

Legislative (1897) Department.

ORDINARY MS.

G.O., No. 59

DATED 31. 7. 97

INDEXED.

h/s

[Despatch Abstract.]

Recording Proceedings, Revenue Department,
ordering that a letter be despatched to the
Govt. of India regarding the memorial of the
Landholders' Association, Madras.

BACK PAPERS.

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

FURTHER PAPERS.

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

Government {1897} of Madras. REVENUE.

Recd. 22 July } 1897.
Regd. 22-7-

Enclosures

Spare copies 4

G.O., No. 508, 29th June 1897.

Order No. 59 d/31 July 1897
This Recorded.

JUNE

23/7

HC asked to
submit a copy
31/7

The Landholders' Association, Madras.

Ordering that a letter be despatched to the Government of India regarding the memorial
of —

Ref
Put up please
the two letters
Gos marked within
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GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—Endorsement of H. A. SIM, Esq., I.C.S., Acting Private Secretary to His Excellency the Governor, dated 6th February 1897.

ABSTRACT.—Transferring a petition, dated 5th February 1897, from the Rajah of Venkata-giri, President, Madras Landholders' Association, soliciting that the association's petition praying for legislation to regulate the succession to zemindaries may be forwarded to the Secretary of State for India.

READ—Memorial from the President of the Madras Landholders' Association, dated 3rd March 1897.

ABSTRACT.—Requesting that the accompanying appeal memorial of the association, praying for an enactment for the relief of encumbered estates, may be forwarded to the Government of India.

ORDER—No. 508, Revenue, dated 29th June 1897.

Miscellaneous.

In the memorial first read above, the Landholders' Association, Madras, appeals to the Secretary of State against the orders of the Government as then constituted contained in G.O., No. 606, dated 10th July 1893, and requests that a legislative enactment may be passed declaring that the ancient zemindaries and other large proprietary estates in this Presidency are impartible and inalienable. The present Government is not of the same opinion as the Government of 1893 and considers it necessary to discuss the subject at some length.

The modern zemindaries created by Regulation XXV of 1802 were formed by parcelling out certain districts into permanently settled estates which were put up to auction in 1802. Most of these estates had disappeared before 1809 and had been repurchased by Government. The owners of the surviving estates have never laid any claim to impartibility and the estates are admittedly subject to the ordinary law of inheritance. No reference is therefore made to them in the memorial which sets out the case of zemindaries and proprietary estates which were in existence prior to 1802. The circumstances under which the order of 1893 was passed will be briefly noticed.

2. Ancient zemindaries in the Madras Presidency are of two classes, viz., those which were originally—

- (a) military fiefs, and
- (b) properties which had become heritable in the hands of official *sanad* holders from Native Governments—farmers-general of revenue in fact.

Before the passing of Regulation XXV of 1802, the holders of the Military fiefs who are the real "ancient zemindars" had a heritable property in their estates which must have possessed the character of impartibility, as the necessity of their existence, depending as it did on the supply of troops and their armament, demanded that they should belong to one man and not be subject to the accidents of partition. The case of holders of assigned revenue was on a different footing. They were nothing more than farmers-general appointed by the ruling power. Owing to the incidents of their tenure, however, the character of impartibility was gradually introduced in imitation of the ancient military feudatories. It may be said therefore that ancient zemindaries were then impartible and inalienable.

3. Out of a total number of 849 permanently-settled estates covering an area of 27½ million acres, there are 135 estates of this description covering an area of 15½

million acres which, until some years ago, were believed to be held under the law of primogeniture and to be impartible. But

* 2 Madras 128.

† 13 Madras 406.

the decisions of the Privy Council in the * Nuzvid and † Devarakota cases have completely altered that *status*. The rule

of primogeniture and impartibility has been declared by the Privy Council not to attach necessarily to any estate but is only the result of family custom liable to be annulled with the mutual consent of the members of the family. The question whether an estate is governed by the law of primogeniture or the ordinary law of equal division is thus made to depend upon the facts of each case and the conduct of the parties during a long series of years, there being no certain criterion laid down to determine the point in any particular case without resort to protracted litigation. It was also believed by all interested in the matter that the holders for the time being of impartible estates had only a life interest in them; that they could not alienate or encumber the properties so as to have effect beyond their own life time; that acts and alienations so made if not made *bonâ fide* and if prejudicial to the family could be set aside; and that their powers were the same as those of a manager of a Hindu family holding property in co-parcenary under the ordinary law, with the exception that partition could not be claimed by the junior members of the family who were only entitled to maintenance out of the income of the estate. But this idea was held to be erroneous by the decision of the Privy Council in 10 Allahabad 272, in which it was ruled that the zemindar of an ancient and impartible estate is absolute owner and can dispose of it as he pleases, the property being impartible only in the sense that it is not divisible among the members of the family, unless inalienability depends on custom, which must be proved, or on the nature of the tenure and this decision has, to the dismay of all zemindars, been followed by the Madras High Court in the Kangundi case (13 Madras 197) and in the Pithapuram case (*vide* enclosure V to the memorial) in which the Madras High Court decided last year that the Rajah could alienate his estate or any part of it or bequeath it to any outsider even if he had a son. These changes in the law, or at all events, in what was believed to be the law by all the parties interested in the question in this Presidency has led to a great amount of litigation, the junior members in the case of several estates which had been supposed to be impartible having instituted suits for partition and alienations having been made and contested.

