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Legislative (189 ) Department.

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12/17



[Despatch Abstract.]

Bill to amend the Madras Proprietary Estates Village Service  
Act &c.

Directing the publication in English & in the  
vernaculars of a ————— & requesting the  
Honble Mr. Winterton to take charge of it.



# BACK PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|------|-----|-------------|-------|
|      |     |             |       |      |     |             |       |

# FURTHER PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|------|-----|-------------|-------|
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## Government {1899} of Madras. LEGISLATIVE.

Recd.

Enclosures

Regd.

} 1899.

Spare copies

G.O., No. 105, 5th October 1899.

OCTOBER.

Bill to amend the Madras Proprietary Estates' Village Service Act, &c.

Directing the publication in English and in the vernaculars of a —, and requesting the Hon'ble Mr. Winterbotham to take charge of it.



## GOVERNMENT OF MADRAS.

## LEGISLATIVE DEPARTMENT.

READ—the following paper:—

G.O., No. 573, Revenue, dated 29th August 1899.

ABSTRACT.—Forwarding, with remarks, to the Legislative Department a draft Bill, with a statement of Objects and Reasons, to amend the definition of "Proprietor" in the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897.

ORDER—No. 105, Legislative, dated 5th October 1899.

Under rule 33 of the Rules for the Conduct of Business at meetings of the Council of the Governor of Fort St. George for making Laws and Regulations, His Excellency the Governor is pleased to direct the publication of the Bill to amend the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897, together with the Statement of Objects and Reasons in English and in all the vernaculars.

2. The Hon'ble Mr. Winterbotham will be requested to take charge of the Bill.

(True Extract.)

M. HAMMICK,  
Ag. Secretary to Government.

To the Revenue Department.  
„ the Hon'ble Mr. H. M. Winterbotham.  
„ the Superintendent, Government Press.  
„ all Translators to Government.

Leg. CUR. NO. 341  
Government {1899} of Madras.  
REVENUE.

E.

Over  
has

Referred to the Hon'ble. General  
for favour of remarks at an early  
date.

Recd. 25-9-99.  
Regd. 23-9-1899.

Enclosures

Spare copies

nil

48c.

Abstract

Note Please see separate note attached.

G.O., No. 573, 29th August 1899.

AUGUST.

Bill.

Forwarding, with remarks, to the Legislative Department a draft —, with Objects and Reasons, to amend the definition of "Proprietor" in the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897.



## GOVERNMENT OF MADRAS.

## REVENUE DEPARTMENT.

Read—again the following G.O., No. 604, Revenue, dated 22nd October 1898:—

Read—again the following G.O., Mis. No. 2261, Revenue, dated 25th May 1898:—

Read—the following Proceedings of the Board of Revenue (Land Revenue), Ref. No. 469, dated 25th April 1898:—

Read—the following letter from W. O. HORNE, Esq., I.C.S., Acting Collector of Vizagapatam, to the Secretary to the Commissioners of Land Revenue, dated 23rd March 1898, No. 594:—

There are at present seven estates under the management of the Court of Wards, while the whole of the Vizianagram estate is under the management of a guardian appointed by the local District Court under the Guardians and Wards Act (VIII of 1890). Vacancies in the village offices arise very frequently in the areas named above, which constitute about two-thirds of the ordinary portion of the district. I have the honour, therefore, to enquire as to who should be considered to be legally competent to perform the duties laid down in sections 5, 6, 8, 9, 11, 13 and 15. I, as agent to the Court of Wards, cannot perform them, nor can the managers of estates appointed under Regulation V of 1804, so long as the definition of "Proprietor" remains unaltered. A similar disability attaches to the guardian of the Vizianagram Samastanam. If it is not proposed to amend the Act so as to extend the definition of "Proprietor" therein contained, I request that an authoritative ruling be issued on the point raised above.

2. In regard to the power of fining village officers under section 16 (1), the

Board's Proceedings, No. 316, dated 20th August 1896.

Board's Proceedings, No. 379, dated 6th October 1896.

Paragraph 6 of Board's Proceedings, No. 148, dated 7th May 1897.

Court's Proceedings, Mis. No. 110, dated 27th January 1898.

Board has repeatedly held in the proceedings noted on the margin that it cannot be legally delegated to agents, managers and guardians of proprietors.

Reference—No. 469, dated 25th April 1898.

Submitted for the orders of Government.

2. In paragraph 1 of its order, No. 3869, Revenue, dated 28th September 1896, Government accepted the Board's view that managers of proprietary estates under the control of the Court of Wards and of Civil Courts cannot be legally empowered to fine village officers under section 16 (1) of Act II of 1894 as they do not fall within the definition of proprietor as given in section 4 of the Act; and with reference to paragraph 2 thereof, the insertion of a special provision in the Court of Wards' Bill conferring the power on managers of estates under the Court's control has been recommended in paragraph 5 of Board's Proceedings, No. 249, dated 21st July 1897.

3. The Collector of Vizagapatam recently requested that he might, as agent to the Court of Wards, be empowered to fine village officers of the estates under the Court's management in his district; but he was informed in Court's Proceedings, No. 110, dated 27th July 1898, that his request could not be complied with in view of the definition of "Proprietor" referred to above.

4. In the letter read above, the Collector now brings to notice that vacancies in village offices arise very frequently in the seven estates now under the management of the Court of Wards in his district as well as in the Vizianagram Samastanam for the management of which a guardian has been appointed by the local District Court under the Guardians and Wards Act VIII of 1890, and requests that, if it is not proposed to amplify the definition of proprietor as given in section 4 of the Act (II of 1894), an authoritative ruling may be issued as to who should be considered to be legally competent to perform the duties laid down in sections 5, 6, 8, 9, 11, 13 and 15 of the Act. The difficulties brought to notice require an authoritative and early solution, and legislation may be necessary should there be no doubt as to the correctness of the opinion already expressed by the Board and concurred in by Government. In these circumstances the Board ventures to urge the desirability of consulting the Honourable the Advocate-General as to the precise state of the law. Reference is, in this connection, requested to the debates in the Legislative Council on section 8 of the Proprietary Estates' Village Service Bill from which it will be seen that the addition of the words "or his authorized agent" to the word "proprietor" occurring therein was at the time considered unnecessary.

(True Copy and Extract.)

(Signed) LIONEL DAVIDSON,  
Acting Secretary.

To the Secretary to Government, Revenue Department,  
with the Collector's letter, in original, to be returned.

Order—Mis. No. 2261, Revenue, dated 25th May 1898.

Referred to the Honourable the Advocate-General for favour of opinion.

(True Extract.)

(Signed) G. S. FORBES,  
Ag. Secretary to Government.

To the Honourable the Advocate-General,  
through the Government Solicitor.

Copy to the Board of Revenue (Land Revenue).

Read—also endorsement from the Government Solicitor, Madras, dated 27th June 1898, No. 273, forwarding the following opinion of the Honourable the Advocate-General, dated 23rd June 1898:—

## OPINION.

1. In my opinion it is quite clear that a manager of a proprietary estate under the control of the Court of Wards, or of a Civil Court is not, as such, a proprietor within the meaning of section 4 of Madras Act II of 1894. Consequently, he cannot exercise the powers conferred, or discharge the duties imposed, by sections 5, 6, 8, 9, 11, 13 and 15 of the Act.

2. Possibly the difficulty might be met by registering the manager as "Proprietor" "for the time being." He would thus have all the powers conferred and be liable to discharge all the duties imposed, on the proprietor by the Act. If this, for administrative reasons, is not practicable, fresh legislation appears to be necessary.

3. As regards section 16 of Madras Act II of 1894, it has been suggested that a provision should be inserted in the Court of Wards' Bill enabling the Board of Revenue to empower the manager of an estate under the control of the Court of Wards to exercise the power of fining village officers for misconduct (see Mr. Lionel Davidson's Reference No. 469, dated 25th April 1898). But this would only meet the difficulty with reference to the fining of village officers for misconduct under section 16 of the Act. I think the most convenient course would be to introduce a short amending section into Act II of 1894 to the effect that where a proprietary estate is under the management of a person appointed by the Court of Wards, or by a Civil



Court, that person shall, for the purposes of sections of the Act, be deemed to be the proprietor, and shall exercise all the powers conferred, and discharge all the duties imposed, by the said sections.

