M.R.O. 1—89,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 563 Press / Mis.

129-130

Dated 16 . 4. ~~19~~ 866

3/3

Not to be folded or roughly handled

No. 129. Read the following letter from Mr. W. BOALTH, Pensioned Deputy Collector, Bangalore, to the Chief Secretary to Government, Fort Saint George; dated Bangalore, 13th March 1866.

I most respectfully beg to forward my petition, for review of judgment, to His Excellency the Honorable the Governor in Council, in the matter of the Jail building and ground at Salem, which I beg you will be so good as to lay before Government, and obtain their final order thereon.

To His Excellency the Honorable the Governor in Council,

&c., &c., &c.,

Fort Saint George, Madras.

The humble Petition of Mr. WILLIAM BOALTH, Pensioned Deputy Collector, residing at Bangalore,

Humbly Sheweth,

1. That your petitioner respectfuly begs to submit his petition for review of judgment, in reference to Petition Rules published in the Fort Saint George Gazette, dated 16th May 1837 The subject matter now set forth embraces new and important facts relative to the issue of your petitioner's claim on the Jail building and ground, purchased by him at Salem.

2. Your petitioner will now undertake to prove by the Records in the Government Office, and by the Records and ground plan in the Revenue Board Office, relative to the extent of the Jail ground and building sold to your petitioner, and that the Salem Collector's present report is erroneous.

3. The Collector is in error, because in his present report to Government in December 1864, he has taken the measurement of the Court House and ground attached to it, and applied it to those of the Jail ground, for the Jail building and ground are distinct from the Court House grounds and their measurement. Thus, applying the one to the other had caused a serious error, which is detrimental to your petitioner's claim.

4. If Government were to refer to the Honorable Mr. Pycroft's letter, dated 19th October 1848, to Government, when Secretary to the Board of Revenue, paragraphs 2 and 17, in the statement annexed to the 2nd paragraph relative to the measurement of the land occupied by the Jail, which is stated to be 1 acre, 26 guntas and 14 annas, for which tax was paid to Mr. Fischer, for 33 years, they will find that it is the identical Jail ground which was sold by Order of Government, as per letters, dated 26th April 1862, No. 663, and 5th January 1863, No. 6, and which your Petitioner, in good faith on the said orders, purchased, in 1863, for Rupees 1330-0-0. This land goes under the name of Cotaymodoo Perumpoke, or Jail ground,—vide Board's letter, paragraph 2, and statement attached thereto.

5. The first claim of Mr. Fischer on the Assessment of Jail ground, measuring 1 acre, 26 guntas, and 14 annas, was finally settled by Government in September 1839,—vide paragraph 17 of the above said letter. While so, the Collector in his present Report to Government, dated 26th December 1864, No. 59, has taken the measurement or Chitta of the Court House made in 1841, and has erroneously applied it to the measurement of the Jail building and ground which had already been finally settled in 1839.

6. The Jail ground, or Cotaymodoo Perumpoke, is a distinct ground from Nuthum Punja, or Court House ground,—vide Board's letter, statement in paragraph 2. Mr. Fischer, being dissatisfied with the settlement made in 1839 of the Court House ground, made a further claim on the Court House ground in 1841, which was referred to the then Collector, who, having examined his claim by measuring the Court House ground, and finding that his further claim on 2 acres, 32 guntas, and 4 annas, was correct, and which claim was admitted by the Board in paragraph 3 of their above said letter.

7. By the above explanation your Petitioner believes he has proved the error into which the Collector has fallen by applying the Court House measurement to that of the Jail.

8. Your petitioner now begs to explain the chitta, and compare it with the above said Board's letter, and with Lieutenant Cloete's plan.

Explanation of the chitta or the measurement of the Court House and compound, &c.

(It must be observed that the chitta always have in view the Court House as the centre of the limits).

