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Revenue (1899) Department.

MISCELLANEOUS SERIES.

G.O., No. 8

DATED

13th January 1899

[Despatch Abstract.]

Concurring with the N^o. of Decree in
concerning that a right to the free
use of water cannot be acquired
by way of prescription and modifying
So no. 2601 of 18.6.98 in so far as it
is inconsistent with the above
principle.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Cuo.	2791/03		1.0 1282 28-5-03				
Cuo.	4597/03		2435-6 12-10-03				

Revenue (1898) Department.

CURRENT No. 6798

Read again S.O. No. 2601 of 18.6.98.
... B.O. No. 5847 nio of 30.9.98
(C. No 6798)

From

The Board of Revenue
Rev. Secy. L. R. R. A.
Madras

No. 5847. nio

Order (nise)

1088/37 Jan 1899



The Govt. concurs with the Board of Revenue

in considering that a right to the 'free' use of water cannot be required by way of ^{and that no such free use can be claimed} ~~except~~ easement, except to the extent covered by the engagement with the Govt.

Dated 30th Sept 98.

Received 3 Oct

Registered 3 Oct

Enclosures

Spare copies

SUBJECT.

Submitting for the orders of Govt., further reference to the subject matter of G.O. No. 2601 of 16.6.98 re the exemption of Tiruvajanti & Pasalanti areas of dry & wet land in Inam villages, which are shown in the Inam Registers of those villages to have been cultivated even at the time of franchise with wet second crop.

G.O. No 2601 of 18.6.98 is hereby ^{modified} ~~cancelled~~ in so far as it is inconsistent with the above principle.

Wt

16/11/98

5/10/98

The B.O. of Revue (R.S.L.R. A.)

15.12.98

5.6.1-99

BACK PAPER

G.O.	No.	Department.	Date.

FURTHER PAPERS

G.O.	No.	Department.	Date.

(Sett. 12-2,000)



Proceedings of the Board of Revenue
(Revenue Settlement, Land Records and Agriculture),

Dated 30th September 1898.

No. 5847. Mis.

READ

G. O. Revenue Department,
No. 2601. Mis. dated 18th June 98.

Resolution.

The Board regrets to find itself obliged to trouble Government with a further reference on the subject of the above G. O.

2. After reading, to the best of its lights, the Assessments Act V of 1882 with the Madras Exemption Cess Act VII of 1865, the Board is unable to understand how a

to immunity from
under a special law
be acquired by way of
ment

3. The Board would respectfully submit that a right to a "free" use of Government water by an inamdar cannot be acquired by way of easement, but must be derived (if it exists) by virtue of an engagement with the Government, as expressly provided in section 4 of the Irrigation Cess Act VII of 1865.

There is no doubt in the present case that the primary source of irrigation belongs to Government; and the Board ventures to suggest that though the right to use the water for irrigation purposes

purpose may be acquired by way of easement, the ^{right} ~~right~~ ^{is not} ~~is not~~ to pay, in respect of its use, the irrigation cess leviable under Madras Act VII of 1865 remains unaffected.

4. The Board has a number of pending appeals hinging on this question, and it therefore considers it necessary, before issuing orders upon them, to enquire whether its view of the law is erroneous, or (if it be correct), how the G.O. should be construed.

(True Extract.)

R. V. Srinivasan
Secretary.

To, The Secretary to Govt., Rev. Dept.

Reserve

B.P. No 5847 vide 7/30/94
(C. No. 6798)

To Under Secretary:

In 1894 the
inamdar of the two villages of
Kodavankalam and Panthenra
puram in the Ambarasamudra
taluk of the Tinnevely district
who had been charged fasalijasti
on some of his lands preferred
appeal to Govt. The appeal was
disposed of in G.O. No. 852 of
27.2.1894 in which the Govt
directed that the extent of
single crop wet land which
was mentioned in the inam
register as having been under
second crop cultivation at the
time of the enfranchisement
should be exempted from fasalijasti.

2. The above ruling was
followed ^{by the local authorities,} in the case of another
inam village named Vagrikulam
and the two inamdar then
request that the G.O. quoted
above

Please see para 2 of the
B.P. in G.O. 2601 of 18.6.98.

E.

2
ought to be given retrospective
and that the extra charge
during previous years
ought to be refunded to them.