(Signed) C. ARNOLD WHITE,  
Advocate-General.

Order—No. 604, Revenue, dated 22nd October 1898.

The draft of a Bill to amend Act II of 1894 will be forwarded for the early remarks of the Board of Revenue. It is presumed that the case of a receiver appointed by the Civil Court should be included and provision has been made accordingly.

(True Extract.)

(Signed) G. S. FORBES,  
Secretary to Government.

To the Board of Revenue (with copy of the opinion of the Honourable the Advocate-General, dated 23rd June 1898).

*A Bill to amend the Madras Proprietary Estates' Village Service Act.*

WHEREAS it is expedient to amend Madras Act II of 1894; It is hereby enacted as follows:—

(1) To the definition of the word "Proprietor" in section 4 of the Act, the following shall be added:—

"Where an estate is under the management of a person appointed by the Court of Wards or in charge of a receiver appointed by a Civil Court such person shall, for the purposes of chapter II and of sections 21 and 22 of this Act, be deemed to be the proprietor of the estate."

READ—also the following Proceedings of the Board of Revenue (Land Revenue), No. 312, dated 19th November 1898:—

Read—G.O., No. 604, Revenue, dated 22nd October 1898.

Resolution—No. 312, dated 19th November 1898.

The Draft Bill to amend Madras Act II of 1894 received with the Government Order last read above provides that where an estate is under the management of a person appointed by the Court of Wards or in charge of a receiver appointed by a Civil Court, such person shall, for the purposes of chapter II and of sections 21 and 22 of the Act, be deemed to be the proprietor of the estate.

2. The Board recommends that the Bill should provide also for the case of estates managed by guardians, curators, executors and administrators appointed under Acts VIII of 1890, XIX of 1841 and V of 1881 and natural guardians recognized by law. Another criticism which suggests itself is that, besides the sections specified in the Draft Bill, there are several others in chapters III and V of the Act conferring powers or imposing liabilities on a proprietor. The Board would therefore deprecate any reference to specific sections.

3. If the foregoing suggestions be approved, the addition to the definition of proprietor would take some such form as the following:—

"When an estate is under the management of a person by virtue of his appointment under the provisions of any law or is in charge of a natural guardian recognized by law, such person shall, for the purposes of this Act, be deemed to be the proprietor of the estate."

4. The Board takes this opportunity to invite the attention of Government to Board's Proceedings, No. 209, dated 17th August 1898, and to submit that the words "in the office of the Collector of the district wherein the estate is situated" occurring

in the definition of "Proprietor" may be replaced by "in the public registers kept under Regulation XXVI of 1802 in the district wherein the estate is situated." This amendment will relieve the huzur offices of the necessity of maintaining a register of proprietors of whole inam villages prescribed in paragraph 2 of Board's Proceedings, No. 209, dated 17th August 1898. Pending the orders of Government on this point Collectors will be authorized to suspend action with reference to those Proceedings.

(True Copies and Extract.)

(Signed) LIONEL DAVIDSON,  
Acting Secretary.

To the Secretary to Government, Revenue Department.  
Copy to all Collectors.

READ—also the following Proceedings of the Board of Revenue (Land Revenue), Mis. No. 288, dated 24th January 1899:—

Read—letter from R. MORRIS, Esq., I.C.S., Acting Collector of Kistna, to the Secretary to the Commissioners of Land Revenue, dated 2nd January 1899, Dis. No. 6-R. GL of 99.

Resolution—Mis. No. 288, dated 24th January 1899.

In continuation of paragraph 4 of its Proceedings, No. 312, dated 19th November last, the Board submits for consideration the suggestion that the definition of the word "Proprietor" occurring in section 4 of the Madras Hereditary Village Offices Act III of 1895 should be amplified by an addition referring to the number and year of the Act into which the present Bill to amend Madras Act II of 1894 will develop.

2. The Collector of Kistna further suggests that the present opportunity may be taken to amend section 11 of Act III of 1895 so as to empower Divisional officers to make appointments to vacant village offices in cases where the proprietor neglects to exercise the power under that section. He adds that as Act II of 1894 is not in force in small estates as yet, Divisional officers cannot legally do so at present. The Board considers it hardly necessary to amend this section; for it applies only to (a) the minor village offices in all estates falling within the scope of Act II of 1894 and (b) (when the Act of 1894 has been extended\* to the larger whole inam villages), the major offices in such estates as are not of sufficient importance to be brought within the scope thereof.

\* Vide paragraph 1 of Board's Proceedings, No. 350, dated 19th October 1897, and paragraph 2 of Board's Proceedings, No. 378, dated 8th November 1897.

(True Extract.)

(Signed) LIONEL DAVIDSON,  
Acting Secretary

To the Secretary to Government, Revenue Department.  
" Collector of Kistna.

READ—again Official Memorandum, No. 246, Revenue, dated 14th October 1898.

In forwarding letter No. 1-Sur., dated 2nd October 1898, from the Collector of the Vizianagram zamindari appointed under the Guardians and Wards Act (VIII of 1890), the Advocate-General is requested to be good enough to favour Government with his opinion whether the Collector's written application for the survey of the zamindari



with reference to section 27 of that Act may be dealt with as an application in writing by the proprietor within the meaning of section 17 of the Madras Survey and Boundaries Act (IV of 1897).

(By Order.)

(Signed) N. E. MARJORIBANKS,  
Ag. Under Secretary to Government.

To the Advocate-General, through the Government Solicitor,  
with the Collector's letter in original.

READ—also endorsement of the Government Solicitor, dated 14th November 1898, No. 527, forwarding the following opinion of the Honourable the Advocate-General, dated 14th November 1898 :—

#### OPINION.

For the purposes of the Madras Survey and Boundaries Act (IV of 1897) proprietor is defined as "any person in whose name any estate is for the time being registered in the office of the Collector of the district wherein the estate is situated." Under section 17, clause (a) of the same Act, the Local Government may, by notification, direct the survey of any estate on the application in writing of the proprietor of such estate.

2. It is clear that the Vizianagram zamindari is an "estate" within the meaning of section 3 of Madras Act IV of 1897, and it is equally clear that the Minor Raja, as soon as the estate is registered in his name in the office of the Collector, could, if he were *sui juris*, apply under clause (a) of section 17 of the Act of 1897 for an order directing the survey of the zamindari. Mr. H. F. W. Gillman is the guardian of the Minor Raja appointed under the Guardian and Wards Act, 1890, and the question for consideration is whether the Government can take action under clause (a) of section 17 of the Act of 1897 on the written application of the guardian.

3. Section 27 of the Guardians and Wards Act, 1890, empowers the guardian of a ward to do all acts which are reasonable and proper for the realization, protection or benefit of the property. There can be no question that the survey of the estate in question would be for the protection and benefit of the property; but it seems to me that the general powers conferred upon the guardian do not constitute him the "proprietor" of the estate for the purpose of enabling him to apply under section 17, clause (a) of Act IV of 1897. The narrowness of the definition of "proprietor" in Act IV of 1897 is unfortunate, but as the law stands, I do not think that Government can direct the survey of the estate in question under clause (a) of section 17.

4. There seems no reason, however, why the survey should not be directed under clause (b) of the section in question, or why, pending the issue of the notification, the work should not be commenced as suggested by Mr. Gillman in paragraphs 5 and 6 of his letter of 2nd October 1898.

(Signed) C. ARNOLD WHITE,  
Advocate-General.

READ—again the following G.O., Mis. No. 4767, Revenue, dated 5th December 1898 :—

Order—Mis. No. 4767, Revenue, dated 5th December 1898.

The draft of a Bill to amend the Madras Acts II of 1894 (Proprietary Estates) and IV of 1897 (Survey and Boundaries) is forwarded to the Advocate-General for favour of early opinion.