	Acres.	Gts.	Ans.
General Limits.—"Physal land bounded on the West by a passage near "the Betel garden, and the garden of greens of Palany Gounden Marimoot-"too; on the North by the avenues on the High road; on the East by the house "of Mookumbari, the backyard of Moochee Rengien and others, and the "Main Street; and on the South by the compound of Messrs. Anfreres and "Hargrave, and stand registered in the name of Mr. Macleod.".....	4	33	7

(This can be proved by the records in the Revenue Board's Office).

Within the above general limits the following are included :—

Nos.	Names of lands.	Square contents of Salaguntas.	Assessment. RS. A. P.	Acres.	Gts.	Ans.
131	Kundachari Tottum...	$\frac{1}{8}$	1 4 2	0	19	2
132	Do. do. ...	$\frac{15}{64}$	5 4 1	1	22	1
133	Vadugam Tottum. ...	$\frac{17}{64}$	9 5 0	2	32	4
		$1\frac{1}{64}$	15 13 3	4	33	7

4 33 7

Deduct.—Deduct from the above, Acres 4, Goontas 33, Annas 7, land let out for cultivation for the "Current Fusli," (here it must be observed that Lieutenant Cloete's plan does not show the cultivated lands which lie West to the limits of the Court House) "1250, year Sharvari, and bounded on the South "by the wall of the distillery; on the North by a passage near the betel garden, "and the garden of greens of Palany Gounden Marimoottoo, and by the house "of the Poojaree of Marryemmen Temple; and on the East by the compound of "Mr. Anfreres' Bungalow and by a hedge of a cultivated field close to the land "on which the Court House stands."

The above are the limits of the cultivated land which the chitta divides into three plots as follows :—

	East and West.	North and South.	Square contents on Salaguntas.
1 Plot South to the wall of the Distillery.....	$2\frac{1}{8}$	2	$4\frac{1}{4}$
1 Do. North to the above.....	$1\frac{5}{8}$	$1\frac{1}{4}$	$3\frac{3}{16}$
1 Do. do.	1	$1\frac{5}{16}$	$1\frac{19}{64}$
Total Plots 3.			$8\frac{5}{8}$ or proper Guntas $\frac{17}{32}$.

"Particulars of the fields or slips into which the above land is divided."

Nos.		Plots.	Square contents in Salaguntas.	Extent. Acres.	Gts.	Ans.	Assessment. RS.	A.	P.
131	Kundachari Tottum.	1st.	$\frac{1}{8}$	0	19	2	1	4	2
132	Do. do.	2nd.	$\frac{15}{64}$	0	31	1	2	10	1
133	Vadugam do.	3rd.	$\frac{17}{64}$	0	31	0	2	9	3
	Total.....	..	$\frac{11}{32}$	2	1	3	6	7	9

2 1 3

Remainder... 2 32 4

"Remaining land occupied by the Court House with their compounds."

Square contents in Salaguntas.	Extent. Acres.	Gnts.	Ans.	Assessment. RS.	A.	P.
$\frac{45}{64}$	2	32	4	9	5	9

(This extent of 2 Acres, 32 Guntas, 4 Annas, will agree with the Board's letter, paragraph 3, which states that this extent is the excess of land claimed by Mr. Fischer in 1841, above the settlement made in 1839, therefore the Government will observe that the extent of land belonging to the Jail is not included in the chitta).

"Particulars of the Court House compound."

"The above extent of land, that is to say 2.32-4, is bounded on the West "by the hedge of the cultivated field above alluded to; on the North by the "avenues of the high road; on the East, by the house of Mookumbari, back-"yard of Moochee Rengien and others, and the main street opposite to the "house of Arnachellum Aucharry; and on the South by the compound of "Mr. Anfreres' bungalow."

