

(1) பக்கங்களின் எண்ணிக்கை 8

(2) புதுக்கித் திருப்பிய நாள் 21.6.1990

(3) ஆதாரங்குறிப்பவர் சுருக்கொப்பம் 127

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

சு.ம.வ. துறை

அரசாணை எண்.
மு. கோப்புத் தாள் எண்.

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அச்சகம்
பலவகை

நாள் : 20-3-1991

மடிக்கவோ கண்டபடி கையாளவோ கூடாது

A. Shakti

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ஆவண. கா-1-18,006-15-6-87.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

THE HON. J. GROSE.
MR. G. McWATTERS.

Read—the following G.O., dated 22nd December 1890, No. 1033, Revenue :—

Read—again the following G.O., dated 22nd November 1890, Mis. No. 7176, Revenue :—

Read—the following Proceedings of the Board of Revenue (Land Revenue), dated 3rd September 1890, Mis. No. 5535 :—

MR. H. W. BLISS.
MR. W. S. WHITESIDE.

Read—G.O., dated 9th August 1890, No. 630, Revenue.

Resolution—dated 3rd September 1890, Mis. No. 5535.

The Board ventures to submit the following remarks to Government, with reference to their order, dated 9th August 1890, No. 630.

2. The law of the case appears to stand as follows :—Under section 38 of Act II of 1864, as amended by Act III of 1884, the Collector shall, at the expiration of 30 days from the date of the sale, either set the sale aside or confirm it; if he confirm it, he shall grant a certificate of sale which shall be conclusive evidence of the fact of the purchase.

3. Under section 3 of Regulation VII of 1828, Sub and Assistant Collectors may exercise all the powers granted to Collectors under the Regulations, unless the contrary be expressly declared; and in such cases, their acts are subject to the fullest superintendence, control and revision of the Collector.

4. In section 38 of Act II of 1864, the word "Collector" is not defined nor are the powers of the Collector restricted to the Collector of the district only. Under Regulation VII of 1828, therefore, the Board submits, Sub and Assistant Collectors are by law vested with the powers granted to Collectors in Act II of 1864, subject of course to the control of the Collector of the district under the latter part of section 3 of the Regulation; and being by law vested with those powers, they cannot be divested of them by an order of the executive Government.

5. The Board further ventures to urge upon Government that it is advisable, if the law will bear out such an interpretation, to make Divisional-officer act the part of a Collector under Act II of 1864, while still keeping the power of revision conferred by Regulation VII of 1828 in the hands of the Collector of the district. There were over 8,000 defaulters whose lands were sold in fasli 1298, and such cases are always likely to be numerous. If the duty of confirming (or setting aside) the sales in all these cases (an average of about 400 in each district) is to be imposed on the Collectors

The Board's interpretation of the law that, as the term Collector is not restricted by definition in Madras Act II of 1864, Sub and Assistant Collectors are competent under Regulation VII of 1828 to exercise the powers conferred on Collectors by that Act, is doubtless correct; but the question is whether when a Divisional-officer has, in the exercise of the power conferred on Collectors by section 38 of the Act, as amended by Madras Act III of 1884, confirmed or cancelled a sale, his decision may be revised by the Collector of the district under the controlling power conferred on him by section 3, clause 3 of the Regulation. There is indeed no express provision in Act II of 1864 similar to section 76 of Madras Act VIII of 1865, which has been held (*vide* M. H. C. Reports, Vol. V, page 129) to preclude the Collector of a district from revising the decision of a Head Assistant Collector when the latter has in passing the decision exercised the powers conferred on a Collector by that Act; but the provisions of section 38, clause 5 of the Revenue Recovery Act, seem by implication to debar the Collector of the district from setting aside a sale confirmed by one of his Divisional-officers exercising the powers of a Collector. For if, as clause 2 of this sub-section provides, the certificate of the latter officer is to be "conclusive evidence of the fact of the purchase in all courts and tribunals where it may be necessary to prove the same," such certificate must be binding also on the Collector of the district, and to this extent the general power of revision conferred on him by the Regulation would seem to be restricted. Nor, it may be noted, is any power of revision of his own decision conferred by the Act on the Collector (whether the Divisional-officer or the Collector of a district); for the first paragraph of the sub-section enacts that, after the confirmation of a sale, the Collector "shall register the lands, &c.," and this seems to imply that after the Collector has once confirmed the sale it is not open to him to interfere with it.