A file of connected papers is enclosed for reference and return.  
(True Extract.)

(Signed) G. S. FORBES,  
Secretary to Government.

To the Honourable the Advocate-General.

#### ENCLOSURE.

A Bill to amend the Madras Proprietary Estates' Village Service Act, 1894, and the Madras Survey and Boundaries Act, 1897.

WHEREAS it is expedient to amend the Madras Proprietary Estates' Village Service Act, 1894 (II of 1894-M.) and the Madras Survey and Boundaries Act, 1897 (IV of 1897-M.).

It is hereby enacted as follows :—

(1) To the definition of the word "Proprietor" in section 4 of Act II of 1894-M., the following shall be added and shall be deemed always to have been added, namely :—

"Where an estate is under the management of a person appointed by the Court of Wards or in charge of a receiver or guardian appointed by a Civil Court, such person shall, for the purposes of chapter II and of sections 21 and 22 of this Act, be deemed to be the proprietor of the estate."

(2) To the definition of the word "Proprietor" in clause (iii) of section 3 of Act IV of 1897-M., the following shall be added and shall be deemed always to have been added :—

"Where an estate is under the management of a person appointed by the Court of Wards or in charge of a receiver or guardian appointed by a Civil Court, such person shall, for the purposes of the said Act, be deemed to be the proprietor of the estate."

READ—also the following opinion of the Advocate-General on the Bill to amend the Madras Acts II of 1894 (Proprietary Estates) and IV of 1897 (Survey and Boundaries) dated 8th December 1898 :—

#### OPINION.

I think the Bill, as drafted, will meet the difficulties which have arisen in connection with the Madras Proprietary Estates' Village Service Act, 1894, and the Madras Survey and Boundaries Act, 1897.

I have made two verbal alterations in red ink in the type-written draft.

(Signed) C. ARNOLD WHITE,  
Advocate-General.

#### ENCLOSURE.

A Bill to amend the Madras Proprietary Estates' Village Service Act, 1894, and the Madras Survey and Boundaries Act (1897).

WHEREAS it is expedient to amend the Madras Proprietary Estates' Village Service Act, 1894 (II of 1894-M.), and the Madras Survey and Boundaries Act 1897 (IV of 1897-M.).

It is hereby enacted as follows :—

(1) To the definition of the word "Proprietor" in section 4 of Act II of 1894-M., the following shall be added and shall be deemed always to have been added, namely :—

"Where an estate is under the management of a person appointed by the Court of Wards or in charge of a receiver or guardian appointed by a Civil Court, such person shall, for the purposes of chapter II, and of sections 21 and 22, of this Act, be deemed to be the proprietor of the estate."

(2) To the definition of the word "Proprietor" in clause (iii) of section 3 of Act IV of 1897-M., the following shall be added and shall be deemed always to have been added, namely :—

"Where an estate is under the management of a person appointed by the Court of Wards or in charge of a receiver or guardian appointed by a Civil Court, such person shall, for the purposes of this Act, be deemed to be the proprietor of the estate."



READ—again Official Memorandum, No. 61, Revenue, 27th February 1899.

With reference to the draft of a Bill to amend the definition of Proprietor in Madras Acts II of 1894 and IV of 1897 returned with the Advocate-General's opinion of 8th December 1898, the Advocate-General is requested to be good enough to advise whether any practical or legal difficulty is likely to arise if the proposed legislation be dropped.

2. In his opinion of 14th November 1898, the Advocate-General doubted whether action could be taken upon the written application of the guardian. It has however been suggested that, if the application be made *in the name of the minor or disqualified proprietor* "by A. B. his guardian," no legal objection could be taken to the action following upon such application. A proprietor's duly authorised agent, who is not specifically comprised in the definition of "Proprietor," may, it is understood, apply effectually on behalf of his principal and, if so, it seems difficult to distinguish the case of a proprietor applying by his guardian.

(By Order.)

(Signed) G. S. FORBES,  
Secretary to Government.

To the Advocate-General.

READ—also endorsement of the Government Solicitor, dated 28th March 1899, No. 183, forwarding the following opinion of the Hon'ble the Advocate-General, dated 28th March 1899.

#### OPINION.

As regards applications under section 17 (a) of the Madras Survey and Boundaries Act, 1897 (IV of 1897), I think an application in the name of the minor proprietor "by A. B. his guardian" might be acted on without risk, practically speaking, of legal difficulties arising hereafter. I think, however, that difficulties might arise, if proceedings were taken under the provisions of the Madras Proprietary Estates' Village Service Act, 1894 (II of 1894), by a person other than the "Proprietor" as defined in the Act. It seems to me that the safer course is to amend the two Acts as suggested.

(Signed) C. ARNOLD WHITE,  
Advocate-General.

ORDER—No. 573, Revenue, dated 29th August 1899.

Miscellaneous.

The Government accepts the view expressed by the Honourable the Advocate-General in his opinion, dated 28th March 1899, and resolves to introduce a Bill in the Legislative Council to amend the definition of "Proprietor" in Acts II of 1894 (M.) and IV of 1897 (M.).

2. The Bill will provide for all cases in which the management of an estate lawfully vests in a person other than the proprietor, whether as managers appointed by the Court of Wards, receivers or guardians appointed by Civil Courts, Curators, Executors, Administrators, Official Trustees, or as natural guardians. Opportunity will also be taken similarly to amplify the definition of "Proprietor" in the Madras Hereditary Village Offices Act (III of 1895), as the reasons adduced for amending the definition in Act II of 1894 apply equally to this Act.

3. A draft Bill, with a Statement of Objects and Reasons, will be forwarded to the Legislative Department for necessary action.

(True Extract.)

for Ag. Secretary to Government.

To the Legislative Department, with draft Bill and  
Statement of Objects and Reasons,  
,, the Board of Revenue (Land Revenue).

Exd. A. Rangaswamy Aiyangar.  
40 Copies.

A

## BILL

TO

*Amend the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897.*

WHEREAS it is expedient to amend the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897; It is hereby enacted as follows:—

1. In section 4 of the Madras Proprietary Estates' Village Service Act, 1894, after the words "registered by the Collector as senior joint owner," and in section 3 of the Madras Survey and Boundaries Act, 1897, after the words "estate specified in clause (e) of sub-section (i), the holder thereof," the following words are inserted and shall be deemed to have been so inserted at the times when those Acts respectively came into force:—

"Where, by virtue of his appointment under the provisions of any Act or Regulation, an estate is under the management of a person other than the person in whose name the estate is registered, or where an estate is under the management of the natural guardian of the person in whose name the estate is registered, the person so appointed, or the natural guardian, shall, for the purposes of this Act, be deemed to be the proprietor of the estate."

2. In section 4 of the Madras Hereditary Village Offices Act, 1895, the words defining the terms "Proprietary Estate" and "Proprietor" are hereby repealed, and the following words are substituted therefor and shall be deemed to have been so substituted at the time when that Act came into force:—

"'Proprietor' means any person in whose name an estate is for the time being registered in the office of the Collector of the district wherein the estate is situated, and, in respect of an estate specified in clause (e) of section 4 of the Madras Proprietary Estates' Village Service Act, 1894, the holder thereof."



"Where an estate is so registered in the names of two or more persons as joint owners thereof, the proprietor shall, for the purposes of this Act, be the person who is recognized by the other joint owners as the manager of the estate or who, in case of dispute, is recognised and registered by the Collector as senior joint owner.

"Where, by virtue of his appointment under the provisions of any Act or Regulation, an estate is under the management of a person other than the person in whose name the estate is registered, or where an estate is under the management of the natural guardian of the person in whose name the estate is registered, the person so appointed, or the natural guardian, shall, for the purposes of this Act, be deemed to be the proprietor of the estate.

"'Proprietary Estate' means an estate as defined in the Madras Proprietary Estates' Village Service Act, 1894, as amended by this Act."