	East and West.	North and South.	Square contents in Salaguntas.
(*First Plot.*) "Running at an angle north to the Arasamarum wall." "In this a horse-stable is newly constructed."	$\frac{1}{8}$	$\frac{1}{8}$	$\frac{9}{64}$
(*Second Plot.*) East to the above..... "On this stands 1 Court House, 1 Sudder Ameen's Court."	3	1	3
(*Third Plot.*) "South to the above." ..... "North $3\frac{1}{8}$." "South $2\frac{9}{16}$."	$2\frac{19}{64}$	$1\frac{3}{4}$	$4\frac{57}{64}$
(*Fourth Plot.*) "Land included by Arnachellum Aucharry according to the orders of Mr. ——, late Judge."	$\frac{11}{64}$	$\frac{11}{16}$	$\frac{1}{2}$

"The above land is bounded on the West by the Sudder Ameen's Court; "on the East by the High road; on the South by the compound of Mr. "Anfreres' bungalow; and on the North by the house of Moochee Rengien,"

	Acres.	Gnts.	Ans.
Total plots 4 (2	32	4)	
Add to the above cultivated land $\frac{8}{16}$, or proper Guntas $\frac{17}{32}$.....	2	1	3
Total...	4	33	7

9. The whole of the ground belonging to the Jail building on which the encroached houses from Nos. 1, 3, 4, 5, 6, 7, 8. (Your petitioner has colored them with blue, and the three encroached houses on the Court House land Nos. 9, 10 and 11, he has marked green; No. 2, on which Mr. Macleod's bungalow stood, and now enclosed by the Salem Tahsildar, your petitioner has marked red. The Jail building is also marked blue; but east to the Jail, a slip of land, which Lieutenant Cloete's plan shows to be free from any building, and where the sentry for-

merly stood, your petitioner has marked brown.) The whole extent of ground on which all these houses stand together with the old Jail building, and the slip of land, your petitioner purchased.

10. Your petitioner had illustrated copy of Lieutenant Cloete's plan with different colors, and written the limits as mentioned in the chitta therein, with a view of better understanding it, when comparing it with the chitta and the Collector's Report.

11. In paragraph 7 of the Collector's letter to Government, he asserts "*that Mr. Cherry, "Captain Gahagan, or himself, have no intention whatever to sell the ground claimed by Mr. "Boalth.*" This is certainly inconsistent with the previous orders of Government on the point in question, dated 26th April 1862, No. 663, and 5th January 1863, No. 6. The former of these two orders approves of the proposals of the then Collector Mr. Brett, as given in paragraphs 2, 3, and 6 of his letter. The 2nd paragraph of Mr. Brett's letter states as follows: "I would re- "commend 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 "sufficiently large for superior Native houses or for houses suitable for East Indians or Euro- "peans."

12. The latter Order of Government alluded to by your petitioner confirms the tenor of the former Order, and authorizes the sale of two of the old judicial buildings at Salem, with a moderate extent of ground attached for private houses. The Collector's present construction of the Committee's intention not to sell the ground in dispute, is opposed to the orders quoted above.

13. Captain Gahagan's plan being essentially correct, your petitioner avers that no discretionary power was accorded to the Members of the Committee beyond selling the buildings with the extent of ground allotted to each.

14. Unfortunately Captain Gahagan is dead; but his plan will speak for him and for itself. This plan shows the great pains he had personally taken in dividing the lots and marking the different angles of area contained in lot No. 1, according to the orders of Government above referred to, not losing sight also of Mr. Maltby's measurement, nor of Mr. Brett's letter. If Government will be so good as to refer to it, they will find that every part of it is correct, and that the Engineer Officer, Captain Gahagan, had the intention, in keeping with the views of the Committee at that time, to sell Government ground along with the Jail building, without reference to the private buildings which had been unauthorizedly built thereon, because the land belonged to Government.*

* Further, at the foot of Captain Gahagan's plan, before his signature, the following words are inserted—
"*N. B.—These lots have been all marked out by the District Engineer.*"
T. C. Gahagan, Captain,
District Engineer"
thus proving the Engineer's plan to be correct.

15. The Collector further states, "*that Mr. Cherry, Captain Gahagan, or myself, had no "intention to sell anything but the old Jail, and that there was no intention whatever to sell the ground marked* K. I. M. N., *on which stands eleven private houses.*" If Government will be pleased to refer to the letters of Mr. Cherry, marked C. D., written to your petitioner subsequent to the sale of the Jail ground, they will find that the statement now made by the Collector is perfectly inconsistent with the views at the time of sale held by the Committee comprising the said three gentlemen.

