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Regular _____ No.
Miscellaneous _____

of 189 .

Revenue (1899) Department.

MISCELLANEOUS SERIES.

G.O., No. 778

DATED 2^{0th} February 99

[Despatch Abstract.]

Considering that a temporary or annual lease, with certain conditions expressed, may, in the special circumstances of his case, be granted to T. A. Kalliamanni Pillai in the land on the stream margin., and requesting the Collr. of the Nilgiris to dispose of the case accordingly.; and referring the peti. to the Collr. for orders.

BACK PAPERS.

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

FURTHER PAPERS.

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

⁰/₁₈ 2,000-50-3-08.

Revenue (1898) Department.

CURRENT No. 7559

Order

From

T. A. Calthamun Pillai
Merchant -

with a D.O. from the Private Secy to
H. E. the Govt.
No.

Dated 6th Sept.

Received 3rd Nov.

Registered 5th

Enclosures

Spare copies

SUBJECT.

Praying for the grant of
a patta for certain land on the
margin of a stream in a the-
carrutti village encroached upon
by him.

BACK PAPERS.

G.O.	No.	Department.	Date.
fo	663M	(Rev)	24/2/98

FURTHER PAPERS.

G.O.	No.	Department.	Date.



Nilgiri Collector's Office,
Ootacamund, 20/9 1898.

My dear Sir,

Your note of the 8th with
its enclosures returned.
The case is one of hundreds in
this district; encroachment on
stream reserves.

The Petitioner puts in the usual
plea that the encroachment
was made by his predecessors in
title & that he has given full
value for the land from which
he is now to be ejected.

With that plea put has nothing
to do. The survey map shows

OOTACAMUND,
6th September 1898.

SIR ARTHUR ELIBANK HAVELOCK, G. C. M. G.

THE PETITION OF T. A. SATHAMUNY
PILLAY, MERCHANT, OOTACAMUND.

HUMBLY SHEWETH,

669 R
2-4-98
That your Petitioner addressed your Honorable Government on the 5th March 1898, with reference to a plot of land purchased by your humble Petitioner 10 cents. of which have been claimed by the Collector and prohibitive assessment improperly charged on the same.

(2) That such petition was returned to your humble Petitioner with the stereotyped reply. "That Government sees no reason to interfere" under circumstances which show that the merits of the case have not been considered and that the arguments adduced have been overlooked.

(3) Your Petitioner is convinced that if your honor were pleased to give the subject personal consideration, your honor could not fail to perceive that a wrong has been inflicted upon your Petitioner, as the Government does not profess to dispossess a ryot and acquire properly on the untenable ground advanced to justify the act by the Collector.

(4) Your Petitioner therefore craves leave to resubmit the aforesaid petition and to solicit its disposal after personal attention.

For which act of kindness your Petitioner will as in duty bound ever pray.

Your Humble Petitioner,



To the enclosed petition your humble servant would beg leave to add the following:—

The large stream margin to a rivine seems to be unnecessary and in such cases it is presumed that there are precedent in this District, that a portion of the same is not unfrequently granted on a temporary putta to the adjoining ryots. The Petitioner will therefore be content if such a concession is allowed him and begs to state that he will be prepared to vacate the land whenever required by Government without claiming any compensation for the same.



GOVERNMENT HOUSE.

Friday, 1st Nov. 1898.

My dear Forbes,

In passing the enclosed on to you for disposal, His Excellency wishes me to say, that ^{prima facie} he thinks each case might be dealt with on its own merits, i.e. that either temporary puttah or something of the sort might without harm be given in those cases in which enquiry shows that no great harm is likely to be done by the stream-bank being cultivated.

Yours sincerely
J. M. S. M.

OOTACAMUND,
24 March 1898.

To

**HIS EXCELLENCY THE GOVERNOR
IN COUNCIL OF MADRAS.**

THE HUMBLE PETITION OF T. A. CATHAMUNY
PILLAY, MERCHANT, OOTACAMUND.

