without the previous consent of the Government, or of any other authority, to whomever they may think proper, by sale, gift, or otherwise, their proprietary right in the whole, or in any part, of their zemindaries; such transfers of land shall be valid, and shall be respected by the Courts of Judicature and by the officers of Government; provided they shall not be repugnant to the Mahomedan or to the Hindoo laws, or to the regulations of the British Government. But unless such sale, gift or transfer shall have been regularly registered at the office of the Collector and unless the public assessments shall have been previously determined and fixed on such separated portions of land by the Collector, such sale, gift, or transfer shall be of no legal force or effect, nor shall such transaction exempt a Zemindar from the payment of any part of the public land-tax assessed on the entire zemindari previously to such transfer, but the whole zemindari shall continue to be answerable for the total land tax, in the same manner as if no such transaction had occurred.—Reg. XXV of 1802, Section 8.

I

Madura, 7th February, 1899.

To

The Honorable the Members of the Board of Revenue,

MADRAS.

The humble petition of ROBERT FISCHER of Madura.

SHEWETH,

1. That your petitioner applied to the Collector for separate registration and assessment of his village of Kondagai, under Act I of 1876, and he, after taking the necessary proceedings under the said Act and hearing the parties concerned, (that is the Zemindar of Sivaganga and his Lessees), on 13th November 1890, directed the separate registration and declared the assessment of the said village to be Rs 2757—4—1.

2. That your Board confirmed in due course such separate assessment in its proceedings No. 735 dated 5th December 1890.

3. That the Lessees thereupon appealed to your Board against the separate assessment, by a petition dated 15th March 1891, which reached your Board on or about the 23rd March 1891.

4. That such appeal should have been made under Sec. 7 of the said Act within 90 days from the declaration of such assessment.

5. That such declaration was made on the 13th November 1890 by the Collector, by his order of that date, in a legal proceeding to which the said Lessees were parties.

6. That from the 13th November 1890 to the 23rd March 1891 the date of the Appeal, a period of 130 days had elapsed.

7. That the appeal lay to your Board not from the date of the confirmation of the assessment, but from the date of its declaration, which is the act which causes the injury, to remedy which the said Act gives the appeal.

8. That even if the date of confirmation of the assessment by your Board, viz., 5th December 1890, be taken as the period from which the 90 days should be calculated (which your petitioner denies), a period of 108 days had elapsed from the date of confirmation to the date of appeal.

9. That though such appeal was not made within the time allowed by law, your Board nevertheless illegally accepted the said appeal, and proceeded to revise the original assessment of Rs 2757—4—1, and passed its proceedings No. 490, dated 17th August 1891 substituting a fresh assessment of Rs. 3027—4—8 in its place.

10. That your petitioner wrote to your Board on the 30th November 1891 pointing out the said illegality, and asked it to review its proceedings of the 17th August 1891, and direct the original assessment to stand.

11. That your petitioner also wrote to Government on the same date desiring to be heard in the matter of an appeal by the Lessees, then pending before it against the order of your Board upholding the separate registration and assessment of the Collector, before it passed any order thereon, but the Government curtly informed your petitioner on the 8th December 1891, that the said appeal "had already been disposed of" behind his back and without notice—it having already cancelled the orders of your Board confirming and revising the assessment by its famous order No. 1088 dated 14th November 1891.

12. That your Board upon your petitioner's appeal to it of the 30th November 1891, passed its proceedings No. 247 dated 11th January 1892, refusing to reconsider its decision, as it could not do so in the face of the said order of Government dated 14th November 1891, cancelling the separate registration and assessment of the Collector.

13. That thereupon your petitioner being denied redress, or even the common justice of a hearing, instituted a suit in the Sub-Court of Madura, East against the Secretary of state for India, for the cancelment of the said order of Government of the 14th November 1891, which was finally quashed on the 2nd February 1899 by a decree of the Queen in Council.

14. That as the said registration and assessment of the 13th November 1890 was cancelled by Government, your petitioner was not able to take any steps to set aside the said illegal order of your Board of the 17th August 1891.

15. That the said registration having been now restored by the said decree of the Queen in Council, he now respectfully appeals to your Board for a reconsideration of its said order of the 17th August 1891, and for a direction that the original assessment of Rs. 2757—4—1 be allowed to stand.

*And your petitioner, shall, as in duty bound,
ever pray.*

Trueman P. Perera

Enclosures (to be returned.)

1. Copy of the decree of the Queen in Council, dated 2nd February, 1899.
2. Resolution of the Board of Revenue dated, 11th January, 1892, No. 247.
3. Endorsement of the Government (Revenue Department) No. 1788, R. dated, 8th December, 1891.

Petition from Robert Fisher Esq.
 d. 5-4-99. (Cus. 2535)

To the Under Secretary

Recd. 13-11-90

The Collector of Madura decided in the presence of the Laminar of Sivaganga and his lessees (so says Mr. Fisher) that the Village of Kondagai and its hamlets of the said Laminari should be separately registered in the name of Mr. Fisher and the assessment thereof fixed at Rs 2757-4-1 from a calculation of the average income for 3 years. The case having been then submitted to the Board of Rev. the latter confirmed the Collector's order, in its Resolution dated 5-12-90. The resident lessees of the Sivaganga Laminari appealed against the Collector's order on the 15-3-91 whereupon the Board

vide paras 19 and 20
 of the Collector's letter in
 B.P. 735 d. 5-12-90
 Stitches with Gp. 1088
 14-11-91

B.P. 735.
 5-12-90

taking the average income for 10 years instead of 3, revised the apportionment of the peshkash, which was confirmed in its Resoln no 735, and 5-12-90 fixed the peshkash of Konda Jain Village at Rs 3027-2-8 on the 17-8-91.

