

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	799	Press ~~Mis.~~
Dated	5. 6.	19-1865

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
5th June 1865.

No. 19. Read the following letter from J. DOUGALL, Esq., Acting Civil Surgeon, Vizagapatam, to D. F. CARMICHAEL, Esq., Magistrate of Vizagapatam; dated Vizagapatam, 18th May 1865, No. 22.

The Peons attached to the Lunatic Asylum, Vizagapatam, are at present without any distinguishing badge. If you have any in store, I shall feel obliged by your granting me four for the use of these Peons.

No. 157.

Forwarded to Government, with a recommendation that, under the circumstances, Rupees 16 be sanctioned for the purpose of providing four belts with badges, for the Peons referred to.

VIZAGAPATAM,

(Signed) D. F. CARMICHAEL,

20th May 1865.

Magistrate.

To the Honorable A. J. Arbuthnot, Chief Secretary to Government, Fort Saint George.

No. 20.

ORDER THEREON, 5th June 1865, No. 799.

Sanctioned Rupees (16) sixteen.

(True Extract).

Chief Secretary.

To the Magistrate of Vizagapatam.

„ Civil Paymaster.

From
- The Magistrate
of
Viragapattam
to
The Chief Secretary
to Government
Fort St. George

4/20 May 1865
recd 27

PDY / N° 157.

Submitting annexed,
copy of a letter from the
Civil Surgeon Viragappa
Tann, and requests that
sanction may be granted
for the four badges
therein asked for, amount-
ing to Rs. 10.

5 June 1865 No. 499-
Sanctioned Papers (16)
sixteen-

19.20 depth $\frac{7}{16}$ } the largest
" " " " " " " "

*Proceedings of the Madras Government, Judicial Department,
5th June 1865.*

No. 21. Read the following letter from W. BOALTH, Esq., Deputy Collector of Madura, on sick leave at Bangalore; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Ootacamund, dated Bangalore, 25th August 1864.

I have the honor to forward a petition and documents connected therewith (in a separate packet) by this day's post, and request you will be so good as to lay the petition, &c., before the Honorable the Governor in Council, and procure for me their final order.

TO THE HONORABLE THE GOVERNOR IN COUNCIL,
Fort Saint George.

The humble Petition of Mr. W. BOALTH,
(Deputy Collector of Madura) on sick leave
at Bangalore.

HUMBLY SHEWETH,

That your petitioner whilst Deputy Collector of Salem, purchased an extent of land, namely, 1 Acre 2 Goontas and 9 Annas, specified as Lot No. 1 in the Engineer's plan marked A, for Rupees 1330, sold by the Order of Government, and which the Committee after having sold refuse now to put your petitioner in the possession of the full extent of the ground, according to the plan and records which are to be found both in the Collector's office and in the office of the Board and Government.

2. The Collector, Judge, and Civil Engineer of the District being the chief parties, your petitioner begs to be allowed to plead his case before Government in two capacities: first, as a client, and secondly as a pleader.

4. As a client your petitioner will explain the grounds of his claim, and the documentary facts upon which it is based. And as a pleader your petitioner begs to be allowed to plead his own case judicially; to quote Regulations, to make observations relative to the claim of his purchase regarding the unjust withholding from him a local investigation of the matter by the parties concerned, and the non-delivery of the whole extent of the land sold him by the local Revenue, Judicial, &c., authorities of the District, by one of whom the said land was sold to him with the building thereon. For since your petitioner has paid the consideration of 1330 Rupees for the whole extent of land in question, your petitioner cannot withhold or relinquish his claim; nor can the Committee in justice, seek to deprive him of his right of the equivalent in land.

4. The facts of the case are simply the following, which will preponderate as to prove that the property in question belonged to the Government as private property of any other individual, and that by virtue of the subsequent Order of Government, dated 5th January 1863, No. 6, document marked O, your petitioner purchased the ground and stands in the place of Government as a proprietor holding all the right and title appertaining thereto. These are, according to the records obtained by your petitioner by permission from the Collector, and they are, therefore, gathered from the most authentic sources that can be relied on.

5. In the District of Salem and opposite the Tahsildar's Cutcherry, Colonel McLeod the first Collector of Salem purchased a spot of ground from the Ryots in Fuslies 1206 and 1208, upon which he built a small bungalow, occupied it; the ground measuring at that time 1 Acre 26 Goontas and 14 Annas. This land subsequently passed into the possession of Government—Vide letter marked L, dated 19th October 1848, from T. Pycroft Esq., then Secretary to the Board of Revenue, to J. F. Thomas, Esq., Secretary to Government, paragraphs 2, 7, 17.

6. In the Statement annexed to the 2nd paragraph of the Board's letter, the land on which the "old Jail" stood, measured 1 Acre 26 Goontas and 14 Annas, whereas in the new

plan marked A, the said land is shown to measure only 1 Acre 2 Goontas and 9 Annas, showing a difference of 24 Goontas and 5 Annas. This difference is owing to the lots having been now newly divided by the Committee for the purpose of sale. The difference of 24 Goontas, and 5 Annas was separated from Lot No. 1, and added to Lot Nos. 2 and 3. The Plan will explain this.