RESPECTFULLY SHEWETH,

That your Petitioner on the 22nd July 1896 purchased for the sum of Rs. 300 Settlement No. 1160 A of the Athigarathi Village measuring 4 acres 74 cents. from one Nursimmalu Naidoo a holder of the same for 19 years and who in his turn purchased from Badaga Ryots, cultivating from time immemorial (Ex. No. I, plan.)

2. That your Petitioner was induced to pay the price he did for the land principally on account of 350 mature coffee trees growing on the margin of the stream, now claimed by the Collector for Government, as the reserve of such stream measured from hypothetical points in the centre of the waterway extending 33 feet on either side of such waterway without stone or mark to indicate such reserve.

3. That on such alleged encroachment, estimated to be 10 cents. or thereabouts, your Petitioner has been demanded by the Tahsildar of the Division a sum of Rs. 5 as prohibition assessment (Ex. 2) and has been further notified to vacate the land under threat of future penalties and ultimate ejection.

4. That the Government plan (Ex. 1) is obviously incorrect as the positions of the margin (X) and (Y) would seem on it to be equal, but on the ground the former is only 2 cents. and the latter 17 cents. This is a point of importance because the claim of Government to any reserve is not a definite one, but is supposed to be ascertained by measuring from the middle of the stream up an indefinite slope.

5. That your Petitioner submitted two petitions (Ex. 3 and 4) to the Honorable Members of the Board of Revenue, who, however, declined to interfere on your Petitioner's behalf.

6. That in so declining the Honorable Members based their decision exclusively on the Collector's report and not on the facts of the case or with reference to the manner in which similar cases had been treated.

7. That the clemency of your Excellency's Government is solicited among others for the following reasons:—

(a) that your Petitioner is a *bona fide* holder for value and had no intimation before or at the time of purchase of the alleged encroachment although then existing for many years and within the knowledge of the local Revenue Officials.

(b) That the policy of the Government in dealing with such cases heretofore has been to regard the vegetable growth on the margin of a stream as a means of conserving its waters, and that in pursuance of such policy the vegetable growth has been strictly preserved.

(c) That in insisting on the clearing away of such growth, which is the ostensible object of the action of the Revenue authorities in such position the Government is practically reversing the policy of the past and advocating denudation which Government previously on numerous occasions deprecated.

(d) That the Collector has not given any notice of such reversal of policy, for if such notice had been given your petitioner would have been on his guard when making his purchase.

1898

REVENUE DEPT.

Encl. No.

C. No.

7657

(e) That the removal of your Petitioner's coffee trees will be but an infinitesimal remedy if any at all in case your Excellency's Government has decided upon a reversal of the established policy only just beginning to be understood by the land holders of the District, because numerous similar alleged encroachments have already been confirmed by your Excellency's Government, when Mr. MacCartie, Mr. Rees and others were Collectors and administered the district. No doubt impressed with the equity of such a course knowing that the reserve trees on appropriation without compensation of private land by Government which the ryots in ignorance or from a fear of authority deviate, deem it wise to resist or even complain of at the time of demarcation or survey.

(f) That there is nothing in the conduct of your Petitioner in the transaction to call for exemplary punishment or harshness in dealing with his case as he had nothing to do with the original act of appropriation or one of encroachment, and has subsequently acted *bona fide* and straightforwardly in the matter throughout.

(g) That the existing waterway of the stream has never been exceeded by the current at any time, because of the very limited watershed drained by it, a fact born out by the absence of erosion in the bed which even in flood never exceeded a width of 5 or 6 feet, nor has any reference to planters in the locality been made to ascertain if any adverse influence has been experienced by reason of encroachments.

(h) That the assumed diminution in the volume of water is imaginary and has never formed the subject of complaint at any time directly or indirectly.

Your Excellency's Petitioner prays for equitable treatment, for which, as in duty bound, he will ever pray.

your humble Petitioner
(Sd) J. A. Cuthbert Pillay

Cir No. 7559

Peti. From J. A. Kathammang Pillai, Merchant,
Cotacamund.
Transferred by the Private Secy. to H.E. the Governor.

Dated 6th September 1898.

FOR ORDERS.