Mr Fisher then applied to the Board for a reconsideration of its second order. ~~the latter~~ however, declined to do so, in its Resoln no 247 11-1-92.

The collector's order regarding the Separate Registry and the Subdivision of peshkash having been in the meantime cancelled by Govt in its order no 1088 14-11-91, Mr pet. states he did not press the matter further, now that the original orders of the Collector have been restored by the judgment of the Privy Council. Mr Fisher once more petitioned the Board in regard to the amount at which the peshkash

B.P. 490 stitches, after
17-8-91
So 1088
14-11-91

In G.O. 368
19-1-92 S

in G.O. 201
24-3-98 R

peshkash of the village should be fixed.

He argued that the lessees' appeal alone referred to was dated 15-3-91 and reached the Bd on or about 23-3-91 that is 130 days after the date on which the collector declared the separate registry and subdivision of assessment of the village, whereas the period of appeal allowed by Sec 7 of act I of 1876 is only 90 days. The petitioner therefore argued ~~that the Bd~~ that the Bd was wrong in ~~admitting~~ admitting and ~~thereupon~~ ~~revising~~ revising the assessment once confirmed by it in its Progs no 735-8 5-12-90. In reply to the petition, the Board states that the appeal in question was within the time allowed by the act, the period of appeal running from the date of the collector's order (19-1-91) which

From 19-1-91
to 23-3-91
only 63 days

declared to the parties con-
cerned the apportionment
of peshcush as confirmed
by the Board in its Progs
no 735 of 5-12-90,
and that the only remedy
for the petitioner lay in
an application to Govt
for under Sec 8 of the Act
for a readjustment of
the apportionment by reason
of fraud or any material
error. The petitioner now
comes up to Govt, and his
contention is not that there
was any fraud or error, but
~~this ground~~ that the
period of appeal should begin
to run from the date of the
Collector's original order 13-11-90,
as the Act contemplates
only an appeal from the
Collector's order and not from
the Bd's order or from intima-
tion by the collector of
a confirmatory order of the
Board of Rev. The petitioner
accordingly prays that

to Bd's Progs 490 of 17.12.91 reversing
the assessment of Kandasani Vihari
may be cancelled and the original
order confirming the Collector's apportion-
ment restored. The petitioner hints
at legal proceedings being instituted
against Govt in case his request is
not sanctioned. The revised assess-
ment is in excess of the original
assessment by Rs 269-14-7.

2. The points for consideration
are -

(1) Whether the Bd is competent
to revise the assessment once con-
firmed by it; if not,

(2) from what date the period
of appeal should run - whether

(a) from the date of Collector's
original order, or

(b) from the date of the Bd's
confirmation of the Collector's order, or

(c) from the date of intimation
of the Bd's order by the Collector to the
parties concerned.

(1) Section 7 of Act I of 1876
provides that the Bd of Rev can
on an appeal presented by any
of the parties, revise the ^{apportionment of} peshcush
assess made by the Collector; the

as such apportionment is not valid till confirmed by the Bd of Rev. The provision must be taken as conferring authority on the Bd to revise the assessment once confirmed by it. But this is only on an appeal presented by one of the parties. Any revision passed on a trier-barred appeal cannot be upheld unless the Bd had power to revise, of its own motion, the apportionment once confirmed by it. It is doubtful whether the Bd has this power.

Regards 2(a). As already stated, the amount of assessment fixed by the Collector is not valid until it has been confirmed by the Bd in writing (see s 6 of Act II of 1864). Does this mean that Collector's order is perfected by the Bd's order, and that till then the Collector's decision is not to be regarded as an order. The point at issue seems to turn on the answer to this question.

Orders are requested as to whether the opinion of the Asst. General can be obtained.

3. In the first of their for

marked portion at page 3 of the G.O.

judgments printed in G.O. 201 the Privy Council refer to the revision by the Bd of Revenue of the assessment fixed on Kondagari, and say that "so far (i.e. up to this revision) the proceedings appear to have been regular this is, however, not conclusive and there is nothing in either judgment precluding the re-opening of the question of assessment"

RS
5-5-99

See

Submitted that the Govt may at once reject the petition on the ground that no fraud or ^{material} error appears in the ^{apportionment} ~~fixing~~ of the revised amount of pesh cash. (See s 6 of Act I of 1876)

Mlle
8/10/88

Under sec 2 of Act I of 1876 & s 46 of Act II of 1864 the following apportionment must be confirmed by the Bd of Rev. in writing. Until then the apportionment

is not valid. The assessment must therefore be "declared" until that confirmation has taken place.

From the ass't so declared an appeal lies under S. 7 of Act I of 1876 to the D.R. within 90 days from the date of the declaration of such ass't.

In this case the declaration of the original appt was the date of the M.R. order of 19th Jan 1891.

The Board is therefore right in saying that the appeal of 23.3.91 was in time; & on such appeal the Bd. can modify the original declaration in any way they please. An appeal is quite a different thing from proceedings on confirmation, in which latter they have only the collector's word, & have not necessarily given any hearing to the objecting party.

The decision thus given

B.P. 1007
21.3.99

M

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is final
MS

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by the Board on 17.8.91 unless ~~the facts~~ it can be shown to the sup. under Sec. 8 that there has been fraud or material error in the apportionment. Fraud is not alleged: & it is not shown that there has been material error. The Board were quite justified in taking the average of 10 years accounts instead of 3 years. Section 45 of Act II of 1874 indicates that not less than 3 years acc'ts shall be taken (if available), but it nowhere defines the precise no. of years.

The appeal may be rejected.
S.R. 12/5/95

to the reg

Please see draft order on docket below.

18.5.99

15.1.188

10/8/1885

1 comment
MS
27-5-99

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

189

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

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DITTO.

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