7. When the British Government formed Muttahs, Government paid Theervah up to Fusly 1215 to the Muttahdars. Subsequently Muttahs changed hands and came into possession of G. F. Fischer, Esq., who discovered that Government failed to pay kist on the Jail ground (now in dispute) for 33 years, and who claimed the arrears amounting to Rupees 114-7-6 from Government, exclusive of his other demands which formed a separate claim.

8. The claims of G. F. Fischer, Esq., only terminated after a struggle of eight years, when ultimately the Revenue Board and Government on the report of Mr. Maltby the then Sub-Collector, and Mr. Lockhart the then Collector of Salem, determined to pay the said balance of Rupees 114-7-6, purchased also the escheat of the said ground from Mr. Fischer, ordering the annual Theervah of Lot No. 1 being Rupees 3-7-6 to be deducted from his Peishcush, which deduction is shown in the annual accounts of the Taluq Cutcherry* up to this day. Wherefore the Government will no doubt observe that by the above said proceedings, the Government become the sole proprietor of the said Lot No. 1 as any other private individual; that Government had the possession of that land from that time ordered that the said land be reserved for Government purposes, and which Government had now ordered to be sold, and which was purchased by your petitioner.

9. In further proof of the above facts, the Board in their letter, dated 19th October 1848, marked L, distinctly and pointedly advert to the said ground in the following terms—thus, “The correctness in respect to ground occupied by the Jail has never been disputed.”

10. Government in their Minutes of Consultation, dated 16th November 1848, marked M, ordered the payment of Mr. Fischer's claim on Lot No. 1 and others, and directed the whole of the lands to be enclosed; the area I believe to be included in the general limits of the present plan marked A. This could be established by village accounts and by the old plans in the Civil Engineer's office and Court House, a copy of which appears to have been taken by the Engineer Officer, who divided the said land into seven separate Lots as specified in the present plan marked A for the convenience of sale; of which Lot No. 1 was purchased by your petitioner.

11. When the Civil Judge of Salem Mr. Cherry suggested the sale of the said lands to Government they (Government) addressed the Collector Mr. Brett desiring to know how he would dispose of them. Mr. Brett in a letter to Government, dated 28th March 1862, No. 25 marked N, distinctly recommended “that two or three of the buildings be offered for sale separately with a suitable extent of ground connected with each, and that the rest of the ground be divided into building lots, either for superior Native houses or for houses suitable for East Indians and Europeans.” Thus the building opposite the Tahsildar's Cutcherry being the old Jail and the suitable extent of land attached thereto as shown in the plan marked A, designated as Lot No. 1 therein, was the identical extent of land purchased by your petitioner.

12. The Government in their Proceedings, dated 26th April 1862, No. 663, marked N ordered that the proposals made by Mr. Brett contained in paragraphs 2, 3, and 6 of his letter be carried out by a Committee constituting the Collector, the Civil Judge, and the District Engineer. Accordingly a Committee of the said gentlemen assembled, ordered the above said plan marked A to be drawn up, published a Statement of the extent of land which each lot contained, advertised the conditions of sale in distinct and unmistakable terms in the Salem Government Gazette, marked B, dated 7th February 1863, pages 53 and 54, thus—

ADVERTISEMENT.

1. “It is hereby notified that the seven plots of ground formerly occupied by the old Courts, specified in the annexed Statement, will be sold by public auction under the Orders of Government at the Collector's Cutcherry, Salem, on Monday the 13th April 1863.”

2. “Purchasers will be required to deposit 15 per cent. of the purchase money at the time of sale, and where the remainder of the purchase money shall not be paid within 8 days from the date of the sale, the money so deposited shall be liable to forfeitures.”
3. “When such deposit shall not be made, nor the remaining purchase money paid up, the lands shall be re-sold at the expense and risk of the first purchaser.”
4. “Purchasers having made the necessary deposit shall be placed in immediate possession, with the exception of the buildings in Lot No. 2, which being now temporarily occupied by the Survey Department, cannot be made over till they are vacated.”
5. “A road 38 feet wide is to run through the boundary lines, as laid down in the Engineer's plan, and no small Native houses will be allowed to be erected as it is intended to keep the space free for bungalows and large buildings.”

STATEMENT of lands put up for Public Auction.

Zillah.	Talook.	Number of the land.	Name of the land.	Extent.		
				Acres.	Goontas.	Annas.
Salem...	Town of Salem...	1	Old Jail...	1	2	9
Do. ...	Do. ...	2	Old Courts...	2	12	6
Do. ...	Do. ...	3	Piece of land...	0	20	11
Do. ...	Do. ...	4	Do.	0	17	0
Do. ...	Do. ...	5	Do.	0	18	15
Do. ...	Do. ...	6	Do.	0	19	7
Do. ...	Do. ...	7	Do.	0	26	3

(Signed) J. W. CHERRY,
Civil and Session Judge.

SALEM, CIVIL COURT,
3rd February 1863.

13. This sale was held on the 13th April 1863 at the Collector's Cutcherry, when Mr. Cherry as a Member of the Committee conducted the sale personally. At the time of sale Mr. Cherry ordered the Advertisement published in the Salem Gazette to be read as conditions of sale, exhibiting the Engineer's plan, and distinctly stated and assured the purchasers that the lots and extent of land specified in the plan shall be put in their possession as soon as they paid the purchase money pursuant to the conditions of sale.