#### STATEMENT OF OBJECTS AND REASONS.

The definition of proprietor in section 4 of Act II of 1894 (M.) does not include the manager of an estate appointed by the Court of Wards or the Receiver or Guardian appointed by a Civil Court, and the persons so appointed cannot therefore exercise the powers conferred or discharge the duties imposed on proprietors by the Act. Considerable inconvenience has, in consequence, been, and is likely to be, experienced in working the Act in connection with the estates of incapacitated proprietors who are legally incompetent to act.

A similar difficulty has been experienced in connection with Act IV of 1897 (M.) as, in view of the definition of proprietor in clause (iii) of section 3 of this Act, the Manager, Receiver or Guardian appointed as above cannot apply to Government for a survey of the estate under Chapter III.

There are also other cases of estates in which similar difficulties might be experienced in working the Acts, such as estates in charge of the Official Trustee, of Curators, Executors, Administrators or other persons appointed to management under specific provisions of law.

2. It is desirable that in all the above cases the Managers of the estates should be empowered to act as and for the proprietor, and it is proposed to amplify the definition of the term in the two Acts so as to include them.

3. It is further proposed similarly to amplify the definition of proprietor in the Madras Hereditary Village Offices Act (III of 1895) to provide for the exercise of powers in cases where the proprietor is incompetent to act. The reasons for amending the definition in Act II of 1894 (M.) apply equally to Act III of 1895 (M.).

Legislative Dept.

Will the Revenue Department kindly furnish the Legislative Department with a set of ~~printed~~ papers relating to the Bill forwarded <sup>with</sup> go. No 573 Revenue, dated 29 August 1898, for Communication to the Honble members of the Legislative Council.

To the Revenue Department  
U.O.

25-9-99  
27/9/99

80.22.8

The whole correspondence connected with the Bill (with the exception of the last note from the ADG. General, is printed in go. 573 29-8-99 & there is no objection to the go being communicated to the members of the Legislative Council. Copy of 517 4-8-99

Surge  
H.T. 517/83  
To Leo H.T. 517/83  
1-9-99



Government (1899) of Madras.  
REVENUE.

Recd.

Regd.

1899.

Enclosures

Spare copies

G.O., No. 573, 29th August 1899.

AUGUST.

Bill.

Forwarding, with remarks, to the Legislative Department a draft —, with Objects and Reasons, to amend the definition of "Proprietor" in the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897.

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G.O. No. 573, 29th August 1899.

AUGUST

Bill

Forwarding, with remarks, to the Legislative Department a draft —, with Objects and Reasons, to amend the definition of "Proprietor" in the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897.

Bill  
to amend the definition of "Proprietor" in the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897.



## GOVERNMENT OF MADRAS.

## REVENUE DEPARTMENT.

Read—again the following G.O., No. 604, Revenue, dated 22nd October 1898:—

Read—again the following G.O., Mis. No. 2261, Revenue, dated 25th May 1898:—

Read—the following Proceedings of the Board of Revenue (Land Revenue), Ref. No. 469, dated 25th April 1898:—

Read—the following letter from W. O. HORNE, Esq., I.C.S., Acting Collector of Vizagapatam, to the Secretary to the Commissioners of Land Revenue, dated 23rd March 1898, No. 594:—

There are at present seven estates under the management of the Court of Wards, while the whole of the Vizianagram estate is under the management of a guardian appointed by the local District Court under the Guardians and Wards Act (VIII of 1890). Vacancies in the village offices arise very frequently in the areas named above, which constitute about two-thirds of the ordinary portion of the district. I have the honour, therefore, to enquire as to who should be considered to be legally competent to perform the duties laid down in sections 5, 6, 8, 9, 11, 13 and 15. I, as agent to the Court of Wards, cannot perform them, nor can the managers of estates appointed under Regulation V of 1804, so long as the definition of "Proprietor" remains unaltered. A similar disability attaches to the guardian of the Vizianagram Samastanam. If it is not proposed to amend the Act so as to extend the definition of "Proprietor" therein contained, I request that an authoritative ruling be issued on the point raised above.

2. In regard to the power of fining

Board's Proceedings, No. 316, dated 20th August 1896.  
Board's Proceedings, No. 379, dated 6th October 1896.  
Paragraph 6 of Board's Proceedings, No. 148, dated 7th May 1897.  
Court's Proceedings, Mis. No. 110, dated 27th January 1898.

village officers under section 16 (1), the Board has repeatedly held in the proceedings noted on the margin that it cannot be legally delegated to agents, managers and guardians of proprietors.

Reference—No. 469, dated 25th April 1898.

Submitted for the orders of Government.

2. In paragraph 1 of its order, No. 3869, Revenue, dated 28th September 1896, Government accepted the Board's view that managers of proprietary estates under the control of the Court of Wards and of Civil Courts cannot be legally empowered to fine village officers under section 16 (1) of Act II of 1894 as they do not fall within the definition of proprietor as given in section 4 of the Act; and with reference to paragraph 2 thereof, the insertion of a special provision in the Court of Wards' Bill recommending the power on managers of estates under the Court's control has been recommended in paragraph 5 of Board's Proceedings, No. 249, dated 21st July 1897.

3. The Collector of Vizagapatam recently requested that he might, as agent to the Court of Wards, be empowered to fine village officers of the estates under the Court's management in his district; but he was informed in Court's Proceedings, No. 110, dated 27th July 1898, that his request could not be complied with in view of the definition of "Proprietor" referred to above.

4. In the letter read above, the Collector now brings to notice that vacancies in village offices arise very frequently in the seven estates now under the management of the Court of Wards in his district as well as in the Vizianagram Samastanam for the management of which a guardian has been appointed by the local District Court under the Guardians and Wards Act VIII of 1890, and requests that, if it is not proposed to amplify the definition of proprietor as given in section 4 of the Act (II of 1894), an authoritative ruling may be issued as to who should be considered to be legally competent to perform the duties laid down in sections 5, 6, 8, 9, 11, 13 and 15 of the Act. The difficulties brought to notice require an authoritative and early solution, and legislation may be necessary should there be no doubt as to the correctness of the opinion already expressed by the Board and concurred in by Government. In these circumstances the Board ventures to urge the desirability of consulting the Honourable the Advocate-General as to the precise state of the law. Reference is, in this connection, requested to the debates in the Legislative Council on section 8 of the Proprietary Estates' Village Service Bill from which it will be seen that the addition of the words "or his authorized agent" to the word "proprietor" occurring therein was at the time considered unnecessary.

(True Copy and Extract.)

(Signed) LIONEL DAVIDSON,  
Acting Secretary.

To the Secretary to Government, Revenue Department,  
with the Collector's letter, in original, to be returned.

Order—Mis. No. 2261, Revenue, dated 25th May 1898.

Referred to the Honourable the Advocate-General for favour of opinion.

(True Extract.)

(Signed) G. S. FORBES,  
Ag. Secretary to Government.

To the Honourable the Advocate-General,  
through the Government Solicitor.  
Copy to the Board of Revenue (Land Revenue).

Read—also endorsement from the Government Solicitor, Madras, dated 27th June 1898, No. 273, forwarding the following opinion of the Honourable the Advocate-General, dated 23rd June 1898:—

## OPINION.

1. In my opinion it is quite clear that a manager of a proprietary estate under the control of the Court of Wards, or of a Civil Court is not, as such, a proprietor within the meaning of section 4 of Madras Act II of 1894. Consequently, he cannot exercise the powers conferred, or discharge the duties imposed, by sections 5, 6, 8, 9, 11, 13 and 15 of the Act.

2. Possibly the difficulty might be met by registering the manager as "Proprietor" "for the time being." He would thus have all the powers conferred and be liable to discharge all the duties imposed, on the proprietor by the Act. If this, for administrative reasons, is not practicable, fresh legislation appears to be necessary.

3. As regards section 16 of Madras Act II of 1894, it has been suggested that a provision should be inserted in the Court of Wards' Bill enabling the Board of Revenue to empower the manager of an estate under the control of the Court of Wards to exercise the power of fining village officers for misconduct (see Mr. Lionel Davidson's Reference No. 469, dated 25th April 1898). But this would only meet the difficulty with reference to the fining of village officers for misconduct under section 16 of the Act. I think the most convenient course would be to introduce a short amending section into Act II of 1894 to the effect that where a proprietary estate is under the management of a person appointed by the Court of Wards, or by a Civil



Court, that person shall, for the purposes of sections of the Act, be deemed to be the proprietor, and shall exercise all the powers conferred, and discharge all the duties imposed, by the said sections.