4. Apprehending that these changes and the uncertainty involved in the state of the law would lead to the rapid extinction of their estates and the decay of the influence and the importance of their families which it was the intention of the rule of primogeniture to conserve, the zemindars of the Presidency through their association submitted two memorials, dated 5th December 1890, and 8th March 1892, invoking the aid of the legislature to declare the ancient zemindaries impartible and inalienable. The then Government declined to comply with the request of the memorialists on the following grounds:—

That it was impossible to fix any date before which all zemindaries were impartible, and this must depend on family usage and local custom which can best be determined by the ordinary procedure of the civil courts; that a declaration of impartibility would involve the annihilation of the rights of co-parceners and ought not to be made on the *ex parte* application of a proprietor; that the Madras zemindars, as a class, had not done anything in the past to deserve to be regarded as possible promoters of any desirable social reform and that there were no clear indications on the part of the zemindars of the present day of any movement in that direction; that the past history of the Madras zemindars did not encourage the hope that agricultural interests would be in any way benefited by their maintenance and that though Sir Thomas Munro had contemplated legislation to the effect desired by the memorialists in 1821, he would not think it desirable if he were living now. These views were generally in accordance with the views held by Government as constituted in 1884.

5. Memorialists now appeal to the Secretary of State against the orders of this Government set forth above. The first nineteen paragraphs of their memorial contain a précis of the past correspondence on the subject, a statement of their case and the purport of the legal decisions bearing upon it. In the remaining paragraphs they criticise the views of Government contained in its order referred to above.

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6. With regard to the arguments against the declaration summarized in paragraph 4, it is observed that the question what zemindaries are partible or impartible might be quickly settled by a Commission, and that this would prevent the ruinous legislation which must attend on an examination of family usage and local custom in each case by the civil courts; that the rights of coparceners would be strengthened by a declaration of inalienability which would leave them entitled to a maintenance from the estate, whereas under the present law it may be alienated entirely to outsiders; that the zemindars are steadily improving; and that present circumstances give no ground for supposing that Sir Thomas Munro would alter his decision if he were living now.

7. Government, as at present constituted, considers that the contention of the memorialists is, in the main, well founded, and that they have made out a case for the intervention of Government. The apprehension of the memorialists that the unrestricted powers of alienation thus allowed to their class will lead to the rapid extinction of their estates and the decay of the influence and importance of their families seems well founded, for while in the case of ordinary ancestral property the power of alienation by the managing member is restricted only to his fractional share of the property, there is no such limit in the case of an impartible zemindari and, consequently, the dismemberment of impartible estates is likely to be brought about more quickly than the dismemberment of properties to which the ordinary rule of inheritance applies. This result could not have been contemplated, whatever theory is adopted in regard to the origin of the rule of primogeniture, *i.e.*, whether the object of the rule is taken to be the maintenance of the dignity and influence of official position, or the maintenance of the dignity and influence of certain ancient families, for to secure the object in view, the estate must be inalienable from the office in the one case and from the family in the other.

8. As pointed out by the Board in its Proceedings disposed of in the Government order quoted above, the impartible character of the ancient zemindaries had been regarded as a matter of course by the zemindars themselves, as testified to by their replies to Sir Thomas Munro in 1820—22, and has been admitted by the sovereign power, as evidenced by Bengal Regulation XI of 1793, which, however, for political reasons, declared partibility for the future. It has been recognized by the Privy Council in respect of certain of the estates which were in existence prior to 1802.

9. In these circumstances, Government does not consider it justifiable to withhold legislative sanction to what is in equity "an unassailable position." The present state of the law is so uncertain that the public have a clear right to have an authoritative statement of it on the part of the Legislature.

10. The policy of maintaining a native aristocracy of birth has already been decided on by the Government of India

* (1) Letter from the Government of India, Home Department, to the Government of Bengal, No. 3171, dated 11th December 1888.

(2) Letter from the Government of India, Legislative Department, to the Government of Bengal, No. 1430, dated 2nd September 1890.

(3) Secretary of State's despatch No. 42, dated 13th November 1890.

and the Secretary of State.* On political grounds no allegations have ever been made that zemindaries have been a source of weakness to Government in the past. On the contrary, they may, in the hands of an educated and advanced aristocracy, be a source of considerable strength in the future. There is, in this Presidency, a very strong body of educated opinion in favour of the retention of its old aristocracy. It is believed that they supply a useful link between Government and a people almost entirely agricultural; and, as education penetrates more and more, as it is rapidly doing, into their homes, the zemindar class is becoming more and more a political force. The uneducated masses of this Presidency have a great respect and reverence for what is old, for what their forefathers did and knew. When then they see their ancient land-marks swept away by the action of the laws as administered by the British Courts, they are astounded at and condemn a Government which permits such results.