14. Besides the above, certain questions arose between your petitioner and Mr. Cherry at the time of sale, when he, your petitioner, ascertained from him. How many public streets does Lot No. 1 possess? The exact extent of land Lot No. 1 enclosed? And what passages or gates should be opened towards the streets since the said Lot No. 1 had its ingress and egress on the west through Lot No. 2 which communicated with the main street through the gate of Lot No. 2 on the north opposite the Tahsildar's Cutcherry.

15. To the above queries Mr. Cherry put the original plan into your petitioner's hands, and said that Lot No. 1 possesses two roads, one towards the east and west leading to Salem, and the other north and south leading to Trichinopoly; that the purchaser of Lot No. 1 may open gates on the two streets, and that he might close the present gate towards the west. G. F. Fischer, Esq., who purchased Lots Nos. 2, 6, and 7, Messrs. J. Fischer, Scott, Misquita, together with Venkatachellum Pillay, Head Quarter Inspector, and many others who purchased lots were present and could testify to the truth of the above conversation.

16. Your petitioner being satisfied with the explanation thus afforded by Mr. Cherry, on good faith, became a purchaser. Arnachellum Achary, the chief fraudulent encroacher being pre-

plan marked A, the said land is shown to measure only 1 Acre 2 Goontas and 9 Annas, showing a difference of 24 Goontas and 5 Annas. This difference is owing to the lots having been now newly divided by the Committee for the purpose of sale. The difference of 24 Goontas, and 5 Annas was separated from Lot No. 1, and added to Lot Nos. 2 and 3. The Plan will explain this.

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9. In further proof of the above facts, the Board in their letter, dated 19th October 1848, marked L, distinctly and pointedly advert to the said ground in the following terms—thus, “The correctness in respect to ground occupied by the Jail has never been disputed.”

10. Government in their Minutes of Consultation, dated 16th November 1848, marked M, ordered the payment of Mr. Fischer's claim on Lot No. 1 and others, and directed the whole of the lands to be enclosed; the area I believe to be included in the general limits of the present plan marked A. This could be established by village accounts and by the old plans in the Civil Engineer's office and Court House, a copy of which appears to have been taken by the Engineer Officer, who divided the said land into seven separate Lots as specified in the present plan marked A for the convenience of sale; of which Lot No. 1 was purchased by your petitioner.

11. When the Civil Judge of Salem Mr. Cherry suggested the sale of the said lands to Government they (Government) addressed the Collector Mr. Brett desiring to know how he would dispose of them. Mr. Brett in a letter to Government, dated 28th March 1862, No. 25 marked N, distinctly recommended “that two or three of the buildings be offered for sale separately with a suitable extent of ground connected with each, and that the rest of the ground be divided into building lots, either for superior Native houses or for houses suitable for East Indians and Europeans.” Thus the building opposite the Tahsildar's Cutcherry being the old Jail and the suitable extent of land attached thereto as shown in the plan marked A, designated as Lot No. 1 therein, was the identical extent of land purchased by your petitioner.

12. The Government in their Proceedings, dated 26th April 1862, No. 663, marked N, ordered that the proposals made by Mr. Brett contained in paragraphs 2, 3, and 6 of his letter be carried out by a Committee constituting the Collector, the Civil Judge, and the District Engineer. Accordingly a Committee of the said gentlemen assembled, ordered the above said plan marked A to be drawn up, published a Statement of the extent of land which each lot contained, advertised the conditions of sale in distinct and unmistakable terms in the Salem Government Gazette, marked B, dated 7th February 1863, pages 53 and 54, thus—

ADVERTISEMENT.

1. “It is hereby notified that the seven plots of ground formerly occupied by the old Courts, specified in the annexed Statement, will be sold by public auction under the Orders of Government at the Collector's Cutcherry, Salem, at 12 o'clock on Monday the 13th April 1863.”

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Do. ...	Do. ...	4	Do.	0	17	0
Do. ...	Do. ...	5	Do.	0	18	15
Do. ...	Do. ...	6	Do.	0	19	7
Do. ...	Do. ...	7	Do.	0	26	3

SALEM, CIVIL COURT,
3rd February 1863.

(Signed) J. W. CHERRY,
Civil and Session Judge.

13. This sale was held on the 13th April 1863 at the Collector's Cutcherry, when Mr. Cherry as a Member of the Committee conducted the sale personally. At the time of sale Mr. Cherry ordered the Advertisement published in the Salem Gazette to be read as conditions of sale, exhibiting the Engineer's plan, and distinctly stated and assured the purchasers that the lots and extent of land specified in the plan shall be put in their possession as soon as they paid the purchase money pursuant to the conditions of sale.

14. Besides the above, certain questions arose between your petitioner and Mr. Cherry at the time of sale, when he, your petitioner, ascertained from him. How many public streets does Lot No. 1 possess? The exact extent of land Lot No. 1 enclosed? And what passages or gates should be opened towards the streets since the said Lot No. 1 had its ingress and egress on the west through Lot No. 2 which communicated with the main street through the gate of Lot No. 2 on the north opposite the Tahsildar's Cutcherry.

