

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	955	Press
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Dated	5-8-	19-185

Not to be folded or roughly handled

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Read the following papers.

No. 1. From Kiamud Dowlah, Bahader, and Kamrood Dowlah, Bahader.

To

THE RIGHT HONORABLE GEORGE FRANCIS ROBERT LORD HARRIS.

MY LORD,

We trust the peculiarity of our case will be sufficient apology for endeavouring to engage your Lordship's attention.

We are the grandsons of Wallajah and the owners of an estate known as the Ally Baugh within the limits of the Supreme Court.

About 2½ years ago a portion of our estate was taken for public purposes, and compensation was paid, or agreed to be paid us, by Government, and during the transaction a sum was left in the hands of the Collector of Madras, Mr. Stokes.

Mr. Ritchie (a Solicitor) was the representative of some pretended mortgagees of a portion of our estate *not taken by Government*; but, seeing money was about to be paid us, harrassed us through his friend the Collector with pretended claims, and eventually asserted that he would give up the above mortgaged land for a specific sum which was agreed on, and the Collector was allowed by us to retain the same for payment on delivery of the title deeds and possession of the land.

It proved however that he never had the title he claimed, and, in fact, the whole thing was apparently done to create a law suit, which our Agent had special instructions to avoid. It so far served his purpose that it brought an opponent against him in the shape of the rightful owner of the land and he had to defend this suit; the subject matter at issue being of the value of Rupees 22 thousand and the costs being little less than 7 thousand Rupees on either side. In the above contest the Advocate General took part, although acting at the same time as the independent adviser of the Government.

We assert with all respect my Lord that our property was in this instance improperly held out as a bait to litigation; and have every reason to believe that if on its being found that the assertion of Mr. Ritchie was without foundation, our deposit had been returned as it ought to, and undoubtedly would have been, under the advice of an independent Advocate General, the expenditure of the above 14 thousand Rupees in costs might have been avoided; as the parties would have compromised between themselves when the money was removed; there being then no further cause for dispute than had previously existed.

Your Lordship will perhaps better understand our dread of the Supreme Court when we assert that we are able to substantiate the fact that within the last few years this very Ally Baugh estate has paid for 2 Equity suits, which originated in a dispute amongst our relatives, upwards of 68 thousand Rupees, viz.

An Equity suit brought against certain sharers in the estate to which our signature was forged and who obtained a decree in their favor.

Actual costs of the above.....	Rupees... 31,800
A suit brought by us to set aside the above decree.....	36,500

Total costs paid to the Supreme Court.....	Rupees... 68,300
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We believe my Lord we are not the only Proprietors who have paid more than the value of their estate in law costs and that there are few lands within the limits of the Supreme Court that have not done so within a generation; and, in that respect, we may not be much worse off than others; but, as Mussulmen, this is not the only inconvenience; and were there are numerous secluded females who have divided interests in land, as is the case with Mahomedans, the annoyance, vexation and expense is enormously increased.

Fort St. George, Judicial Consultation, 11th August 1857.

We have now a large sum of money withheld from us to which no person pretends to assert any claim; and we are told we must file a bill in the Supreme Court; or, in other words, lay out a large sum of ready money in addition to that we are deprived of.

This money was held by the Collector as our property to be paid to another party on the performance of specific acts; those acts cannot now be performed and we are undoubtedly entitled to the return of the money received from us.

We trust therefore as the descendants of princes, who have never hitherto obtained justice from the Supreme Court except at the price of ruin, that we may not again be compelled to seek what belongs to us through the dreaded medium of a legal process. The small pension we receive from the Government having been for years past made to contribute to the enormous demands of legal proceedings which have kept us in extreme penury.

We further take the liberty of soliciting from your Lordship the presentation of our enclosed petition to the Council and that the matter may be ordered to be enquired into and our money no longer withheld.

We are,

My Lord,

Your Lordship's most obedient humble Servants.

Seal of KIAMUD DOWLAH,

Bahader.

Seal of KAMROOD DOWLAH,

Bahader.

Madras, 30th June 1857.