Ramdoss Nayudu, Appellant (Plaintiff).
Bashyathiengar and 7 others, Respondents (1, 2, 4, 5, 6, 7, 8 and 9, Defendants).

Appeal against the decree of the District Munsif of Poonamallee in Original Suit No. 906 of 1887, dated 27th December 1888.

This appeal coming on for hearing, the Court delivered the following Judgment:—This is an appeal from the decision of the District Munsif of Poonamallee in Original Suit No. 906 of 1887, on the file of his Court. In that suit, the plaintiff, Ramdoss Nayudu, as the Secretary of a society called the "Sasvata Dhannarakshaka Nidhi," alleged that the first defendant, Bashyathiengar, a subscriber to the *Nidhi*, and the second defendant, Ramanuja Aiyengar, his son, mortgaged the plaint land to the *Nidhi* and on the same day executed a muchilika stipulating to cultivate the land and pay Rs. 5-4-0 a month to the *Nidhi*; that, subsequently, steps were taken to have the patta transferred to the plaintiff's name; that the defendants 1 and 2 fraudulently omitted to pay *Sirkar* kist, as they were bound to do under terms of the muchilika; and without the knowledge of plaintiff, brought about, with the connivance of the karnam and others, a sale of the lands, for arrears of kist, in which sale the lands were purchased in the names of defendants 3 to 7, who are relatives of defendants 1 and 2; and that plaintiff petitioned the Deputy Collector, who thereupon cancelled the sale; but on an appeal being made to the Collector (8th defendant) the latter reversed the Deputy's order and confirmed the sale. The plaintiff therefore sued to have the revenue sale set aside.

2. The defendants 1 and 2 contended that the suit was opposed to section 424 of the Civil Procedure Code; that the plaintiff himself had undertaken to pay *Sirkar* kist and had also received a sum of Rs. 71-8-2 from 1st defendant, as a deposit for kist; that defendants should not have been made parties to the suit which was instituted to set aside the Collector's order; that the sale could not be set aside unless fraud or irregularity were proved; and that the plaintiff's gumasta was aware of the attachment and sale.

3. The defendants 4 to 7, amongst other things, pleaded that there was no ground for setting aside the 8th defendant's order.

4. The 8th defendant pleaded that there was no notice under section 424 of the code, and that he confirmed the sale as he was satisfied that there was no irregularity or fraud.

5. The Munsif found that no notice was required under section 424, but that the Collector had power to interfere with the Deputy Collector's order. He dismissed the suit with costs.

6. Against that decision the plaintiff now appeals.

7. The plaintiff contends that the Munsif ought to have found that the order of the Deputy Collector cancelling the revenue sale was final, and that the Collector had no power to interfere with that order. I think, however, that the Munsif was right in holding that the Collector had power to interfere. I am of opinion that, under the controlling powers vested in the Collector in clause 3 of section III of Regulation VII of 1828, he is empowered to set aside orders passed by subordinate officers.

8. I confirm the Lower Court's decision and dismiss this appeal with costs.

(Signed) S. T. McCARTHY,
District Judge.

READ—also the following paper:—

From ERNEST BARCLAY, Esq., Government Solicitor, Madras, to the Secretary to Government, Revenue Department, dated 9th December 1890, No. 584.

Forwarded, with enclosures, with reference to the order of Government, No. 7176, dated 22nd November 1890, Revenue.

ENCLOSURE.

In the matter of Madras Regulations No. VII of 1828, and of Madras Act II of 1864, section 38, as amended by Madras Act III of 1884.

Opinion.

1. In *Rajaram Lala v. Kaliyappen* (a) the Court observed (b)—Ordinarily where a Court

(a) 5 M. H. C. Reports, page 129.
(b) *Ib.* page 131.
has passed judgment in a suit, it has not the power to review and alter its first judgment upon the merits, unless such power has been expressly conferred upon the Court. I think that the same principle applies to the case of an order passed by the Collector under the provisions of Madras Act II of 1864, section 38, as amended by Madras Act III of 1884. The power to review his own order is not inherent in the "Collector," and has not been expressly conferred upon him by the Act.