16. The Collector further states in his Report, paragraph 7, "*that Mr. Boalth's statement "that he considered he was buying these houses as part of the old Jail, is utterly incredible.*" This statement of the Collector is perfectly erroneous. Two of your Petitioner's petitions on the subject of his claim are now before Government; in neither of those petitions, nor even in this do your Petitioner claim or state that he purchased the houses as alleged by the Collector; but your Petitioner did, and do still, claim and maintain that he purchased the ground only on which these houses are situated, because this ground belonged to Government up to the day of sale, and as such they were sold to, and bought by, your Petitioner, in good faith, under the conditions of sale published in the Salem Gazette, marked B, and as shown in Captain Gahagan's plan,

marked *A*. All the documentary evidences adduced in this case prove beyond a shadow of doubt the one fact, namely, that the ground belonging to Government on the east side of the Jail, together with the old Jail building, as shown in Captain Gahagan's plan, which will correspond with Lieutenant Cloete's plan in its general integrity, including the ground on which the encroached houses from 1 to 11 stand.

17. The Collector also states in paragraph 7, "that neither Mr. Boalth or any one else "had the slightest idea at the time of sale that these houses or the ground they stand on formed "part of the Jail" This statement is quite incorrect with the facts of the case as they stood at the time of sale. Your petitioner, as Deputy Collector of Salem, had the opportunity then to read the whole of the papers relative to the sale of judicial buildings, and knowing that the building facing the Tahsildar's Cutcherry was to be sold under the orders of Government, with a suitable extent of ground attached to it, coupled with Captain Gahagan's plan, which Mr. Cherry, who was selling the land, put into your petitioner's hand, your petitioner was quite convinced that he was purchasing both the old Jail and the extent of ground specified in the margin of the plan, without reference to the houses that stood thereon. Lot No. 2, as shown in Captain Gahagan's plan, was put up and purchased by Mr. Fischer, in which no buildings were shown. Could the Collector now say that Mr. Fischer purchased only the Court House, and not the compound, or any other buildings which stand thereon?

18. The Collector in the 8th paragraph of his letter has further erred by mixing land belonging to the Jail ground, which was settled in 1839, with the measurement of the Court House land made in 1841, The Collector in the above paragraph alleges, "*that Mr. "Fischer claimed assessment in* 1841, *on the whole ground occupied by the old Jail and Court, "Houses.*" If Government were to refer to the above said Board's letter, in paragraph 17, they will find that the Jail ground dispute were finally settled in 1839; that in 1841 Mr. Fischer claimed assessment for the Court House ground, and not for the Jail ground, as alleged by the Collector. This will be further corroborated by the heading of the very chitta made in 1841, of the Court House ground only. In the whole of the chitta which the Collector alludes to, not a word of the old Jail or its measurement are mentioned, which, however, leaves it as a settled question in 1839. The Collector further states that in the year 1841, "Mr. F. N. Maltby measured the land, and in the Physal chitta the boundaries are given as fol- "lows: 'bounded on the East by the house of Mookumbari (No. 11), (No. 1 in Mr. Cloete's plan), "backyard of Moochee Rengien and others, and the main street opposite the house of Arnachel- "lum Aucharry.'"