3. In submitting the
papers for the orders of Govt. the
Board doubted whether the inamdar
was entitled to the concession
granted in G.O. No. 853 of 27-2-94.

Board pointed out that though
in these cases of the inamdar the
Joint Deputy Collector had stated
in his remarks in the inam
register that second crop was
raised on certain simple crop
wet lands and wet crops on
certain dry land, no second
crop charge or water rate had
been taken into account in
estimating the value of the
land for purpose of fixing
the quit rent. The Board also
states that in cases in which
the inam settlement preceded
the Revenue Survey and
settlement, the practice of
the inam dept. was to
take no account of such
extra

D.P. in G.O. No. 2601 of 18-6-94
E

C.

194

extra charges but to be determined and that
the Revenue Department near
Board stated: "In these circumstances and in view of the
general principles enunciated
in the Advocate General's opinion
communicated with G.O. No.
5883 of 16-11-97 it appears to
the Board doubtful whether
the inamdar is entitled to
exemption from second crop
charge and water rate on the
areas referred to."

2
Confidential

4. The opinion of the
Advocate General above
referred to was obtained in
connection with the question
regarding the levy of water
rate on certain charitable inam
lands in Tanjore. The views
of the Advocate General on
the point now in question
is contained in the passages
extracted below for easy
reference:-

"By the grant of certain areas
of wet land and certain areas
of

The A.G.'s opinion should be
been printed
H

land then comprised
holding Kacator Row
ered by way of easement
right to the flow of Govt
water to the extent to which
such water was at the time
the grant in 1836 used for
enjoyment of the said
set and garden acres respectively
under the principle of law
enforced in Section 13 clauses
1 & (b) of the Indian Easements
Act of 1882) and Govt can
pay no charge for the use of
Govt water to that extent.

x x x x x x x x
x x x x x x x x

The trustee of the Choultry in
question should be taken to have
a valid title to the different
descriptions of land recorded in
the title deeds issued to him by
the Indian Commissioner. In
determining the extent to which
he would be entitled to the use
of Govt water free of any separate
charge, he must be taken to be
entitled to the use of Govt water

for the met land comprised in
his title deeds in respect of an
estate of the first crop thereon
whether or not he would be so entitled
in respect of the second crop on such
met land is a point which cannot
be determined from the title deeds or
the income register in which the land
is described simply as met land and
not as single or double crop met land.
It will have to be ascertained from the
old revenue accounts how much of
the met land comprised in the grant
was registered double crop land and
how much of the grant; and in respect
of such double crop met land the trustee
would be entitled to the use of Govt
water for both the crops free of any
additional charge. He would also
be entitled to the use of Govt water
free of any additional charge
in respect of the extent of land
classed as garden land in the
income title deeds. This is the
extent to which, under the provisions
of Section 4 of Madras Act VIII of 1865
the mandam by virtue of an implied
engagement with Govt is entitled
to irrigation free of any charge.

as he is therefore liable to pay
 the excess in respect of
 (a) wet lands in excess of the
 limit specified in the main title deed
 (b) dry or garden land specified
 such in the title deed, on which
 it crops are raised
 (c) second crop raised on land
 which was not double crop wet
 and at the time of the original
 grant."

5. In passing orders on the
 Prop^r referred to in para
supra the late Honble Mr Justice
 as follows:-

The Advocate General's opinion
 G.O. No 5883 of 16.11.97 makes
 it clear that irrigators are
 not entitled to a free water supply
 for second crop on land stated in
 the main title deed to be single
 crop land or for a wet crop on
 land stated in the title deed to be
 dry land, unless a right to
 it had been acquired "by way
 of easement" when the title
 deed was granted. G.O. No
 53 of 27.2.94 was therefore
 erroneous

is. Submitting for order the claim
 for refund of amounts collected
 before issue of G.O. 853 of 27.2.94

Please see his notes under
 G.O. 2601 of 18.6.98
 X

erroneous to the extent that it
 granted the free use of water only
 at the time of its franchise and
 in such cases as are mentioned
 above without its being ascertained
 that the irrigator had then acquired
 "by way of easement" a right
 to it. The order should accordingly
 be cancelled and enquiring made
 as regards the villages referred
 to in it and the village now under
 consideration whether a right to
 the free supply of water has
 been created by way of easement
 when the main was enfranchised.
 The Hon. Sir Henry Bhabha agreed
 in this view and G.O. No 260
 of 18.6.1898 was accordingly
 issued.