Please see Note
under G.O. R No. 663 d/2nd
April 1898. For the reasons
stated therein, the Govt.
declined to interfere with
the order of the Bd. of Rev.

The peti. has now
addressed His Excellency
the Governor, requesting
that the case may be
disposed of by H.E. after
giving personal attention
to the matter. He states
that margins of streams
are often granted on
temporary puttās to the
ryots concerned, and
requests that a similar
temporary puttā may be
granted to him, subject
to the condition that he is

postscript to
the peti.

A

to vacate the land whenever required by Govt., without claiming any compensation for the same. In transferring the petition to Govt. for disposal, the Private Secretary to H.E. says:-

"In passing this on to you for disposal, His Excellency wishes me to say that prima facie he thinks that each case might be dealt with on its own merits; i.e. that either a temporary puttah or something of the sort might, without harm, be given in those cases in which enquiry shows that no great harm is likely to be done by the stream bank being cultivated."

The Colbr. of the Nilgiris (Mr. Trumheere) in his Report to the Board of Rev. on 7th Oct. 1907, states on the question of granting these temporary puttahs:-

FOR ORDERS.

This is the course ~~invariably~~ prescribed in practice & appears to be generally followed in this case it was the

Under G.O. 2663
H.B. 2-4-98

para 2 of the
Report

"Nor is it the fact that puttahs, in the usual acceptance of the word, were granted for the encroachments on stream reserve, mentioned in para 3 of the petition. Temporary puttahs were granted at an assessment of Rs 2 an acre, subject to the condition that the land should be given up without compensation whenever required.

para 3

"Petitioners did not apply for such a temporary puttah, nor indeed had he done so, should I have granted one. In my opinion, this (the frequent encroachment) should be stopped, and no puttah permanent or temporary should be granted for the encroachments save in the most exceptional circumstances. In the present case, I did not find these circumstances."

It is clear from this, as well as from Mr. Butler's D.O. to Mr. Sim on 4/20.9 that

4
that the courts of the District
do not consider the circum-
stances of the Petitioner's case
such as to call for
any exceptional treatment.

Secy

In this case the
prohibitory charge has
not been imposed in mere
accordance with a general
rule but after careful
repeated consideration
of the circumstances of
the case & because the
cultivation was objectionable
& highly so.

There seems
therefore no need to reconsider
the order previously
passed. M
19/11/98

H.M.

These encroachments on
banks of streams are the
most objectionable form of

encroachment. Moreover

Ch. 12/10/98
a temporary putta really
aggravates the situation;
for the longer the occupant is thus
permitted to remain in temporary possession
the more attached he becomes to the land,
the more difficult it is to get him out, when
the necessity of doing so arises. In ca.

What is the statement based upon?

H.M.

(1) H.M.

(2) H.G.

G# R663
2-4-98

H.B.

of encroachment it is in the
end kinder & more humane to
oust the trespasser at once.

In this particular case the
particular case was specially
considered by the Collector.

I think therefore the order
previously passed should not
be reviewed. S.D. 20/11/98

I enclose
H.S.
22-11-98.

Before concurring, I should like to know
upon what basis the statement in the
office note, that the case was carefully and
repeatedly considered, has been made.
I cannot find a basis for that statement
in this file. It is possible that Mr. T. S. S. S.
has in his letter of 13/11/98, may have been written
after repeated and careful consideration, but I
can see no evidence in this letter that such
was the case.

Secy

I beg to submit that
the statement at A above
is based on the following:-

Under the Standing
Orders, the particular

that the Courts of the District do not consider the circumstances of the Petitioner's case to be such as to call for any exceptional treatment.

Secy

In this case the prohibiting charge has not been imposed in mere accordance with a general rule but after careful & repeated consideration of the circumstances of the case & because the cultivation is objectionable & highly so.

There seems therefore no need to reconsider the order previously passed. MU 19/11/98

H.M.

These encroachments on banks of streams are the most objectionable form of encroachment.

- (1) H.M.
- (2) H.G.

Ch. 12/11/98
20/11/98
21/11/98

Moreover a temporary putta really aggravates the situation; for the longer the occupant is thus permitted to remain in temporary possession the more attached he becomes to the land & the more difficult it is to get him out, which is a necessity of doing so arises. In cases

A

What is the statement based upon?