(Signed) C. ARNOLD WHITE,  
Advocate-General.

Order—No. 604, Revenue, dated 22nd October 1898.

The draft of a Bill to amend Act II of 1894 will be forwarded for the early remarks of the Board of Revenue. It is presumed that the case of a receiver appointed by the Civil Court should be included and provision has been made accordingly.

(True Extract.)

(Signed) G. S. FORBES,  
Secretary to Government.

To the Board of Revenue (with copy of the opinion of the Honourable the Advocate-General, dated 23rd June 1898).

*A Bill to amend the Madras Proprietary Estates' Village Service Act.*

WHEREAS it is expedient to amend Madras Act II of 1894; It is hereby enacted as follows:—

(1) To the definition of the word "Proprietor" in section 4 of the Act, the following shall be added:—

"Where an estate is under the management of a person appointed by the Court of Wards or in charge of a receiver appointed by a Civil Court such person shall, for the purposes of chapter II and of sections 21 and 22 of this Act, be deemed to be the proprietor of the estate."

READ—also the following Proceedings of the Board of Revenue (Land Revenue), No. 312, dated 19th November 1898:—

Read—G.O., No. 604, Revenue, dated 22nd October 1898.

Resolution—No. 312, dated 19th November 1898.

The Draft Bill to amend Madras Act II of 1894 received with the Government Order last read above provides that where an estate is under the management of a person appointed by the Court of Wards or in charge of a receiver appointed by a Civil Court, such person shall, for the purposes of chapter II and of sections 21 and 22 of the Act, be deemed to be the proprietor of the estate.

2. The Board recommends that the Bill should provide also for the case of estates managed by guardians, curators, executors and administrators appointed under Acts VIII of 1890, XIX of 1841 and V of 1881 and natural guardians recognized by law. Another criticism which suggests itself is that, besides the sections specified in the Draft Bill, there are several others in chapters III and V of the Act conferring powers or imposing liabilities on a proprietor. The Board would therefore deprecate any reference to specific sections.

3. If the foregoing suggestions be approved, the addition to the definition of proprietor would take some such form as the following:—

"When an estate is under the management of a person by virtue of his appointment under the provisions of any law or is in charge of a natural guardian recognized by law, such person shall, for the purposes of this Act, be deemed to be the proprietor of the estate."

4. The Board takes this opportunity to invite the attention of Government to Board's Proceedings, No. 209, dated 17th August 1898, and to submit that the words "in the office of the Collector of the district wherein the estate is situated" occurring

in the definition of "Proprietor" may be replaced by "in the public registers kept under Regulation XXVI of 1802 in the district wherein the estate is situated." This amendment will relieve the huzur offices of the necessity of maintaining a register of proprietors of whole inam villages prescribed in paragraph 2 of Board's Proceedings, No. 209, dated 17th August 1898. Pending the orders of Government on this point Collectors will be authorized to suspend action with reference to those Proceedings.

(True Copies and Extract.)

(Signed) LIONEL DAVIDSON,  
Acting Secretary.

To the Secretary to Government, Revenue Department.  
Copy to all Collectors.

READ—also the following Proceedings of the Board of Revenue (Land Revenue), Mis. No. 288, dated 24th January 1899:—

Read—letter from R. MORRIS, Esq., I.C.S., Acting Collector of Kistna, to the Secretary to the Commissioners of Land Revenue, dated 2nd January 1899, Dis. No. 6-R. GL of 99.

Resolution—Mis. No. 288, dated 24th January 1899.

In continuation of paragraph 4 of its Proceedings, No. 312, dated 19th November last, the Board submits for consideration the suggestion that the definition of the word "Proprietor" occurring in section 4 of the Madras Hereditary Village Offices Act III of 1895 should be amplified by an addition referring to the number and year of the Act into which the present Bill to amend Madras Act II of 1894 will develop.

2. The Collector of Kistna further suggests that the present opportunity may be taken to amend section 11 of Act III of 1895 so as to empower Divisional officers to make appointments to vacant village offices in cases where the proprietor neglects to exercise the power under that section. He adds that as Act II of 1894 is not in force in small estates as yet, Divisional officers cannot legally do so at present. The Board considers it hardly necessary to amend this section; for it applies only to (a) the minor village offices in all estates falling within the scope of Act II of 1894 and (b) (when the Act of 1894 has been extended\* to the larger whole inam villages), the major offices in such estates as are not of sufficient importance to be brought within the scope thereof.

\* Vide paragraph 1 of Board's Proceedings, No. 350, dated 19th October 1897, and paragraph 2 of Board's Proceedings, No. 378, dated 8th November 1897.

(True Extract.)

(Signed) LIONEL DAVIDSON,  
Acting Secretary.

To the Secretary to Government, Revenue Department.  
" Collector of Kistna.

READ—again Official Memorandum, No. 246, Revenue, dated 14th October 1898.

In forwarding letter No. 1-Sur., dated 2nd October 1898, from the Collector of the Vizianagram zamindari appointed under the Guardians and Wards Act (VIII of 1890), the Advocate-General is requested to be good enough to favour Government with his opinion whether the Collector's written application for the survey of the zamindari



with reference to section 27 of that Act may be dealt with as an application in writing by the proprietor within the meaning of section 17 of the Madras Survey and Boundaries Act (IV of 1897).

(By Order.)

(Signed) N. E. MARJORIBANKS,  
Ag. Under Secretary to Government.

To the Advocate-General, through the Government Solicitor,  
with the Collector's letter in original.

READ—also endorsement of the Government Solicitor, dated 14th November 1898, No. 527, forwarding the following opinion of the Honourable the Advocate-General, dated 14th November 1898:—

#### OPINION.

For the purposes of the Madras Survey and Boundaries Act (IV of 1897) proprietor is defined as "any person in whose name any estate is for the time being registered in the office of the Collector of the district wherein the estate is situated." Under section 17, clause (a) of the same Act, the Local Government may, by notification, direct the survey of any estate on the application in writing of the proprietor of such estate.

2. It is clear that the Vizianagram zamindari is an "estate" within the meaning of section 3 of Madras Act IV of 1897, and it is equally clear that the Minor Raja, as soon as the estate is registered in his name in the office of the Collector, could, if he were *sui juris*, apply under clause (a) of section 17 of the Act of 1897 for an order directing the survey of the zamindari. Mr. H. F. W. Gillman is the guardian of the Minor Raja appointed under the Guardian and Wards Act, 1890, and the question for consideration is whether the Government can take action under clause (a) of section 17 of the Act of 1897 on the written application of the guardian.

3. Section 27 of the Guardians and Wards Act, 1890, empowers the guardian of a ward to do all acts which are reasonable and proper for the realization, protection or benefit of the property. There can be no question that the survey of the estate in question would be for the protection and benefit of the property; but it seems to me that the general powers conferred upon the guardian do not constitute him the "proprietor" of the estate for the purpose of enabling him to apply under section 17, clause (a) of Act IV of 1897. The narrowness of the definition of "proprietor" in Act IV of 1897 is unfortunate, but as the law stands, I do not think that Government can direct the survey of the estate in question under clause (a) of section 17.

4. There seems no reason, however, why the survey should not be directed under clause (b) of the section in question, or why, pending the issue of the notification, the work should not be commenced as suggested by Mr. Gillman in paragraphs 5 and 6 of his letter of 2nd October 1898.

(Signed) C. ARNOLD WHITE,  
Advocate-General.

READ—again the following G.O., Mis. No. 4767, Revenue, dated 5th December 1898:—

Order—Mis. No. 4767, Revenue, dated 5th December 1898.

The draft of a Bill to amend the Madras Acts II of 1894 (Proprietary Estates) and IV of 1897 (Survey and Boundaries) is forwarded to the Advocate-General for favour of early opinion.