The above explanation of the Collector, if compared with the actual position of the house of Mookumbari, Moochee Rengien, and Arnachellum's workshop, Nos. 9, 10, 11 in Lieutenant Cloete's plan, which are situated according to the chitta next to each other, three houses stand positively on the Court House ground, which your petitioner has marked green, and the main street opposite to the house of Arnachellum Aucharry. This latter house Lieutenant Cloete has not shown in his plan, which your petitioner has marked yellow. The real position, therefore, of Mookumbari's house is not "*No.* 1 (nor No. 11) *in Lieutenant Cloete's plan*", as alleged by the Collector, but stands East to the Court House building in No. 9 and that of Moochee Rengien No. 10, and Arnachellum's workshop No. 11, in Lieutenant Cloetes plan, and the chitta will correspond with your petitioner's explanation; but the Collector's Report will not. The Collector in placing Mookumbari's house in No. 1, in Lieutenant Cloete's plan contradicts the chitta, which he confidently quotes, because if No. 1 is Mookumbari's house according to the Collector's allegation, then No. 2, marked red, must be Moochee Rengien's house, and the main street, instead of being opposite the house of Arnachellum Aucharry as shown in the chitta, the Collector's Report has fixed it in the North street, thus contradicting the chitta and matter of facts, which has mis-guided Government, and therefore the matter calls for a review of judgment.

19. Further, the statement made by the Collector in the 9th paragraph of his letter that "*there was probably in former days land attached to Jail on the west side, not on the east as "claimed by Mr. Boalth.*" This is directly opposed to the depositions taken by the Collector,

and to the matter of facts shown in Lieutenant Cloete's plan, which proves that there is a slip of land next to the east side of the Jail wall, which had been used by the Jail guards, and which your petitioner affirmed before in his supplemental petition, and even does now declare that it has been unauthorizedly taken possession of by the Tahsildar of Salem Taluq, who built his horse-stable thereon. This building has not been shown in Lieutenant Cloete's plan, nor has the Collector ever alluded to it in the whole of his Report. Your petitioner leaves it to the Government to decide why such a glaring omission of facts, so important to your petitioner's cause, was overlooked by the Collector and Lieutenant Cloete. Your petitioner alleges this as it is a new matter and calls for a review of judgment.

20. The present Collector's Sheristadar, Paul Pillay, in his deposition before the Collector, states, "that I see the plan made by Lieutenant Cloete of the ground on which the old Jail "and judicial buildings stand. There formerly stood an old dilapidated building opposite the "corner marked G. It was removed by Mr. Dykes' order, and the materials sold on account of "Government, and this was accordingly done about the year 1857. Afterwards as this spot "became a rubbish heap, Mr. Smith had a wall put round it, to prevent filth being put there. "The wall was built out of funds raised in the town for cleaning it before Sir Charles Tre-"volyan's visit in 1859." This statement was corroborated by Mr. Martin, the Head Clerk of the Collector's office. While so, the Collector has included this as one of the private houses standing for 40 years and upwards. This spot also the Tahsildar of Salem has taken possession.

21. There are material contradictions in the depositions of Arnachellum Aucharry, Moochee Rengien, and Moochee Kooppen, which your petitioner will but slightly note as follows:—Arnachellum Aucharry in his deposition states that, "the land on which my workshop "stands, No. 11, does not belong to the compound of the old Court Houses. On this land Moochee "Rengien had a house of his own, which I purchased "from him for Rupees 100 and "odd about 36 or 37 years ago. I removed this building and constructed my work-"shop. I had the sale Bond of the house, but it was destroyed when my house was "burnt down by fire." This allegation will be found utterly incredible when compared with the chitta, because the chitta states, when measuring the 4th plot (of the Court House ground)—"The land included by Arnachellum Auchary according to the orders of Mr.———— "late Judge"—"The above land is bounded on the West by the Sudder Ameen's Court, on the East "by the High road, on the South by the Compound of Mr. Anfreres' bungalow, and on the North "by Moochee Rengien." Further, when Moochee Rengien was examined by the Sub-Collector at Oossoor on this matter, he admitted that he sold a house of his to Arnachellum Aucharry about 40 years ago, &c., and that he heard from Chinniah Moodelly, Curnum of Salem, that the land under dispute belongs to the old Court Houses. Thus Arnachellum's statement, that the land does not belongs to the compound of the old Court Houses, falls to the ground. Moochee Kooppen, in his deposition, alleges that the house he lives in was mortgaged to his brother Goorroovien by Moochee Rengien, &c., and that, as the latter had not redeemed it, the house has become theirs. Moochee Rengien, in his deposition before Mr. Thomas, contradicts the above statement, and alleges that the spot of ground which he mortgaged to Kooppen was redeemed by him and sold to Arnachellum Aucharry, and therefore he, Moochee Rengien, does not know how that the land mortgaged had become absolute to Kooppen. This difference the Collector took no notice of. Vencatachellum Pillay, in his deposition, alleges that he saw in Captain Gahagan's plan a strip of land on the east side of the ground marked "Jail" and that he supposed that this was the ground where the Sentry used to stand. If Government will be so good as to compare the words of this witness with the plan of Captain Gahagan itself, they will find that the narrow strip of land alluded to is not at all shown in Captain Gahagan's plan. How the Collector could have submitted the opinion of this individual as evidence against the opinion of that of your Petitioner, at the time of sale, is left for the Government to decide.