As Madras Regulation VII of 1828, section 3, clause (1), conferred upon Subordinate or Assistant Collectors authority to exercise within the divisions under their charge all the powers granted to Collectors, it follows that Subordinate and Assistant Collectors are empowered to pass orders under section 38 of Madras Act II of 1864 as amended by Madras Act III of 1884; and that they have no power to review their own orders.

2. Madras Regulation VII of 1828, section 3, clause (3), "gives to the Collector the fullest powers of control and revision over the proceedings of his subordinates;" (c) Madras Act II of 1864, section 38 (5), merely declares that the Collector "shall be conclusive evidence of the fact of the purchase" and does not deprive the Collector of the power of setting aside the sale so conclusively proved, and that power is not affected by any other provision contained in the Act. It follows, therefore, that the Collector of a district, in the exercise of the power of revision conferred by the Regulation, can set aside a sale confirmed by one of his Divisional-officers under section 38 of Madras Act II of 1864 as amended by Madras Act III of 1884.

3. In *Karuppa v. Vasudeva* (d), the High Court held that a revenue sale was completed at the latest at the end of one month thereafter, and that the period of limitation applicable to a suit to set it aside began to run when it was completed either by the grant of the certificate and registration, or on the expiration of one month from the date on which it took place. Though the sale may be thus completed, and the period of limitation begin to run against the party deeming himself aggrieved, on the expiration of 30 days from the date of sale, it does not necessarily follow that the powers of revision conferred upon the Collector of the district must be exercised by him within that time. The period of 30 days is prescribed for applications to, and the passing of orders thereon by, the officer acting under the provisions of section 38 of the Act. The power of revision conferred by the Regulation on the Collector of a district cannot be exercised by him until after the exercise by his Divisional-officer of the power he possess of making an order under the Act. If the exercise of the Collector's power were limited to 30 days from the date of the sale, his subordinate might prevent him from exercising it by abstaining from making any order until the thirtieth day after the sale.

As neither the Regulation nor the Act lays down any period within which the Collector of the district must exercise his power of revision, I answer in the negative the second question put to me.

(Signed) J. H. SPRING BRANSON,
Advocate-General.

MADRAS,
6th December 1890.

Order—dated 22nd December 1890, No. 1033, Revenue.

Land Revenue, No. 71.

The Advocate-General's opinion will be communicated to the Commissioners of Land Revenue for information and guidance. G.O., dated 9th August 1890, No. 630, is hereby cancelled and the proposed amendment of Standing Order No. 106 is approved.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Commissioners of Land Revenue.

RESOLUTION—dated 17th February 1891, No. 109.

Communicated to all Collectors for information and guidance, in continuation of Board's Proceedings, dated 10th July 1890, No. 410.

2. Standing Order No. 106 (new edition), paragraph 10, will be amended as follows:—

(1) Convert the full stop at the end of the 1st sentence into a semi colon, and add the following clause:—

"But the orders of Divisional-officers confirming or setting aside sales are subject to the general powers of revision and control, exerciseable by the Collector under Regulation VII of 1828: such powers may be exercised by the Collector *suo motu* or on appeal from one or other of the parties concerned; but in either case, action must be taken within 30 days from the date of the Divisional-officer's order, exclusive of the time that may have been taken in obtaining a copy of the Divisional-officer's order."

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6 BOARD OF REVENUE (LAND REVENUE), 17TH FEBRUARY 1891, No. 109.

(2) Insert as 2nd sentence—

“The sale, however, becomes complete for purposes of section 59 of Act II of 1864, the moment it is confirmed by the Divisional-officer.”

(3) Omit the last sentence altogether.

(A true Copy and Extract.)

(Signed) H. A. SIM,
Acting Secretary.

(True Copy.)

(Signed) C. CLARK,
Registrar.

To all Collectors.

Copy to the Secretary to Government, Revenue Department.

Exd. T. K. Narayana Aiyangar.

P.W.C. No 53160 ✓

REVENUE DEPARTMENT.

1891.

Board of Revenue

(Land Revenue),

MADRAS.

No 521 W of 20 - March 1891

Recorded

OVB
20.3.91

On

Printed March 4th.

Recd. 5-19-91

Proceedings, 17th February 1891, No. 109.

(4)

Communicating to all Collectors, for information and guidance, Government Order communicating the opinion of the Advocate-General regarding the powers of Collectors to revise Divisional-officers' orders in regard to sales of land under Act II of 1864 ; and amending Standing Order No. 106 accordingly.

See 24/3 - 24/3 -