11. The chief influence of these nobles may be taken to be social and agricultural. It would not be fair to judge of the future usefulness of the class of "ancient" zemindars from what they have done in the past. Their present position is due to the

circumstances by which they have been surrounded. They were, most of them, in possession of unrestrained power in the beginning of the century, and the necessities of orderly and civilized Government in the then existing state of the country required that they should be deprived of all power and influence and relegated to the position of landholders. The conditions also of farming in this country were not such as to render high cultivation profitable. Brought up in the old traditions with no public career open to them in which they could usefully employ themselves they have till recently with some notable exceptions formed an idle, dissipated class. There are clear indications, however, that a change is coming over them. Several of them are being educated and the proceedings of the Landholders' Association, from which the memorial under consideration has emanated, and a list of the members of which is appended thereto, shows clearly that they have at last begun to realize the situation and to feel that if they do not keep pace with the times they will lose all social influence and importance. An aristocracy of birth in touch on the one hand with the Government and in sympathy on the other with agricultural interests would have an influence which an aristocracy of wealth would not possess, would render possible the much needed intercourse and acquaintance between the European and the Native and would lead society in the path of advancement and reform. Their position as proprietors of large estates, with good incomes and ample leisure fits them to undertake the lead in agricultural experiment and improvement, the necessity for which is increasingly made patent by the great increase in population and the expansion of trade, and in the management of industrial enterprises which peasant proprietors cannot be expected to undertake. The highest political expediency requires that the ancient zemindaries should not be dismembered and allowed to fall into the hands of money-lenders who will merely look upon the lands which they acquire as an investment returning a certain percentage upon their outlay. The landed nobility of this Presidency is fast decaying. The number of this important class is already small and decided steps should, in the opinion of this Government, be taken to arrest its extinction.

12. Apart from political or other considerations, the legislation prayed for is dictated by simple justice in view to a return to former status and to the removal of hardships which have been produced by the interpretation of Hindu Law by British Courts.

13. From the foregoing considerations Government deems it expedient to declare by legislation, as prayed for by memorialists,—

(1) that ancient zemindaries and estates of the like nature which have descended as impartible continuously, from some date to be fixed, and of which no partition since that date can be proved, are impartible; and

(2) that the powers of the holder of the estate for the time being shall be those of the managing member of a Hindu family governed by the ordinary law of succession as they were understood to be before the recent * Privy Council decision.

* 13 Madras, 1897.

Memorialists suggest a period of limitation of 60 years, but the Board recommends that the character of impartibility and inalienability should be declared to attach to all proprietary estates which were in existence prior to 1802, the year in which the permanent settlement was introduced. As a preliminary to legislation, it will be necessary to appoint a Commissioner to prepare a schedule of ancient estates. As pointed out by the Board in paragraph 13 of its Proceedings referred to above, the Commissioner will have little difficulty in accomplishing this task. Before, however, taking any steps in the matter, the Government of India will be addressed in view to ascertaining whether it is agreeable to legislation being undertaken on the lines proposed. The memorial will be forwarded to the Government of India instead of to the Secretary of State, as the consideration involved affect other Provinces as well as this, and if the Government of India consents to legislate in the desired direction, reference to the Secretary of State will be unnecessary.

14. While holding that neither of the requests of the memorialists could be entertained, the Government of 1893 was of opinion that particular cases might arise

in which it might be desirable that Government should be empowered to step in and by good management help to extricate an encumbered proprietor. A bill for the relief of encumbered estates in this Presidency was accordingly forwarded to the Government of India with Mr. Gibson's letter No. 959, dated the 7th November 1893, for introduction in the Supreme Legislative Council. The Government of India in its letter of the 15th February 1894, No. 467—359, stated that it was not prepared to introduce the Bill in question, but suggested that the relief of embarrassed zemindars could be attained by the insertion in the Court of Wards Regulation of a provision under which an indebted proprietor would be enabled, by a declaration that he is disqualified from managing his estate, to bring himself under the protection of the Regulation. A draft bill to amend the Court of Wards Regulation has been engaging the attention of Government since June 1894, but the introduction of the measure in the Legislative Council was delayed pending receipt of the reply of the Government of India to Mr. Gibson's letter, No. 646, dated the 24th September 1895. The reply which was received on the 6th May 1897 has been referred to the Board of Revenue for remarks. In the second memorial read above, which is addressed to the Government of India, the memorialists point out that the insertion of the contemplated provision in the Court of Wards Regulation would not afford the same far reaching and effective relief as a special encumbered Estates Act and request that Government to reconsider the orders contained in its letter of 15th February 1894. This memorial will also be forwarded to the Government of India.

15. Ordered that the following letter be despatched.

(True Extract.)

J. H. Wilson
for Ag. Secretary to Government.

To the Board of Revenue.
„ the Legislative Department.

Ed. T. K. Narayana Aiyangar.

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READ AGAIN G.O., No.

189 ,

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STATEMENT WITH DITTO.

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