A file of connected papers is enclosed for reference and return.

(True Extract.)

(Signed) G. S. FORBES,  
Secretary to Government.

To the Honourable the Advocate-General.

#### ENCLOSURE.

A Bill to amend the Madras Proprietary Estates' Village Service Act, 1894, and the Madras Survey and Boundaries Act, 1897.

WHEREAS it is expedient to amend the Madras Proprietary Estates' Village Service Act, 1894 (II of 1894-M.) and the Madras Survey and Boundaries Act, 1897 (IV of 1897-M.).

It is hereby enacted as follows:—

(1) To the definition of the word "Proprietor" in section 4 of Act II of 1894-M., the following shall be added and shall be deemed always to have been added, namely:—

"Where an estate is under the management of a person appointed by the Court of Wards or in charge of a receiver or guardian appointed by a Civil Court, such person shall, for the purposes of chapter II and of sections 21 and 22 of this Act, be deemed to be the proprietor of the estate."

(2) To the definition of the word "Proprietor" in clause (iii) of section 3 of Act IV of 1897-M., the following shall be added and shall be deemed always to have been added:—

"Where an estate is under the management of a person appointed by the Court of Wards or in charge of a receiver or guardian appointed by a Civil Court, such person shall, for the purposes of the said Act, be deemed to be the proprietor of the estate."

READ—also the following opinion of the Advocate-General on the Bill to amend the Madras Acts II of 1894 (Proprietary Estates) and IV of 1897 (Survey and Boundaries) dated 8th December 1898:—

#### OPINION.

I think the Bill, as drafted, will meet the difficulties which have arisen in connection with the Madras Proprietary Estates' Village Service Act, 1894, and the Madras Survey and Boundaries Act, 1897.

I have made two verbal alterations in red ink in the type-written draft.

(Signed) C. ARNOLD WHITE,  
Advocate-General.

#### ENCLOSURE.

A Bill to amend the Madras Proprietary Estates' Village Service Act, 1894, and the Madras Survey and Boundaries Act (1897).

WHEREAS it is expedient to amend the Madras Proprietary Estates' Village Service Act, 1894 (II of 1894-M.), and the Madras Survey and Boundaries Act 1897 (IV of 1897-M.).

It is hereby enacted as follows:—

(1) To the definition of the word "Proprietor" in section 4 of Act II of 1894-M., the following shall be added and shall be deemed always to have been added, namely:—

"Where an estate is under the management of a person appointed by the Court of Wards or in charge of a receiver or guardian appointed by a Civil Court, such person shall, for the purposes of chapter II, and of sections 21 and 22, of this Act, be deemed to be the proprietor of the estate."

(2) To the definition of the word "Proprietor" in clause (iii) of section 3 of Act IV of 1897-M., the following shall be added and shall be deemed always to have been added, namely:—

"Where an estate is under the management of a person appointed by the Court of Wards or in charge of a receiver or guardian appointed by a Civil Court, such person shall, for the purposes of this Act, be deemed to be the proprietor of the estate."



READ—again Official Memorandum, No. 61, Revenue, 27th February 1899.

With reference to the draft of a Bill to amend the definition of Proprietor in Madras Acts II of 1894 and IV of 1897 returned with the Advocate-General's opinion of 8th December 1898, the Advocate-General is requested to be good enough to advise whether any practical or legal difficulty is likely to arise if the proposed legislation be dropped.

2. In his opinion of 14th November 1898, the Advocate-General doubted whether action could be taken upon the written application of the guardian. It has however been suggested that, if the application be made *in the name of the minor* or disqualified proprietor "by A. B., his guardian," no legal objection could be taken to the action following upon such application. A proprietor's duly authorised agent, who is not specifically comprised in the definition of "Proprietor," may, it is understood, apply effectually on behalf of his principal and, if so, it seems difficult to distinguish the case of a proprietor applying by his guardian.

(By Order.)

(Signed) G. S. FORBES,  
Secretary to Government.

To the Advocate-General.

READ—also endorsement of the Government Solicitor, dated 28th March 1899, No. 183, forwarding the following opinion of the Hon'ble the Advocate-General, dated 28th March 1899.

#### OPINION.

As regards applications under section 17 (a) of the Madras Survey and Boundaries Act, 1897 (IV of 1897), I think an application in the name of the minor proprietor "by A. B. his guardian" might be acted on without risk, practically speaking, of legal difficulties arising hereafter. I think, however, that difficulties might arise, if proceedings were taken under the provisions of the Madras Proprietary Estates' Village Service Act, 1894 (II of 1894), by a person other than the "Proprietor" as defined in the Act. It seems to me that the safer course is to amend the two Acts as suggested.

(Signed) C. ARNOLD WHITE,  
Advocate-General.

ORDER—No. 573, Revenue, dated 29th August 1899.

Miscellaneous.

The Government accepts the view expressed by the Honourable the Advocate-General in his opinion, dated 28th

March 1899, and resolves to introduce a Bill in the Legislative Council to amend the definition of "Proprietor" in Acts II of 1894 (M.) and IV of 1897 (M.).

2. The Bill will provide for all cases in which the management of an estate lawfully vests in a person other than the proprietor, whether as managers appointed by the Court of Wards, receivers or guardians appointed by Civil Courts, Curators, Executors, Administrators, Official Trustees, or as natural guardians. Opportunity will also be taken similarly to amplify the definition of "Proprietor" in the Madras Hereditary Village Offices Act (III of 1895), as the reasons adduced for amending the definition in Act II of 1894 apply equally to this Act.

3. A draft Bill, with a Statement of Objects and Reasons, will be forwarded to the Legislative Department for necessary action.

(True Extract.)

(Signed) H. TREMENHEERE,  
Ag. Secretary to Government.

To the Legislative Department, with draft Bill and  
Statement of Objects and Reasons.  
,, the Board of Revenue (Land Revenue).

Exd. A. Rangaswamy Aiyangar.  
40 Copies.

A

## BILL

TO

*Amend the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897.*

WHEREAS it is expedient to amend the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897; It is hereby enacted as follows:—

1. In section 4 of the Madras Proprietary Estates' Village Service Act, 1894, after the words "registered by the Collector as senior joint owner," and in section 3 of the Madras Survey and Boundaries Act, 1897, after the words "estate specified in clause (e) of sub-section (i), the holder thereof," the following words are inserted and shall be deemed to have been so inserted at the times when those Acts respectively came into force:—

"Where, by virtue of his appointment under the provisions of any Act or Regulation, an estate is under the management of a person other than the person in whose name the estate is registered, or where an estate is under the management of the natural guardian of the person in whose name the estate is registered, the person so appointed, or the natural guardian, shall, for the purposes of this Act, be deemed to be the proprietor of the estate."

2. In section 4 of the Madras Hereditary Village Offices Act, 1895, the words defining the terms "Proprietary Estate" and "Proprietor" are hereby repealed, and the following words are substituted therefor and shall be deemed to have been so substituted at the time when that Act came into force:—

"'Proprietor' means any person in whose name an estate is for the time being registered in the office of the Collector of the district wherein the estate is situated, and, in respect of an estate specified in clause (e) of section 4 of the Madras Proprietary Estates' Village Service Act, 1894, the holder thereof."



"Where an estate is so registered in the names of two or more persons as joint owners thereof, the proprietor shall, for the purposes of this Act, be the person who is recognized by the other joint owners as the manager of the estate or who, in case of dispute, is recognised and registered by the Collector as senior joint owner.

"Where, by virtue of his appointment under the provisions of any Act or Regulation, an estate is under the management of a person other than the person in whose name the estate is registered, or where an estate is under the management of the natural guardian of the person in whose name the estate is registered, the person so appointed, or the natural guardian, shall, for the purposes of this Act, be deemed to be the proprietor of the estate.

"'Proprietary Estate' means an estate as defined in the Madras Proprietary Estates' Village Service Act, 1894, as amended by this Act."