H.M.

of encroachment it is in the end kinder & more humane to oust the trespasser at once.

In this particular case the particular case was specially considered by the Collector.

I think therefore the orders previously passed should not be reviewed. S.D. 20/11/98

I enclose H.S. 22-11-98

Before concurring, I should like to know upon what basis the statement in the office note, that the case was carefully and reported by considered, has been made. I cannot find a basis for that statement in this file. It is possible that Mr. T. has been later changed to, may have been written after reported and careful consideration, but I can see no evidence in this letter that such was the case.

H.S. 26.11.98

Secy

I beg to submit that the statement at A above is based on the following:-

Under the Standing Orders, the particular

C 21/11/98
22/11/98

of any unauthorised occupation of ~~reserved~~ land reserved for public purposes are reported to the Divl officer (in this case Collector) in a ~~particular~~ form giving all details vide form B Appn to B.S.O No 30. The Divl officer or Collector has discretionary power to transfer the land to the head of ordinary "assessed" then give it out on patta to the occupier or order its disposal under the darkhast rules.

In this case the Collector must therefore have had the details of this particular case ^{if not from} three separate times before him viz:

- (1) when ordering issue of notice to vacate
- (2) when refusing to grant patta
- (3) when ordering levy of penal assessment

^{2 & 3 may have been the same time} Vide notice to patta & 26 August 97

But had he? - I cannot find that these references show that he had; and I cannot find that the collector did not inspect this particular measurement.

24/11

13.12.98

Vide patta patta to the collector & 11. May 88

Vide Collection Guidt 19th July 97

4 (H) When reporting to the Bd. Vide Collector's letter & 7 Oct 1897. B. ~~Collector~~

In this ~~last~~ letter the Collector after pointing out the necessity for strictly conserving stream margins on the hilgrins & stating that no patta permanent or temporary should be given save in the most exceptional circumstances certified that he ~~found~~ did not find such circumstances in this case.

The particular hardship of the present case viz that the patta was not the original ~~one~~ encroacher but a purchaser in good faith was also considered & dealt with by the Collector who pointed out that the man

8
had only his own
negligence to thank
The only other ~~exception~~ plea
of importance that the
petitioners put forward
is that temporary portions
were granted by previous
Collectors. This point
was considered when
the pp were before
Govt, the Secy noting
that "there is no
"policy of the past except"
"the policy of laches."

In these circumstances
I meant by my note of
18 ultimo to indicate
to the Secy that the previous
order had not been
passed merely because
the cultivation was an
encroachment but
that the nature of that
encroachment & the
circumstances of the
case had been considered
repeatedly.

I am very sorry
if the note misled.

Hu
5/12/89

9
H.B.

I understood the H.B.'s note
in the sense he indicates.
A matter of this kind, con-
tested as it was, must come
before the Joll^r repeatedly
even in the ordinary
course of business: & the
Joll^r expressly stated that
he had considered & been
unable to find exceptional
circs.

S. J. & 8/11/8

This matter was considered in Council to-day, Mr.
Tremblay who was Collector of Virginia at the
time the original decision was arrived at, said
that he had not personally inspected the portion
of land encroached upon. He added that he
did not think, as long as the principle was
maintained, that there would arise any harm
from granting a temporary portion in this case.
The Hon. Mr. Winterbottom had no objection
to the revised of the previous order. The case
should therefore be referred back to the present
Collector, for report as to whether the application
should be granted. The Collector
should examine the portion of land.

The H. Secy Note of explanation dated 5.12.95,
admits that he made his statement in his Note

of 5.11.95 that the prohibitory charge
was made "after careful and
"repeated consideration of the circumstances

"of the case and because the cultivation was speculative and highly at risk on insufficient grounds." —

That statement was
calculated to mislead, and I believe, it did
in fact mislead.

