

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 231	Press
158-159	~~Mis.~~
Dated 23. 2.	19 1864

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Not to be folded or roughly handled

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Proceedings of the Madras Government, Judicial Department,
23rd February 1864.

No. 158. Read the following Proceedings of Government in the Revenue Department, dated 13th January 1864, No. 70.

Forwarding to the Board of Revenue letter from the Government Solicitor with copy of the opinion of the Advocate General, on the subject of the course to be pursued by Government with respect to certain "Kovil Maniam" land at Madura, attached under Decree of the Principal Sudder Ameen's Court at Madura in O. S. No. 5 of 1862, and requesting the submission by the Board of certain information required by the Advocate General.

(Vide Proceedings Revenue Department, dated 13th January 1864, Nos. 135 & 136.)

No. 159. ORDER THEREON, 23rd February 1864, No. 231.
To be recorded.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

*Proceedings of the Madras Government, Revenue Department,
15th December 1863.*

No. 264. Read the following letter from CLEMENT DALE, Esq., Government Pleader, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 3rd December 1863, No. 142 :—

SIR,

26th November 1863, No. 2,129, Revenue Department. I have the honor to acknowledge the receipt of the Proceedings of Government under the date and number noted in the margin.

2. In the papers sent to me it does not appear who are the parties to O. S. No. 5 of 1862, there referred to, I however conclude that Government was not a party, Plaintiff or Defendant thereto.

3. Neither is it stated by whom, or for what purposes, the lands in question were granted. The Collector refers to Regulation 6 of 1831, while from the language used by the Principal Sudder Ameen in his Order of the 5th of November 1863, it appears that the land had been given by Government "in lieu of service," from which it may be inferred that the case would come within the purview of Regulation 4 of 1831; and in corroboration of that view the Government Vakeel at Madras appears to have relied on the Circular Order of the late Sudder Court of the 30th of April 1853, which was passed with reference to Regulation 4 of 1831, and in which no reference is made to Regulation 6 of 1831.

4. In former communications I have referred to the mischief of the Law Officers being called upon to advise on uncertain data.

5. I am of opinion that the Collector was right in his applications to the Court, and that the Principal Sudder Ameen was wrong in refusing to withdraw the attachment on the lands in question.

6. It is not, however, free from doubt, what course should be pursued for the purpose of obtaining a decision by the High Court on the point, for no appeal lies from the decision of the Principal Sudder Ameen; and as at present advised, I do not think the Government (in the present state of the proceedings at any rate) could successfully sustain a Suit, as I do not see what claim or right the Government has in the land, for the establishment or support of which a Suit could be maintained, or that the Government has sustained any such injury as is contemplated by the Code of Civil Procedure.

7. I do not observe that the Courts are precluded from entertaining and adjudicating upon any Suit which may be brought against Judicial Officers for injury sustained consequent on acts which have not been confined within the scope of their jurisdiction, and the inferior Officers who execute process illegally issued.

8. On consideration I have the honor to advise that the best course which suggests itself to my mind is, that if the Decree-holder persists in asking the Court to sell the lands in question, a Suit for the trespass should be brought against him and his Vakeel, including probably the Principal Sudder Ameen, the Nazir, and the Officer who executes the process; I am further of opinion that under the 13th Section of the Charter establishing the High Court, application should be made to remove the Suit into that Court.

9. I am of opinion that such Suit should be instituted by the land-holder and not by Government.

10. Whether or not Government may eventually be advised not to assist the land-holder, the Honorable the Governor in Council doubtless will wish their Law Officers should watch the case, and if it be removed into the High Court, that duty will devolve on Mr. Advocate General. I recommend therefore that the papers with this letter should be laid before that gentleman, for if he concurs in the view I have taken it would, in my opinion, be desirable that the form of Plaint should be settled by him and, if he wishes it, in consultation with the Government Pleader at Madras.

11. The preparation of the Plaint must necessarily be deferred till the land has been sold, or a refusal by the Plaintiff to withdraw the attachment.

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12. I presume the lands in question have been attached; if that be the case, and I were advising the land-holder, I should recommend that a Notice should be served on the Decree-holder pointing out the illegality of his attaching the lands in question, and giving him notice that unless he within a certain period withdrew his application for execution and the attachment on those particular lands, such steps would be taken against him and all other necessary parties as he, the land-holder, might be advised to adopt.

13. If Mr. Advocate General should concur in the opinion I have offered, and Government should desire to take part in the proceedings, I would recommend that full and detailed instructions showing the whole case and what has been done, should be laid before him or myself, when Government could be advised as to the precise course which should be pursued.

14. I return the papers.

No. 265.

ORDER THEREON, 15th December 1863, No. 2,296.

1. From the papers submitted it appears that the Principal Sudder Ameen of Madura ordered the sale of a Kavil Inám in Madura in satisfaction of a Decree against the Inámdar.