To

THE RIGHT HONORABLE GEORGE FRANCIS ROBERT LORD HARRIS, GOVERNOR
IN COUNCIL OF FORT ST. GEORGE.

The humble petition of Kiamud and Kamrood
Dowlah, Sharers, and representatives of Syfood
Dowlah, deceased, and owners of the Ally
Baugh Estate.

SHIEWETH,

I. That your Petitioners as the owners of the Ally Baugh Estate humbly crave from your Lordship in Council, an order to the Collector of Madras to pay out to your Petitioners the sum of 22,000 Rupees received from your Petitioners under circumstances hereinafter detailed; or so much of the same as may be found due to them; and that the remainder may be deposited as provided by the Regulations.

A brief outline of the circumstances is as follows:—

That a portion of your Petitioners land was in the year 1854 taken for public purposes for which the Collector of Madras agreed to pay a sum of Rupees 87½ per ground, and had in hand for that purpose a sum of about 48,000 Rupees subject to some trifling deductions agreed on. That whilst this balance so remained your Petitioners were anxious to recover their legal title to 3 plots of ground held by one Rookmany Ammal as mortgagee who was in receipt of the rents and profits of the same and your Petitioners' Agent was in treaty with the above named mortgagee, for the surrendering of the above 3 plots of ground.

That in the mean time the Executors of one Streenevassa Pillay, deceased, represented by Mr. Ritchie, Solicitor, claimed to be the real mortgagees of the above 3 plots of ground, and appeared before H. Stokes, Esq., the Collector of Madras on the 14th May 1855, at an arbitration held to settle all disputed claims; where Mr. Ritchie asserted that he was in *full possession* of the 3 plots

Fort St. George, Judicial Consultation, 11th August 1857.

of ground in question and, under a caution both from Mr. Norton (an Arbitrator) and your Petitioners' Agent, re-asserted the same in the most positive manner, and undertook to put your Petitioners' Agent in possession of the land the next morning; upon which your Petitioners' Agent signed a consent incorporated into an award whereby 22 thousand Rupees from your Petitioners' money, then in the hands of the Collector, was agreed to be paid to Mr. Ritchie's clients on their putting your Petitioners in possession of the 3 plots of ground, and delivering all title deeds.

That your Petitioners' Agent under the above circumstances could come to no other conclusion than that the clients of Mr. Ritchie had purchased up the interest of Rookmany Ammal, as there was no other way by which they could have acquired possession and was bound to believe the positive assertion of the Attorney.

That so far from the above statement being true; it was utterly at variance with fact, as shewn by the subsequent conduct of Mr. Ritchie in attempting to gain over the tenants in which he was restrained by an injunction from the Supreme Court; also from receiving any money on account of the above transaction. Rookmany Ammal on hearing of his proceedings at the Cutcherry of the Collector filed a bill against him in the Supreme Court.

That on its thus appearing clear that your Petitioners' Agent had been imposed on; he applied to Mr. Stokes for the return of the deposit money, when the matter was referred to your Advocate General Mr. T. S. Smythe.

That previous to this reference Mr. Stokes had obtained from the Arbitrators a declaration of the fact that the undertaking was to put your Petitioners in possession the next morning; and the positive assertions that were made as to possession.

That your Petitioners are instructed that although evidence cannot be taken to vary the contents of a written document, yet it may, and ought to be so taken, to shew the purpose for which it was given; or that it was given under a false impression.

That the Advocate General, who although advising the Government was nevertheless at the same time the feed advocate of Rookmany Ammal assumed a state of facts at variance with truth and only favorable to the interests of his client whom he was desirous of having declared to be the cestui qui trust of the Executors of the late Streenevassa Pillay, and entitled to the full benefit of the above transaction.

That although the Advocate General knew or ought to have known that the award though signed by your Petitioners' Agent was so signed under an erroneous statement made in the presence of several witnesses, and was consequently vitiate and void, yet he nevertheless upheld it as a binding judgment.