The D.O. written by the Private Secy, by my
order, and dated the 1st Nov. 1898, was intended
to elicit a full and careful inquiry into this
particular case; and, I would think that the H.S.,
in preparing ^{his} Note for the Secretary, should not
only have taken more pains than he did to be
accurate; but ^{might} also, ~~be~~ in noting for
the dismissal of further inquiry ^{might}
have dealt with the case in a less summary
manner, and have adopted a less curt tone.

A.S.

14.12.98

Revenue Department

Read petition from S. A. Kathamun
Pillai of 6th September 1898.
(C.No 7559 of 1898).

G.O. Secy.

Referred to the Collector
of the Nilgiris for report ^{the Page} after
personal inspection of the land,
whether a temporary patta may
be granted to the petitioners on the
condition stated by him.

Ulc
16/12/98

What is a "temporary patta"
in the Nilgiris?

87-15

To the Collector of the Nilgiris.

Copy to the

C.O.
15/12/98.

The Secretary's query on the draft order on C.No 7559 of 98, below.

"What is a 'temporary putia' on the Nilgiris?"

To the Under Secretary.

Temporary putia on the Nilgiris would seem to be one granted for land subject to the condition that the land shall be given up without compensation, whenever required by Govt. (vide para 2 of the Collr's letter, D.No 2766 dt 7. Oct 97). Lands held under a regular putia on the other hand cannot be resumed by Govt. without compensation being paid to the pattadars.

Secy
16/11

~~11/11/99~~ I want the authority for the issue of ~~the~~ or recognition

I don't want a repetition of what the M^r said
H. B.
8/11

13
of "temporary" pattas as given
or in any card.

17-15

To the Under Secretary.

No ^{general} authority for the issue
of temporary pattas is trace-
able. But the practice of
issuing Ekasal pattas
(i.e. pattas for one year) for
lands which for some reason
or other cannot be granted
on permanent patta is
recognised in Salem
and Cuddapah - vide portion
marked in red pencil at
page 6 of B. P. No. 131 Lett. dt
6th March 94. Pending dis-
posal of lands under the
Periyar project certain lands
are granted on annual
temporary lease in Madurai.

H. X.

vide D.O. from Mr. Turner dt 19.1.90 H. P.
and Stat. No. 1. at page 21 of G.O. 153
15-2-92. H. Q. cols 10-12.
Levy Submitted. All these
cases seem to contemplate
eventual assignment
or eventual extinction
P.T.O.

14

Temporary pattas are of
course incongruous under
our revenue system when
at any rate they purport to be given
for "assessed" land, because
a regular patta confers
occupancy right. Here the
land is presumably meant
to remain such. What should
be given therefore had better
be called a temporary or
annual lease reserving
a rent, with a condition
expressed that the tenant
shall be liable to ejectment
at any time at the dis-
cretion of Govt. without
any claim for compensation.

12/4/94

Please see draft below.

Draft allowing Govt.
a patta

Please see draft below.

Amul

Leas

meel

A
(Order)

Read again G.O. R no 663 d/2.4.98
declining to interfere against
An order of the Bd of Rev. rejecting
the appeal of T.A. Kathamuni Pilla
against an order of the CM of the
Nilgiris imposing a prohibitory
assessment on certain lands.
Read also petn. from the same
individual d/6.9.98 (Cm/5599
98)

Order Mis. No 778 d/20th Feb 1899

In modification of G.O.
R. no 663 d/2nd April 98, the
Govt. considers that a tem-
porary or annual lease for
the land on the stream margin
may be granted to the petn.,
The lease shall be
reserved a rent, ~~with a~~
include the express
condition expressed that the
tenant shall be liable to
ejectment at any time at
the discretion of Govt. without
any claim for compensation.
The Collr. of the Nilgiris is
requested to dispose of the case
accordingly; but he will not
report it as a precedent.
The petn. is referred to the CM
for orders.

In the special series of
the case

This better be added as a
precaution as we are departing
from general principle)
(to the Bd of Rev. (d. 1898)
(to the CM of the Nilgiris
a Petn. (para 2 only) in
1898

11/12/98

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

AD AGAIN G.O., No.
189

, DATED

Current No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH DITTO.

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

N.B.—

A = Copy in full.
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