#### STATEMENT OF OBJECTS AND REASONS.

The definition of proprietor in section 4 of Act II of 1894 (M.) does not include the manager of an estate appointed by the Court of Wards or the Receiver or Guardian appointed by a Civil Court, and the persons so appointed cannot therefore exercise the powers conferred or discharge the duties imposed on proprietors by the Act. Considerable inconvenience has, in consequence, been, and is likely to be, experienced in working the Act in connection with the estates of incapacitated proprietors who are legally incompetent to act.

A similar difficulty has been experienced in connection with Act IV of 1897 (M.) as, in view of the definition of proprietor in clause (iii) of section 3 of this Act, the Manager, Receiver or Guardian appointed as above cannot apply to Government for a survey of the estate under Chapter III.

There are also other cases of estates in which similar difficulties might be experienced in working the Acts, such as estates in charge of the Official Trustee, of Curators, Executors, Administrators or other persons appointed to management under specific provisions of law.

2. It is desirable that in all the above cases the Managers of the estates should be empowered to act as and for the proprietor, and it is proposed to amplify the definition of the term in the two Acts so as to include them.

3. It is further proposed similarly to amplify the definition of proprietor in the Madras Hereditary Village Offices Act (III of 1895) to provide for the exercise of powers in cases where the proprietor is incompetent to act. The reasons for amending the definition in Act II of 1894 (M.) apply equally to Act III of 1895 (M.).

## Government (1899) of Madras. REVENUE.

Recd.

Regd.

1899.

Enclosures

Spare copies

G.O., No. 519, 4th August 1899.

AUGUST.

#### Survey of the Vizianagram Zamindari.

Ordering the publication, in the Fort St. George Gazette, of a notification directing that the — shall be undertaken and conducted by the Madras Survey Department in accordance with the provisions of Act IV of 1897.



## GOVERNMENT OF MADRAS.

## REVENUE DEPARTMENT.

READ—again G.O., Mis No. 4809, Revenue, dated 7th December 1898 :—

ABSTRACT.—Informing, with remarks, the Collector of the Vizianagram zamindari that he might commence the theodolite survey of the estate as suggested by him.

READ—again G.O., Mis. No. 2022, Revenue, dated 6th June 1899.

ABSTRACT.—Stating that an application for the survey of the Vizianagram zamindari under section 17 (a) of the Madras Surveys and Boundaries Act (IV of 1897) may be acted on without risk, provided that some application is made in the name of the minor proprietor by his guardian, and requesting Mr. Gillman to submit a fresh application accordingly.

READ—also the following letter from H. W. GILLMAN, Esq., I.C.S., Collector and Guardian, Vizianagram Zamindari, to the Secretary to Government, Revenue Department, dated Vizianagram, 14th May 1899, No. 1 of 1898, Survey :—

With reference to G.O., Mis. No. 2022, dated 6th instant, I beg to enclose a formal application in writing in the name of the minor proprietor for the survey of the Vizianagram zamindari.

## ENCLOSURE.

*Application for the Survey of the Vizianagram Zamindari.*

Under section 17 (a) of the Madras Survey and Boundaries Act (IV of 1897), I, H. W. Gillman, Guardian to the property of Sri Raja Pushaneti Viziamama Gajapatiraj, the minor "Proprietor" of the Vizianagram zamindari, beg to apply to Government in the name of the said minor for the survey of the whole of the Vizianagram zamindari situate within the districts of Vizagapatam, Ganjam and Godavari, and in the name of the said minor I hereby consent to defray the entire cost of such survey from the funds of the zamindari.

VIZIANAGRAM,  
14th June 1899.

(Signed) H. W. GILLMAN,  
Guardian.

ORDER—No. 519, Revenue, dated 4th August 1899.

Miscellaneous.

The following notification will be published in the *Fort St. George Gazette* :—

## NOTIFICATION.

Whereas Mr. H. W. Gillman, I.C.S., Collector of the Vizianagram zamindari, being the duly appointed guardian to the property of the minor Proprietor of the Vizianagram zamindari, has on his behalf submitted an application to Government for the survey of the whole of the said zamindari situate within the districts of Vizagapatam, Ganjam and Godavari and has consented in writing to defray the whole cost of such survey, His Excellency the Governor in Council, in exercise of the power vested in him by section 17 of the Madras Survey and Boundaries Act IV of 1897, hereby directs that the survey of the said zamindari shall be undertaken and conducted by the Madras Survey Department in accordance with the provisions of the said Act.

(True Extract.)

(Signed) H. TREMENHEERE,  
Ag. Secretary to Government.

To the Collector of the Vizianagram Zamindari.

„ the Superintendent, Government Press, for publication of notification.

„ the Superintendent, Madras Survey.

„ the Collector of Vizagapatam.

„ the Board of Revenue (Land Revenue).

Ed. A. Rungasawmy Aiyangar.

50 Copies.

# Government {1899} of Madras. REVENUE.

Recd.

Regd.

1899.

Enclosures

Spare copies

G.O., No. 517, 4th August 1899.

AUGUST.

## Survey of Estates under the management of the Court of Wards.

Communicating to the Court of Wards, with remarks, the opinion of the Honourable the Advocate-General that the Government is not competent to direct the — upon the application of the Court of Wards.



## GOVERNMENT OF MADRAS.

## REVENUE DEPARTMENT.

Read—again the following endorsement, Mis. No. 1528, Revenue, dated 24th April 1899:—

Read—the following Reference from the Court of Wards, No. 18, dated 14th March 1899:—

Read—G.O., Mis. No. 155, Revenue, dated 10th January 1899.

Read—also G.O., Mis. No. 451, Revenue, dated 31st January 1899.

Reference—No. 18, dated 14th March 1899.

In order to avoid any question whether the survey of estates under the management of the Court of Wards, already directed by Government, has been properly ordered under section 17 (a) of Madras Act IV of 1897, Government has, in the first paper read above, called upon the Court of Wards to obtain, on behalf of the minor proprietors concerned, written applications from their legal guardians. Similarly, in the second paper read above, an application from the legal guardian of the Sérugadá minor is called for in order to enable the estate to recover from the tenants a portion of the cost of its survey.

2. Before taking action as ordered above, the Court ventures, for the reasons stated below, to request a reconsideration of the orders of Government in the matter and to suggest that a reference be made, if necessary, to the Law officers of Government.

3. The estates for the survey of which applications have already been made to Government under Act IV of 1897 are noted in the margin. All these applications were submitted by the Court of Wards in the exercise of the general power and authority vested in it under section 2 of the Court of Wards Regulation (V of 1804). Government apparently doubts the validity of the applications so made by the Court of Wards and wishes to substitute for them applications by the legal guardians of minors. Government has presumably in view an opinion,\*

\* Printed in G.O., No. 728, Revenue, dated 11th September 1890.

dated 23rd August 1890, given by the late Mr. Spring Branson as Advocate-General, which was to the following effect:—

“According to Madras Act V of 1882, section 32, it is ‘the owner of the land’ who may apply. Where the owner is a minor his guardian represents him, and the application under that section must be made by such guardian.

“2. Applying this principle to the cases referred to me for my opinion, my answers to the two questions are that (a) as to the Jeypore estate the application should be made by the guardian Valevati Krishnayya, and (b) as to the Marungápur estate the application should have been made by the guardian of the minor, not by the manager of its estate.”

4. The question then placed before the Advocate-General was not whether the Court of Wards could make the necessary application on behalf of its wards—in fact the Jeypore minor was not under the Court of Wards—but whether the manager of an estate or the guardian of the ward was entitled to make the application. The Court is not in a position to refer to any specific legal opinion or decision recognizing its authority to make applications on behalf of minors under its charge for the survey of

their estates or in any other matter in which the legislature requires an application from the proprietor. But decisions of the Madras High Court, extracted below, may be referred to in elucidation of the general question at issue:—

*Extract from XIII, I.L.R., Madras (page 199).*

“In the plaint as first presented, the manager appointed under section 8, Regulation V of 1804, was entered as the next friend of the minor plaintiff. That manager was subsequently dismissed, and the Court authorized the Collector of North Arcot to conduct the suit. There is nothing in the Regulation to restrict the duty to the managers appointed under section 8; the Collector is *ex-officio* Agent of the Court, and the direction would be perfectly legal under section 2.”