6. In the current read
 above the Board points out
 that reading the Statute in Easements
 Act - I of 1882 and the Irrigation
 water use Act - III of 1865 together
 it is not clear how a right to
 immunity from taxation under
 a special law can be acquired
 by way of easement. The
 Board

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 and considers that a right
 of use of water by an
 undar cannot be acquired
 by way of easement but only
 by virtue of an engagement
 expressly provided for in
 section 4 of Act III of 1865.
 Section provides: "x x x"
 provided always that, where
 Zamindar or undar, by
 virtue of engagements with
 Govt, is entitled to irrigation
 by separate charge no less
 than this Act shall be implied
 water supplied to the extent
 "such right and no more".
 In the opinion of the Board
 though the right to use the water
 for irrigation purposes may
 be acquired by easement
 the liability to pay the irrigation
 cess for the use of such water
 remains unaffected.

Lapel
 8/11/8

7. The Indian Easements
 Act - II of 1882 Section

13 provide as follows:—
 13. Where one person transfers
 immovable property to

But "Foot" and a "person"
 8/11

to another, —
 (a) if an easement in
 immovable property of the
 transferor or testator is necessary
 for enjoying the subject of the
 transfer or bequest, the transferee
 or legatee shall be entitled to
 such easement; or
 (b) if such an easement
 apparent and continuous
 necessary for enjoying the
 subject as it was enjoyed before
 the transfer or bequest took effect
 the transferee or legatee shall
 a different intention expressed
 or necessarily implied, he entitled
 "such easement."

The Board's contention
 seems to be that the right to
 an easement can only be
 for the use of water and not
 for a free use of water
 i.e. the acquisition of
 easement does not release
 the liability to pay the irrigation
 cess as required by Act
 III of 1865 Section unless
 an engagement has been
 entered

ered into to the contrary. will be seen from the vision of the Advocate and above quoted that on an examination the accounts should show that a certain acreage the land was registered as double crop land then the owner would be entitled use of govt water for the crops free of any "rent charge". The is therefore for consideration in case will be how if the land was registered as double crop, at time of the main settlement how many acres the land should be less water for two crops remain charge.

This is right
8/2
2/10/08

regulation of Act & does not rec of G.O. 2601
to pay the water too broad
required by its opinion
1865 section on it seems
agreement has been that the
the was entitled

E

Z

say

to the water free
if so, to what extent
whether for 2 crops or
one crop only, depends on
the terms of title and
the agreement between
the Govt & the main-tenance
evidenced. If the title
entered in the title
was registered double
crop, then said the
Genl the main-tenance
entitled to water free for
2 crops for the settlement.
The Advocate Genl will
however go further explain
what and he concluded
to be the agreement is
the fact that certain of the
main lands were settled to
with 2nd crop at the
time of settlement and no
mentioned in the form
register.

Presumably it may
be held that the main-tenance
this fact does not rest
an agreement to give water
for water free of fees
on an equal rating entered
come the 11.11.11

not. The Board
of the legal position is
submitted sound.

the right to water has been
taken into consideration in
the quitrent, then
no water rate
is chargeable to the extent to
the stipulation runs i.e.
further settled as rule or
double crop.

Further a right to water
may accrue, but that does
not give any right to using
it free of charge, except to
the extent which the engagement
covers - Mad. Act VII of 1865.

S.P. 3/10/8

described by Mr. H. H. the file
marked for the Hon. Mr. C. H. H. Arundel
Arundel & H. H. the previous

S.P. 7/10/8

under copy

Please see Draft 3.0. submitted
to the warrant

c 5/10/8
Secy
16/11/18
18/12/98
18/12/98

The reference from the Board
is my own & I have nothing
to add to it -
The view that the right to
the 'free' use of Govt. water
can be claimed as an
easement, is utterly wrong,
and the G.O. propounding it
shd. be withdrawn -
This must go to the Hon.
Mr. Arundel & H. H. -

H.W.
5-12-98

I quite agree.
H.W.
8.12.98

and S.P. 7.
H.W.
18.12.98

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MAIN G.O., No.
189

DATED

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH DITTO

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