That the Advocate General also improperly assumed that your Petitioners' Agent had failed to enquire as to the right of Rookmany Ammal, and the documents held by her; whereas this officer knew, or ought to have known, that copies of every document were with your Petitioners' Agent, which Agent well knew that Rookmany Ammal was in possession of the rents and profits for years; and had been actually endeavouring to negotiate with her for the surrender of the 3 plots of land only a few days before; but your Petitioners' Agent could scarcely be upon his guard against the bold and positive assertion of a fact within the bounds of possibility; coming as it did from one of the Advocate General's own profession, and which had not the slightest foundation in truth.

The Bill filed by Rookmany Ammal against Mr. Ritchie's clients for the establishing of her rights ended, in a decree in the Supreme Court about 16 months ago declaring her the mortgagee of the 3 plots above named but the Executors of Streenevassa Pillay the equitable title holders of one plot.

It will thus be seen that neither can Mr. Ritchie fulfil his undertaking nor has the Advocate General succeeded in getting his client invested with the full rights; to which object your Petitioners' interests were undoubtedly sacrificed.

As your Petitioners are up to the present time minus the money they deposited and the land is now owned by two distinct parties, and as it is with the Collector alone they have to deal, they humbly beg that orders may be issued for the refunding of this deposit, the land being now of little use to them even if the parties were in a condition to deliver it; as they have constructed their houses elsewhere.

Fort St. George, Judicial Consultation, 11th August 1857.

For the above named act of justice your Petitioners as in duty bound will ever pray.

Seal of KIAMUD DOWLAH,

Bahader,

Seal of KAMROOD DOWLAH,

Madras, 30th June 1857.

Bahader.

No. 254.

Transferred to the Chief Secretary to Government.

By order.

Government Home, }
6th July 1857. }

H. A. MURRAY,
Private Secretary.

No. 2. From B. CUNLIFFE, Esq., Collector of Madras; to E. MALTBY, Esq., Acting Chief Secretary to Government, dated 23rd July 1857, No. 14.

SIR,

1. Petition to the Right Honorable the Governor in Council, from Kiamud and Kamrood Dowlah.
2. Petition to the Right Honorable Lord Harris, from the same parties.

1. In returning the two enclosures received with the Memorandum of the Deputy Secretary to Government, Political Department, of yesterday's date, I have the honor to state that the dispute between the Petitioners and the Executors of the late Streenevassa Pillay, relative to a portion of the Ally Bag estate is fairly stated in the petition to the Government, barring certain assumptions as to the motives of the legal advisers of the opposing parties.

2. The reasons for the arbitration, and the course pursued therein, are explained in the letter from the late Acting Collector, presiding over the arbitration, and forming enclosure to my letter to Chief Secretary, under date 1st August 1855, the latter giving my reasons for depositing the sum forming subject of arbitration, with the Accountant General of the Supreme Court.

3. About 16,000 out of the 22,000 Rupees in deposit, is the price of land in the possession of Petitioners, when taken by the Government, to whom it was made over by them, but the Executors of Streenevassa Pillay, having claimed a lien on the Ally Bag property to the extent of one-fourth, Mr. Stokes called an arbitration to consider this point, and on agreement between the advisers of the disputing parties, the sum of 22,000 Rupees was awarded to the Executors, in full of all demands, on condition of making over to Petitioners 3 plots of land declared to be in the possession of the Executors, and which condition was not fulfilled.

4. An award having been passed, recourse cannot be had again to a similar mode of settlement, and except by mutual agreement between the parties, I cannot conceive how the money is to be taken out of deposit.

5. If a suit is brought against the Government to recover, it would be met at once; I imagine, by a declaration, that they had no interest in the question and were ready to pay the money into Court; though I should be glad indeed if the matter could be remanded to me, and I was enabled to come to an arrangement with the parties, without the necessity of their resorting to expensive legal proceedings.

(Signed) B. CUNLIFFE,
Collector.

No. 3. From B. CUNLIFFE, Esq., Collector of Madras; to E. MALTBY, Esq., Acting Chief Secretary to Government, dated 27th July 1857, No. 15.