15. To the above queries Mr. Cherry put the original plan into your petitioner's hands, and said that Lot No. 1 possesses two roads, one towards the east and west leading to Salem, and the other north and south leading to Trichinopoly; that the purchaser of Lot No. 1 may open gates on the two streets, and that he might close the present gate towards the west. G. F. Fischer, Esq., who purchased Lots Nos. 2, 6, and 7, Messrs. J. Fischer, Scott, Misquita, together with Venkatachellum Pillay, Head Quarter Inspector, and many others who purchased lots were present and could testify to the truth of the above conversation.

16. Your petitioner being satisfied with the explanation thus afforded by Mr. Cherry, on good faith, became a purchaser. Arnachellum Achary, the chief fraudulent encroacher being pre-

sent bid against your petitioner in competition, but as your petitioner's bid was the highest, Mr. Cherry closed the sale in his (your petitioner's) favor for Rupees 1330. Had the individuals who occupy the ground, really thought that they possessed a legal right and title to the said ground, why have they failed to advance their claims from 7th February to 13th April 1863, *i. e.*, from the date of Notification to the date of sale? Again the description of land in the Jamabundy accounts is garden land; if the encroachers were owners of the land, they could at once have produced their puttahs, but as they have fraudulently occupied the said land, they had no puttah to produce, and therefore no claim to establish.

17. Your petitioner paid the above sum to Mr. Cherry by an order on Messrs. Arbuthnot & Co., and requesting him to put your petitioner in possession of the ground and building of Lot No. 1. Mr. Cherry acknowledged the receipt of the said money, and informed him (your petitioner) in a letter dated 13th April 1863 (marked C) thus—“*That the Nazur of the Court has been directed to put you in possession according to the Engineer's plan, of the building and ground in No. 1 plot.*”

18. Your petitioner again wrote to Mr. Cherry, and requested him to give your petitioner a copy of the Engineer's original plan which was exhibited at the time of sale—to which Mr. Cherry in a letter dated 25th April 1863, (marked D) replied in these terms; “*In reply to your letter of the 25th, I have the honor to inform you that you have full permission to take a copy of the Engineer's plan, and according to the Lot No. 1, so marked on it, the Nazur has been directed to make the same over to you.*”

19. After taking a copy of the plan, your petitioner, Messrs. Paczanskey, Misquita, and others went to the place Lot No. 1, sent for the Nazur of the Court, and desired him to put your petitioner in possession of the whole extent of land and building measuring 1 Acre 2 Goontas and 9 Annas according to the Engineer's plan, a copy which your petitioner showed him. He replied that your petitioner could take possession of the building and a small strip of land on the east, on which the Tahsildar of Salem had lately encroached and built a stable; and that he (Nazur) will direct him to remove the same; that as for the remaining ground, he averred that as different individuals *including his relative* have built houses and occupied part of the ground as backyards, he could not comply with Mr. Cherry's direction, and further said “*that the Engineer's plan was wrong.*” Whereupon on the 27th June 1863, as per letter marked E, your petitioner wrote to Mr. Cherry as President and to the members of the Committee explaining to them the excuse advanced by the Nazur to put him (your petitioner) in possession of the ground according to the Engineer's plan marked A, and the condition of sale, as well as the peremptory orders (letters marked C and D) of the Civil Judge, and showed them how it was originally purchased by Collector McLeod in Fusly 1206 and 1208, who built a bungalow thereon; how it subsequently passed into the hands of Government; how Government failed to pay the rent to the several Muttadars on Lot No. 1 for 33 years; how by order of Government (letters marked L. and M.) Mr. Maltby and Mr. Fischer walked over the ground and made a report as to the question of right and title; how the Revenue Board and Government set the question at rest, by finally deciding that Theervah on Lot No. 1, and others ought to have been paid to Mr. Fischer, and how from that period up to the date of sale, this amount of Theervah was deducted or excluded annually from the Jamabundy accounts. Upon these grounds, therefore, those who have encroached, and built houses thereon should be called upon to show by what right and title they have entered on Government private ground Lot No. 1, and encroached thereon; so that in failure thereof, they should be directed to remove their houses and make over the ground to your petitioner; or to make some arrangements with him regarding the land in dispute, because the proprietorship of the land passed to your petitioner by purchase from Government; and further to give your petitioner a Title Deed for the whole extent of land he (your petitioner) purchased.

20. On the above said letter marked E, Mr. Cherry endorsed upon the said letter an order in pencil to the Nazur to the following effect thus:—“*That the Nazur is peremptorily ordered to*

put Mr. Boalth in possession of the land according to the Engineer's plan,” and with the above endorsement sent the said letter to the Collector, which to this day is on the records of the Collector's office.

21. On the face of these facts it is unaccountable to your petitioner, how Mr. Cherry could have subsequently contradicted the written and verbal conditions distinctly made by him at the time of sale, as shown in paragraphs from 13 to 16 inclusive of this petition, contained in plan marked A, in advertisement marked B, and in his official communications marked C and D, wherein it is clear that not only the “*old Jail*” but also the whole extent of ground attached to it measuring 1 Acre, 2 Goontas, and 9 Annas was purchased by your petitioner. Whereas in his last original letter marked F, Mr. Cherry contradicts his former proceedings and conditions, by alleging untenable arguments, endeavouring to break his conditions of sale made in mutual good faith; to which your petitioner cannot give his consent. Your petitioner begs now to be permitted to point out the direct contradictions which exist between Mr. Cherry's letter marked F, and his official letters marked C, and D.