2. The Collector objected to the sale on the ground that the Inám was one of the description reserved from the jurisdiction of the Civil Courts by Regulation VI of 1831, that the land itself and not merely its assessment formed the emoluments of the Kavil office, and that the attachment should be withdrawn under a Circular* Order of the Sudder Udalt which he quoted.

* Dated 30th April 1853, No. 129 M.

3. The Principal Sudder Ameen overruled the Collector's objections, maintaining that the landed emoluments of all village offices are restricted to the Málwaram or Government share of the produce, represented by the assessment; the Coodevaram or Ryot's share, which alone he was about to sell, forming no part of them, and therefore not coming within the operation of Regulation VI of 1831.

4. There can be no doubt that in laying down this doctrine the Principal Sudder Ameen has committed a serious mistake.

5. In some cases the lands annexed to village offices under Regulation VI of 1831 were already in the occupancy of Ryots, whose tenure of course could not be disturbed, so long as they paid the regulated assessment. In such instances the emoluments of the office to which the lands were attached were necessarily limited to the assessment, for Government could assign no more than they themselves possessed. To such Ináms the doctrine enunciated by the Principal Sudder Ameen undoubtedly applies.

6. But there are other and numerous cases in which the lands attached to the offices were not in the occupancy of Ryots, but wholly belonged to the State; in all such cases, and the present is said to be one of them, the land as well as the assessment forms the emoluments of the office, and neither the Inámdar nor any one else can, as the Principal Sudder Ameen supposes, acquire the occupancy, right to the land, for the whole emoluments are inalienable by law.

7. It is also of some consequence to prevent the occupancy right and Coodevaram from being dissociated from the office for two reasons:—

I. The knowledge that if he is dismissed from his office he will also lose his land with all his improvements is a powerful check on the Inámdar.

II. If the Inámdar has a right only to the assessment, he is much at the mercy of the Ryot and can realize his dues only by a Civil Suit.

8. It is to be regretted that the Principal Sudder Ameen was so ignorant of the tenure of Village Service Ináms and did not, at least, call for evidence to establish the mooted point. There can be no doubt that the terms of Regulation VI of 1831, and the Circular Order of the Sudder Udalt quoted by the Collector, at least preclude a Court from deciding without a title of evidence what form and what do not form the emoluments of a village office; yet this is what the Principal Sudder Ameen has done.

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9. The decision of the Principal Sudder Ameen cannot be appealed from, and it is a matter of difficulty to obtain a decision of the High Court on the point.

10. The Government Pleader advises, as probably the best course, under the circumstances, that if the Decree-holder persists in asking the Court to sell the land, a Suit for trespass should be brought against him and his Vakeel, including probably the Principal Sudder Ameen, the Nazer and the officer who executes the process, and that under the 13th Section of its Charter application should be made to remove the Suit into the High Court. Mr. Dale is of opinion that the Suit should be instituted by the Inámdar and not by Government, and as the Government should at least watch the proceedings in the High Court, which duty would devolve on the Advocate General, he suggests that the papers should be forwarded to that Officer, in order that if he concurs in the course proposed the form of Pleint should be settled by him.

11. Mr. Dale also suggests that if the land has been attached, the Inámdar should have a notice served on the Decree-holder pointing out the illegality of his attachment, and warning him that in the event of its not being withdrawn within a certain period, legal measures would be adopted against him.

12. It is open to doubt whether the Inámdar would move in the matter, for as he cannot evade the execution of the Decree, he is little interested in obtaining the transfer of the distress from the Inám to his own property, and the Principal Sudder Ameen's decision in fact gives him a larger interest in the Inám than he possesses.

13. Independent of this consideration the course proposed seems to place Government in an undesirable position in regard to one of its own Judges, and on this ground they would rather prefer a Suit for the recovery of the land as State property or an injunction, if either course is practicable. The case is, as Mr. Dale remarks, beset with difficulties, and as no immediate measures are practicable, the Government will as he suggests forward the papers, in the mean while, through the Government Solicitor to the Advocate General for his opinion, after consultation if necessary with Mr. Dale.

(True Extract.)

(Signed) J. D. SIM,

Secretary to Government.

To the Board of Revenue.

Government Solicitor.

Government Pleader.

Judicial Department.

Ed. S. T. Augustin.

list of 1889

Jul 1864 Sept

Pres. Government in the
Rev. Separate No. 70.

27 13th 15th 1864
4 copies

Feb 2018

1881

Forwarding to the Board
of Rev. letters from the Gov. Solicitor
with copy of the opinion of the
Attorney Genl on the subject of the
course to be pursued by Gov. with
respect to certain "Kani Manim"
land at Madura, attached under
decree of the 1st Sudr Ameen's
Court at Madura in O.S. No. 5
of 1862. and requesting the
submission by the Board of
certain information required
by the Attorney Genl

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23rd February 1864 N: 231-
Kishore Singh