SIR,

1. I have the honor to forward copy of a letter received on the 24th Instant, from Mr. Saunders, bearing upon the subject of my letter to your address under date the 23rd Instant.

Fort St. George, Judicial Consultation, 11th August 1857.

2. Though, as far as I see, there is nothing on record to show that Mr. Ritchie, did acknowledge before the arbitrators, that the alleged claim of his clients had been satisfied, I believe from information gained on the many occasions on which I have had to consider this case, that such admission was made, and that the fact can be abundantly testified by the Arbitrators.

3. It will be observed by the foot note to para: 4 of Mr. Saunders' letter, that the "original document" has not been received by me, but I apprehend that it will be forthcoming should the Government require it.

4. If the arbitrators had gone regularly through the case, they would doubtless have placed on record not only this document, but would have provided for other contingencies which might happen in course of carrying out their award, but as they were met almost at the outset with a compromise among the contending parties, whom they naturally supposed as capable of performing their engagements, it is not surprising that the award should have been confined to that one point alone, viz., the restoration of the 3 plots of land by Mr. Ritchie, on receipt of the 22,000 Rupees in deposit.

5. As to the assertion in para: 7, the Government will perceive, that Mr. Saunders is in error as to the construction to be put upon Section 15. The title to the land being considered questionable, the Collector may himself act on this doubt, as it is not among the "other grounds" which the Arbitrators are to certify to him. I was therefore authorized to lodge the money with the Accountant General of the Supreme Court.

6. The statement in para: 8 is correct, the entire sum of 22,000 Rupees being made up of some 16,500 Rupees (for the exact sum cannot be known until measurements are taken) belonging to Kiamud and Kamrood Dowlah, about 4,800 Rupees to Rookmany Unmall, and about 560 Rupees to the Executors of the late Streenevassa Pillay.

7. I think therefore that Mr. Stokes would have been justified (the injunction extending only to the Executors of Streenevassa Pillay) in setting the two last mentioned sums aside for future adjustment, and in paying over the remainder to the above named Mahomedan gentlemen, as the price of the land given up by them to the Government.

8. I might have done this myself, but having newly taken up the office, I hesitated in taking such a decided step, and being urged to lodge the money, I eventually did so.

9. The Government will attach what weight is due to the request contained in para: 11.

10. With reference to the concluding para: I conceive the parties named to be paupers and should be inclined to doubt their ability to give the security offered.

(Signed) B. CUNLIFFE,
Collector.

From H. B. SAUNDERS, Esq., Attorney to Kiamud and Kamrood Dowlah; to B. CUNLIFFE, Esq., Collector of Madras, dated 24th July 1857.

SIR,

1. I am instructed by Kiamud and Kamrood Dowlah to inform you that since my letter to Mr. Cochrane of the 20th May last, they resolved on petitioning the Right Honorable the Governor in Council on the subject of the award of the 14th May 1855, in hopes that their money, so long detained, might be restored to them.

2. As they conceive that in due course their petition will be referred to the Collector of Madras for report before any final order can be given, they are anxious to explain a fact that may present some difficulty, inasmuch as it may appear from the present state of the records that the Executors of the late Streenevassa Pillay (represented by Mr. Ritchie) really had some claim or right to appear before the Collector, which right they subsequently merged into the award; whereas such was not the fact, they having no locus standi whatever except what was assumed for the purpose; and afterwards acknowledged by Mr. Ritchie to be so before the whole of the Arbitrators.

No 955

Read Petition from Thomas Dowdall Belader } Recd into 30 June /57.
 & Samuel Dowdall Belader }
 Read letter from the Coll^y of Madras ———— 23 & 27 July /57 No 1445

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The Govt resolve to furnish copy of these
 letters and the correspondence adverted to
 therein to the A. C. Solicitor, who will report
 whether there are any means open to Govt
 for effecting an arrangement between
 Petitioners (the owners of the Ally Bāgh estate)
 and the other parties referred to, or of com-
 -plying with Petitioners wishes.

To be 8th Dec 57, G.
 5th August 1857 - B

Me

To the A. C. Solicitor - Dispt 12th