22. Mr. Cherry advances new conditions which never existed, and which were never agitated at the time of sale. In reply to which, your Petitioner begs to show that the conditions of sale were absolute and mutually concluded in good faith, *i. e.* the extent of Lot No. 1, measuring one Acre two Goontas and nine Annas was sold to your petitioner for Rupees 1330. This sum Mr. Cherry accepted, and in his letter marked C, directed the Nazur to put your petitioner in possession of the building and ground according to plan marked A, Lot No. 1.

23. Whereas now in letter marked F, Mr. Cherry contradicts himself by stating that “*the Nazur has reported to him, that only the “old Jail” was made over to your petitioner, that Lot “No. 1 was sold with the usual understanding at all public sales, viz., that the purchaser takes it “with all faults.”*” In answer to this novel assertion, your petitioner begs to say that no condition nor understanding was advanced at the time of sale other than *that* specified in the advertisement of the 7th February 1863, in the Salem Gazette, and in paragraph 14 of this petition, but on the contrary, Mr. Cherry asserted that he had sold the land and ground to your petitioner, measuring 1 Acre 2 Goontas and 9 Annas, and the building thereon for Rupees 1330.

24. Mr. Cherry, in paragraph 3 of his letter, says that “*if your petitioner thinks that the Engineer's plan marked A is incorrect and dissatisfied with the purchase, he (your petitioner) “can at once relinquish his purchase.”*” To this your petitioner begs to aver that he never entertained such an idea, nor does your petitioner think so now, but on the contrary your petitioner is fully convinced that the Engineer's plan is perfectly correct and ought to be executed accordingly, and that therefore the full extent of land, viz., 1 Acre 2 Goontas and 9 Annas should be delivered up to your petitioner by the Members of the Committee without further objection.

25. If the Members of the Committee and Mr. Cherry, had seen or paid attention to Mr. Brett's letter, dated 28th March 1862, No. 25, marked N, and the Order of Government thereon, dated 26th April 1862, No. 683 respectively, he Mr. Cherry nor they the Committee would not have written as above shown, because Mr. Brett, the late *Commissioner* particularly expressed his opinion that the old Jail and Court House be sold to *East India Company* Europeans with suitable ground attached to each, *which opinion Government endorsed.*

26. Mr. Cherry in paragraph 4 of his letter alleges “*that it was publicly proclaimed by me (Mr. Cherry) at the auction sale, that all parties were to be guided in the description of the lot “put up for sale, shows distinctly that Lot No. 1 contains the old Jail, and no other mention what “ever is made of any other building therein.”*” On the above Statement, your petitioner begs to observe that the Engineer's plan does not show any building whatever in any of the Lots, but simply specifies the measurement of the exact extent of the area of land, each lot put up for sale contained. It neither shows the old Jail, the Court House, &c., nor even the Native encroachments, but simply marks in lines defined the true extent of land sold, and your petitioner therefore asks and demands no more than that which the plan specifies.

27. In the 5th paragraph of Mr. Cherry's letter, he states, "that should the measurement of the ground not be accurate, and you find you do not get the same quantity of ground that you have paid for, nothing is easier than for the same to be put up to auction again as a disputed Lot, when, should it sell for a lower sum, the Government would make up the difference to you, and if it fetches as I learn it is likely to do so a higher sum, the Government will benefit by your objections." Here Mr. Cherry admits and is conscious that he sold your petitioner the full extent of land as per Engineer's plan alluded to, and received from him the full consideration of the value of the said land Rupees 1330, and instead of giving your petitioner the equivalent in land, he has only put less than half of the extent of land, mentioned in the said plan, and leaves the other portion to be enjoyed by encroachers who have neither claim right nor title to the land in dispute.

28. Mr. Cherry further states that he has been informed that the land is worth more. Your petitioner fully believes that the informants are Arnachellum Achary and the Nazur his relative, since they are personally interested in the case; however as your petitioner has once purchased the land either to advantage or disadvantage, he considers himself the sole Proprietor by right of purchase publicly; and as your petitioner intends building a house on the disputed spot, which has not as yet been put in his possession, he cannot consent to give up his claim to the land, because the value of that land is increasing daily, and also because he, your petitioner, has already spent 500 Rupees towards the improvement of the building.

29. Now as regards the threat contained in the 6th paragraph of Mr. Cherry's letter, namely "that within five days from the 8th July 1863 if you do not give up your purchase of the Lot No. 1 within five days that he (Mr. Cherry) will consider that he (your petitioner) took the lot with all its faults." To this your petitioner respectfully begs to say that he does not consider Mr. Cherry's threat as strictly legal and binding on him (your petitioner) in any way, because the Government will at once see that the Law of Limitation, viz., Act No. XIV of 1859, Section 1, Clause 12, allows him (your petitioner) 12 years to urge his claim and not five days only which Mr. Cherry thought proper to fix. Your petitioner begs to add that he only received Mr. Cherry's letter dated 8th July 1863 on the 23rd July 1863, and which your petitioner answered on the 24th July 1863 (marked G) thus forming an interval of 15 days.