The Court House land and the Jail land were purchased by Colonel Macleod from the Ryots, I believe according to Mr. Malthys Report in Fusli 1206 and 1208 (year 1796 and 1798) Puttahs from that time to the year 1811 as shown in the chitta, were in the name of Colonel Macleod This will prove that Moochee Rengien, Arnachellum Aucharry, and others had no proprietary right on the grounds on which their houses stand.

22. Thus, your petitioner has shown that the Collector's major premises contained in his report have been based on erroneous views; consequently, the conclusionis also erroneous. The Government, having adopted the Collector's views, have also been led into error on passing their Order, dated 5th June 1865, No. 800, on your petitioner's former petition.

23. After the receipt of the above Government Order, your petitioner wrote to the Revenue Board to grant him copies on stamp paper of Mr. Maltby's Report, and plans submitted with that Report and other documents, &c., with a view to bring the subject more forcibly before Government. The Board have refused to grant those copies, on the grounds that your petitioner should first ask Government order, and get Government permission to grant him the copies.

24. Your petitioner, therefore, most respectfully now prays for a review of judgment on all the foregoing grounds. In the event of Government not being inclined to review this petition, and to reverse their last order on the Collector's Report, your petitioner most humbly requests that copies of all the correspondence and the plans in the Board's office, relative to this matter, as well as the correspondence in the Salem Collector's office, and copies of Jumabundy Accounts, regarding the Jail and the Court House, be ordered to be granted to your petitioner on stamp paper, to enable him to seek justice and redress in the Civil Courts of Salem, and also in the High Court, for which he believes, according to law, he has a right, as the Executive Members of Government or the Committee have not rendered your petitioner justice in this matter.

25. Your petitioner believes that the Collector and Mr. Cherry were the Agents of Government in selling the property of Government, as any other private Agents would have been to their Principal; the old Jail and the Court House being the property of Government, and they having held it as any other private Individual would hold, and paid kist to the Mootoodar, Mr. Fischer, as such, they having sold their proprietary right and title on the old Jail and ground attached to it through their Agents to your petitioner, and which he purchased in good faith, having done so, and paid good consideration, namely, Rupees 1330; but the Agents or Members of the Committee, having secured the money, do now object to make over the equivalent in land Acres 1, Goontas 2, Annas 9, to your petitioner, which to this day belongs to Government, but fraudulently encroached upon by eleven Natives, and the Tahsildar of Salem. He believes he has therefore an action at law in the matter.

For which act of Justice your petitioner, as in duty bound, shall ever pray.

(Signed) W. BOALTH.

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No. 130. ORDER THEREON, 16th April 1866, No. 563.

The Governor in Council sees no reason to depart from the Order of Government, dated 5th June last, No. 800.

2. The Government decline to grant copies of the correspondence applied for by Mr. Boalth.

(True Extract).

Chief Secretary.

To Mr. W. Boalth, with five enclosures.

Exd. J. H. Burns.

16 April 1866 No 563.

The Governor in Council sees no reason to depart from the order of Government dated 6th June last No 800.

2 The Government decline to grant copies of the correspondence applied for by Dr. Boalth.

To Dr. T. Boalth with 5 Enclosures } despd 24/4