*Extract from XI, I.L.R., Madras (page 316).*

(A Full Bench decision).

“The law does not render it obligatory that the minor should be represented by his guardian at the enquiry under the Boundary Act and the Regulation vests the management of the estate in the Collector as Agent of the Court of Wards and the manager appointed by him under section 8. These were represented at the enquiry.

\* \* \* \* \*

“We are of opinion therefore that the matter in dispute is now *res judicata* and that the zamindar is bound by the proceedings under the Boundary Act in 1875.”

It would appear from these decisions that, under section 2 of Regulation V of 1804, the Court of Wards has full power to do any act which it may consider to be desirable or proper on behalf of any minor who is its ward. It is not ordinarily necessary that the Court should assume into its own hands the power of representing minors—when either the manager or the guardian may with propriety represent them—but when the importance of the occasion demands it, the Court need not, it is submitted, hesitate to exercise the power.

5. Again, in an opinion given in 1893, as to who should execute a mortgage relating to a ward's property, Mr. R. B. Michell, Barrister-at-Law, said that the Court of Wards could authorize a Collector by a power of attorney to do certain acts which the Regulation (V of 1804) does not expressly empower a Collector to do. This view implies that the Court of Wards has authority to do such acts itself.

6. To hold that the Court of Wards cannot make the applications in question but can authorize the guardians appointed by it to do so would be tantamount to holding that an agent could act for his principal in matters in which the principal could not act for himself, which is a contradiction in legal terms. The guardian of a minor in this Presidency is not, like the guardian of a minor in England, a person subject to no control except that of the Court of Chancery, but he is mere subordinate appointed and controlled by the Court of Wards and cannot be conceived as acting independently of its authority.

7. The procedure contemplated in the Government orders read above also involves the following inconvenience, viz., that a guardian of the minor's person is thereby called upon to make an application in the interests of an estate of the requirements of which he knows nothing, and to undertake to defray the necessary charges from the estate funds when he is powerless to spend one pie out of the minor's income without the leave of the Court of Wards. In the case of the Sérugadá and Kasimkóta minors, the guardian of the person, Mr. Morrison, has never been near the estates, and inasmuch as he has no control over or access to their accounts, cannot, even by a fiction, be supposed to be acquainted with their wants in the matter of a survey. His case is therefore exactly in point. In order to obviate these inconveniences, the Court respectfully submits that the necessary authorization in such cases should emanate only from itself.

(Signed) LIONEL DAVIDSON,  
Acting Secretary.

To the Secretary to Government, Revenue Department,  
with a copy of Court's Proceedings, No. 2401, dated 24th July 1893.



Endorsement—Mis. No. 1528, Revenue, dated 24th April 1899.

Referred to the Honourable the Advocate-General for favour of opinion.

(Signed) A. EDGINGTON,  
for Secretary to Government.

To the Honourable the Advocate-General, through the  
Government Solicitor, with copy of Court of Ward's Proceedings,  
No. 2401, dated 24th July 1893, and copies of the printed papers referred to  
in Court's Reference No. 18, dated 14th March 1899.

READ—the following endorsement of ERNEST BARCLAY, Esq., Government  
Solicitor, Madras, to the Secretary to Government, Revenue Department,  
dated 19th May 1899, No. 276.

Forwarded with enclosures with reference to the endorsement of Government,  
Mis. No. 1528, Revenue, dated 24th April 1899.

#### ENCLOSURE.

#### Opinion.

1. I have carefully considered the reasons urged in support of the view that, in the case of estates which are under the management of the Court of Wards, an order for survey may be properly made by Government under section 17 (a) of the Madras Survey and Boundaries Act (IV of 1897) upon the application of the Court of Wards.

2. By section 17 (a) of the Act the Local Government may, by notification, direct the survey of any estate on the application in writing of the proprietor of such estate; and, for the purposes of the Act, proprietor is defined as "any person in whose name and estate is for the time being registered in the office of the Collector of the district wherein the estate is situated." The question, therefore, is—Can the word "proprietor" as defined in the Act be construed as including the Court of Wards with reference to estates which are under their management? In my opinion it cannot. The words of section 2 of Regulation V of 1804—"to take cognizance of all cases of property, &c."—are no doubt very wide, and, taken by themselves, might fairly be construed as conferring upon the Court of Wards all the powers of the owner of the estate. But the generality of these words cannot be prayed in aid for the purpose of giving a convenient construction to a later enactment which expressly defines the person on whose application the Government may take action as the person in whose name the estate is for the time being registered in the office of the Collector. The Court of Wards is *not* the person in whose name the estate is registered in the office of the Collector.

3. I do not think the cases reported in I.L.R., II Mad., 316, and 13 Mad., 199, are really in point. They relate to the construction of the Regulation and the question in the present case is the construction of Act IV of 1897. The same observation applies to the opinion of Mr. R. B. Michell given in 1893 with reference to the construction of section 15 of the Regulation.

As I have pointed out on previous occasions the narrowness of the definition of "proprietor" in Act IV of 1897 is unfortunate, but as the law stands, I do not think it is competent for Government to direct the survey of estates, which are under the management of the Court of Wards, upon the application of the Court of Wards.

OOTACAMUND,  
15th May 1899.

(Signed) C. ARNOLD WHITE,  
Advocate-General.

ORDER—No. 517, Revenue, dated 4th August 1899.

Miscellaneous.

The opinion of the Honourable the  
Advocate-General will be communicated  
to the Court of Wards with reference to

its Reference No. 18, dated 14th March 1899.

2. The Government has decided to amend the definition of "proprietor" in Madras Act IV of 1897 so as to include managers appointed by the Court of Wards

in respect of estates under its control and to give retrospective effect to the amendment. An amending Bill will shortly be introduced in the local Legislative Council. Meanwhile the Court of Wards will comply with the requisitions contained in G.Os., No. 155, dated 10th January 1899, and No. 451, dated 31st January 1899; the written application should be from the manager of the estate appointed by the Court of Wards, not from the guardian of the person of the ward.

(True Extract.)

(Signed) H. TREMENHEERE,  
Ag. Secretary to Government.

To the Court of Wards.

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(Signed) C. ARNOLD WHITE,  
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its Reference No. 18, dated 14th March 1899.



Papers to be read in Proceedings:—

|                 |                                                |       |
|-----------------|------------------------------------------------|-------|
| Again G.O., No. | , dated                                        | 189 . |
| Again G.O., No. | , dated                                        | 189 . |
| Current No. 341 | of 1899, dated 29 August, from the Rev Dept. — |       |
| " "             | " 189 , "                                      | " "   |
| " "             | " 189 , "                                      | " "   |

Mr. K. S. Coie

2P

ORDER.  
PS

10.5 dated 5/10/99

Flag F

Under Rule 33 of the Rules for the conduct of business at meetings of the Council of the Governor of Fort St George for making Laws and Regulations, His Excellency the Governor is pleased to direct the publication of the Bill to amend the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897, together with the Statement of Objects and Reasons in English and in all the Vernaculars.

2. The Honble Mr. Winterbottom will be requested to take charge of the Bill

was understood that Mr. Winterbottom would take charge of the Bill

The Bill may be proceeded with under revised instruction 5(c), in which case prior report to the Secretary of State & the Govt of India is unnecessary, & a dispatch will be sent to the Govt of India for introduction of the Bill.

27/9/99  
(actual address)

28/9/99

Note The Bill which became Act II of 1894 was not published in Malayalam, but the Bills which became Acts III of 1895 & IV of 1897 were published in all the languages — (Hindustani included).

Dept. of the Govt. of India  
with the Bill



1st copy sent to Press.

Returned for signature.

Despatched in print.

REPRINTING G. O., No.  
189

DATED

CURRENT No.

341

h.

ENCLOSURE TO C. No.

ORDER OF GOVERNMENT.

A

LETTER OF GOVERNMENT.

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