30. As Mr. Cherry, as Member of the Committee, virtually refused to put the whole extent of land sold to your petitioner in his possession, and to grant him a title deed for the same he was therefore compelled to bring the subject especially to the notice of the Honorable D. Arbuthnot, in his capacity as Collector of the District, submitting the whole correspondence and documents connected with his (petitioner's) case, and requested him (the Collector) to institute an inquiry (letter marked H, dated 13th August 1863) as a Revenue case, and to ascertain how the encroachers took possession of Government lands and to eject them. A perusal of the above letters will exhibit to Government the sum and substance of his petitioner's claim.

31. On the receipt of your petitioner's letter, the Collector called on the 12 encroachers, by Notice in the Salem Government Gazette to produce their documents and show cause on what title they entered on Government ground, and to make arrangements with your petitioner as he has become Proprietor to the said land by purchase.

32. Before the contemplated investigation took place, your petitioner became seriously ill, the Collector therefore postponed the investigation till another time, notifying that he has postponed the examination to a future day.

33. In December 1863 your petitioner resumed his duties and called upon the Collector from time to time and asked him personally as well as by letters to examine this case which he often promised to do, but failed.

34. Finally, your petitioner again fell sick and left the District of Salem on sick leave on the 12th April 1864.

35. After your petitioner's arrival at Bangalore he addressed, the letter marked I, dated 26th April 1864, to the Collector requesting him to hold an investigation on behalf of Government and pass a decision according to Justice, Law, and Equity.

36. In the said letter, your petitioner brought to the notice of the Collector especially the conduct of Ramasawmy Iyer, Tahsildar of Salem who has recently encroached on a vacant spot near the Jail, which ground was occupied by the guards of the Jail for the purpose of guarding the convicts in the Jail, because as an Officer of Government he refused to give it up with the other encroachers. He had the boldness to tell your petitioner when he left the District, that though he has recently encroached upon the land yet he will not give it up until he should see the result of the Collector's investigation on other encroachers, and that he will desire the Collector to send this case to the District Moonsiff's Panchayet, under Clauses 7 and 8, Section 4, Regulation XII of 1816.

37. This allegation of the Tahsildar in which your petitioner believes he is supported by other claimants also cannot stand in Law, when the Honorable the Governor in Council will be pleased to turn over to subsequent Regulations enacted on this point, i. e., Clauses 1 and 2, Section 15, Regulation V of 1822 read in connection with Section 20, Regulation II of 1802, wherein it is ultimately enacted that the Collector cannot refer the parties to the District Moonsiff's Panchayet, provided both parties agree in writing to that mode of settlement. Therefore, the only mode your petitioner submits is laid open to the Collector was by proceeding in investigating the matter and summarily disposing of the case under Regulation V and VII of 1816.

38. Your petitioner begs the Government will particularly order an inquiry into this

• The Tahsildar of Salem.

Officer's conduct and encroachments with the statements he made to petitioner, who begs that due notice be given your petitioner to be present during the time of the investigation for the slip of land he (the Tahsildar) has encroached upon.

39. In reply to your petitioner's letter, the Collector undertook to write a reply (Vide original letter marked J, dated 2nd May 1864) in defence of the encroachers without first ascertaining from them how they entered into Government ground and built houses thereon. Further, the Collector in the above said letter finally refused to inquire into the matter, consequently he, your petitioner, was obliged to put in a re-joinder, refuting all the untenable and unreasonable arguments (letter marked K) produced by the Collector, and which your petitioner begs the Governor in Council may peruse.

40. There are 11 or 12 fraudulent encroachers on the Government ground your petitioner purchased. These chiefly rest their claim on their long fraudulent possession, and they cannot show the original cause and title upon which they or their immediate predecessors first entered and built houses, &c., on the ground which Government has once purchased through Colonel McLeod and has deducted the Teervah from Mr. Fischer the Muttadar's Peishcush in 1818. This their long possession stand in Law, because the Law of Limitation as laid down in Section 10, Act XIV of 1859, states that "in suits in which the cause of action shall be deemed to have first arisen at the time of which such fraud shall have been first known by the party wronged." The party wronged in this case is your petitioner and the Government, and that your petitioner brought the fraudulent possession of the individuals to the notice of the Committee on the 29th June 1863 and 13th August 1863, respectively. Hence these are the dates of the cause of action on the ground in dispute and not their alleged long possession.

41. Your petitioner in summing up this case begs respectfully to state that as the Collector, Civil Judge, and Engineer, as Members of the Committee and Local Officers of Government after having sold the land in dispute; namely 1 Acre 2 Goontas and 9 Annas, and obtaining the due consideration thereof, namely Rupees 1330, refuse now to put the equivalent in your petitioner's possession, and decline to hold the inquiry prayed for by him, nor have they given him a Title Deed for the land sold to him for building purposes, and instead of doing so, from some cause or other have also delayed above a year not only to institute an investigation but have apparently closed the door of Justice, Equity, and Law against him. Therefore your petitioner begs the Governor in Council after being satisfied with all the documentary evidence† produced in this case regarding his claim to

† Vide Section X, XI, XII, Act II of 1855, as bona fide evidence.

the land in dispute measuring 1 Acre 2 Goontas encroachers, punish the said Tahsildar, according to law, and put your petitioner's possession.

42. The Committee appointed by Government for it as Agents of Government according to the conditions laid Committee themselves. Just as any other private individuals will sell and after having sold the above specified Lot No. 1 outright, and received its consideration in money, viz., Rupees 1330, they have subsequently failed to put the equivalent in land, viz., 1 Acre 2 Goontas and 9 Annas in your petitioner's possession, notwithstanding all his entreaties to them.

43. The whole of the above circumstances were brought to the notice of the Revenue Board, whereupon the Revenue Board after duly considering your petitioner's claim, made the following endorsement (marked P, dated 15th July 1864). "The land herein referred to having been disposed of by a Committee formed under the Government in the Judicial Department, the Board of Revenue have no jurisdiction in the matter." Therefore your petitioner is now constrained to lay the whole case before Government as stated in this petition. Your petitioner considers that Government held all the grounds as owners in the same way as private persons hold ground, and that as such they have a right to eject persons who hold no Puttahs for the ground they have respectively entered into and taken fraudulent possession of without the knowledge of Government and of their respective local Officers. Therefore Government has a right to eject them as mere tenants at will. As your petitioner was long in the Judicial and Revenue Departments and disposed of such claims in his public capacity, he therefore considers that Government alone are the sole private proprietor and the Zemindar of that land in lieu of Mr. Fischer. They alone have the right of ejection—Vide Stoke's Report of cases decided by the High Court, Volume I, page 109, Special Appeal of 1862. For which act of justice and favor, your petitioner will forever pray.

(Signed) W. BOALTH.

Referred to the Collector of Salem.
FORT SAINT GEORGE,
9th September 1864.

J. D. SIM,
Secretary to Government.

TO THE HONORABLE THE GOVERNOR IN COUNCIL

Fort Saint George.

The humble Supplemental Petition of Mr.
W. BOALTH, Deputy Collector of Madras,
on sick leave at Bangalore.

HUMBLY SHEWETH,

In continuation of the Petition forwarded to Government in August last, your Petitioner now respectfully solicits permission to add the following subjects which he had omitted to have done in his former petition, all as to explain some new encroachments made on the ground in question subsequently to your petitioner leaving Salem for Bangalore.

2. That a small slip of ground adjoining the east wall of the Jail building was unoccupied by all the fraudulent encroachers before your petitioner left Salem, except the Tahsildar of Salem, Ramasawmy Aiyer, who had built a thatched horse-stable at the entrance of this slip of ground. This ground was all along occupied from the time that the Jail was built by the Jail sentries. The Tahsildar with a view to occupy the whole of this piece, first built the stable opposite his Taluq Cutcherry and eventually to take possession of the whole spot. Since my purchase, and my leaving the station, I learn that as I was agitating the question of my right

fraudulent encroachers encroachments on the Government ground also individually to the land in your petitioner's Civil Court, and others. This slip of land then free from any encroachments but that of the Tahsildar. The fact of this slip of land being used as a sentry ground all along until encroached by the Tahsildar, &c., could be proved by individual witnesses, noted in the margin. While so, the Collector and Judge not having taken immediate notice for these 18 months, notwithstanding your petitioner's frequent complaints on the matter of the encroachments of the Tahsildar. I am now informed that he intends to build a substantial building on this ground as well as on another spot adjacent to it which he has also encroached, and with this view he gathers bricks and other materials for the purpose of raising a substantial building thereon, which your petitioner now begs that the Tahsildar, &c., might be immediately prevented from building until the Government and your petitioner's claim on those lands be finally settled.

Paul Pillai, Esq., late Sub-Judge of Salem in charge of the Jail when the convicts were there. Paul Pillai, Sheristadar of the Collector's Office, Mr. R. Martin, Head Clerk, Collector's Office, Mr. Anderson, Pensioned Accountant, Manual Senior and Junior, Mr. Connar, Head of the Principal Suder Ameen's Court, present Nazers of the Principal Suder Ameen's Court.

4. The alledged Thany pandal of the Tahsildar is the identical spot in which Colonel McLeod first built a small bungalow, and which subsequently was converted into Taluq and Chankay Cutcheries. In course of time the building being dilapidated your petitioner understands that Mr. Dykes, when Sub-Collector of Salem, without the permission of Government sold only the decayed building by Public auction, and left the ground lie waste until Sir Charles Trevelyan visited Salem. The then Sub-Collector Mr. Smith finding this place being made a nuisance of by the Natives, with Public Funds ordered that a mud wall be raised on the two sides of the said ground facing the streets. This fact can be proved by Paul Pillai the Serishtadar, Mr. Anderson, Mr. Smith, the late Sub-Collector and others.

Remembered that the Tahsildar, Ramaswamy Aiyer, being an old Government was once a Gomastah and Javabneviss under the Collector, and gradually rose to the rank of Serishtadar in the same District when Sir Charles Trevelyan visited Salem, therefore he must be aware that this ground belongs to Government, but by false pretensions of ignorance and other stratagem has succeeded in taking possession of the above said two spots, one of which is his stable, and the other he formed Thany pandal and his private refreshment room, both these spots being situated opposite the Taluq Cutcherry.

Your petitioner further begs to state, that he is able to prove that the whole of the encroached lands, including that of the Tahsildar, were not done in the year, but from 1848; even in 1864 the encroachments were made by others, so this fact of their present encroachments, as well as their former, could further be proved by public documentary evidences.

7. While your petitioner was at Salem a Vakeel came to your petitioner, and stated that he wished to purchase the houses of the encroachers, and wish to know whether your petitioner has relinquished his claims, when your

1865

petitioner told him claims are under
He stated in reply that in
prepared to give compensation for the land encroached
replied that he had purchased the land in question, and that he shall
compensation but the land he had purchased, and
sation does not apply to this case, because compen
are taken by Government for public purposes, such
and when private individuals have fraudulently
property, (as in this case your petitioner believes that
to give compensation, and that they have sent the above said Vakeel to know your
petitioner's mind), compensation should not be enforced on you
Government, but Government should order the encroachers to make over
in dispute to your petitioner as the sole proprietor.

8. Under the above circumstances, your petitioner requests that Government
will be so good as to order an investigation on the above said encroachments, and
that the Tahsildar and other encroachers be punished according to the merits
their conduct.

For which act of justice and favor your petitioner will ever pray.

(Signed) W. BOALTH.

No. 2789 of 1864.

Referred to the Collector of Salem, with reference to Docket of the 9th Sep-
tember.

FORT SAINT GEORGE,
8th November 1864.

(By Order.)

(Signed) C. G. WALKER,
Under Secretary to Government.

No. 557.

OFFICIAL MEMORANDUM.

The Chief Secretary to Government has the honor to request that the report
regarding Mr. Boalth's complaint, that a piece of land in Salem sold to him on behalf
of Government has not been put in his possession, called for under date the 9th
September last, may be furnished with the least practicable delay.

FORT SAINT GEORGE,
29th October 1864.

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

From the Honorable D. ARBUTHNOTT, Collector of Salem, to the Honorable A.
J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George,
dated Salem, 5th November 1864, No. 44.

With reference to your Official Memorandum, under date the 29th ultimo,
No. 557, Judicial Department, I have the honor to inform you that the land, said
by Mr. Boalth to be encroached upon, is owned by several parties one of whom is
residing at Usur. All those at Salem have been examined, and the Sub-Collector
has been requested to take a Statement from the man at Usur. Some of the houses
situated upon the land were subjects of litigation in Civil Courts in this District,
and I have called for the records of these cases. Until the investigation into the
matter is completed, I am unable to submit the report called for. I will,
however, be unnecessarily lost in completing the inquiry.

5th June 1865.

More ; to Honorable A. J. ARBUTHNOT,
Government. Saint George; dated Bangalore,

14 1864.

I respectfully beg to state that I have in August last, addressed a petition to
the Government in Council relative to my claim on a portion of land sold me by an
Engineer, who, after repeated promises have ultimately declined putting
said land, and have also refused against Law, Equity and
Practise to enquire into the matter of the encroachment made by fraudulent indi-
viduals on Government land.

2. These individuals, among whom is one Aranachellum Acharry, with the
Tahsildar of Salem is the chief of them. The former being an influential man, aids
and assists the whole of the other encroachers, by encouraging them not only
to retain the unlawful encroachment of the said Government land, but also to
extend their encroachments, which they have done since my removal from Salem
to Bangalore on sick leave.

3. This latter subject also I have brought to the notice of Government by a
subsequent supplemental petition. And to the above said petitions, I have re-
ceived no reply as yet: the first of which was enclosed in a letter to your address.

4. Wherefore, in reminding you now of the same, I beg you will be so good
as to bring my case to a close, obtaining for me the final Order of Government to
my petitions, because I have, according to petition rules, already received whether
right or wrong, the final Orders of the Collector, Civil Judge, and Board of
Revenue, and as Government alone is now the party concerned, I beg they
will be kindly pleased to pass a final Order on the subject of my petition according
to justice and right, to enable me to carry out my plans which have now been
kept in abeyance above a year and six months from the date of sale.

No. 25. From the Honorable D. ARBUTHNOTT, Collector of Salem; to the
Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort
Saint George, dated Salem, 26th December 1864, No. 59.

I have the honor to report on a petition No. 1789, presented to Government
by Mr. W. Boalth, Deputy Collector of Madura and now on sick leave.

2. By an Order of Government, dated 5th January 1863, No. 6, Judicial De-
partment, the land occupied by the old Jail and Court Houses were sold on 13th
April 1863.

3. The ground on which these buildings stand were divided into certain lots
by Captain Gahagan, and a plan made in his office of the ground. The buildings
were however not inserted in this plan.

4. To correct this omission, I have had a plan of the ground and buildings
made by the Survey Department under the immediate superintendence of Lieute-
nant Clöte. I have carefully compared this plan with the buildings and ground
and find it correct in every particular.

5. Mr. W. Boalth was the purchaser of the lot marked No. 1 "Old Jail" in
Captain Gahagan's plan. This plan is unfortunately incorrect, and includes '60
of an acre (marked K. J. M. N. in Lieutenant Clöte's plan) which is occupied by
private houses.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following

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Collector of Salem ——— 5th November 1844

Mr. W. Bealthe Bangalore ——— 11 ———

Collector of Salem ——— 26 December 1859

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PROCEEDINGS OF GOVERNMENT.

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Dated 5 June 1865

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