

MADRAS RECORD OFFICE.

Government of Madras.

Political **DEPARTMENT.**

G.O. No.	784	Press Mis
Dated	22-9-1918	

Not to be folded or roughly handled

25/9/30

Fort Saint George, Political Consultation, 22nd September 1857.

No. 11. From Surgeon E. C. BALFOUR, Government Agent at Chepauk, to E. MALTBY, Esq., Acting Chief Secretary to Government, Fort Saint George, dated 15th August 1857, No. 224 of P. C. S.

SIR,

1. I have the honor to report on the letter and Petition received from the Right Honorable the Governor in Council, in Extract Minutes of Consultation No. 666 of 21th Instant.

2. I have the honor to explain that Mahomed Banker Hoossain Khan, therein named as a Petitioner, is Carnatic Stipendiary, No. 433, and in receipt of Rupees 10,000 per annum, as the Nickah son of Nabob Oomdoot-ool-Oomrah. That he is now a man near 60 years of age; has been palsied for the past 10 years, has been long in a state of idiotic like imbecility, and has been and is in the complete control of his Khansaman Dade Mahomed;—I have not seen the man myself but the reports to be relied on, are as above.

3. The second petitioner, Shurfoon-Nissa, about 5 years of age, is the daughter of the woman calling herself Mahi-oon-Nissa Begum, these two being the reputed widow and daughter of the late Carnatic Stipendiary, No. 432, Shah Sawar Jung, son of Nabob Oomdoot-ool-Oomrah, and half brother of Banker Hoossain Khan, the first petitioner. The child has been betrothed to the son of Carnatic Stipendiary, No. 300, Ameen-ood-Deen Hoossain Khan.

4. The Right Honorable the Governor in Council is aware that Mr. Waddell, the applicant on their behalf, is not a well known Solicitor.

5. These circumstances would alone have almost induced me to recommend that Government refuse the prayer of this petition.

6. On the other hand the Dewan of the Durbar is entitled to great consideration, on the part of the State:—

Firstly, because his interfering at all in the dying or dead man's estate was as Dewan of the Durbar at my request; and I was called upon to act as Government Agent at Chepauk, by the Chief Magistrate and Superintendent of Police summoning my aid to protect the property from plunder, (*vide* my letter, No. 123, dated 10th October 1853, Colonel Boulderson's letter, 23rd May 1856).

Secondly, because when I asked the assistance, for the decision of this case, of the Kazee-ool-Kazaat of the Court of Sadr and Foujdaree Adalat, Government did not think it advisable (*vide* my letter dated 17th July, No. 81 of 1856, and Extract Minutes of Consultation, dated 31st Idem, No. 230), also my letter, No. 95 of 6th August 1856, and reply thereto.

Thirdly, when the Dewan applied to hand over the whole estate to the Administrator General, the opinion of the Honorable Company's legal adviser was opposed thereto, and he was not permitted to be set free (*vide* my letter, 19th December 1856, No. 159, and Extract Minutes of Consultation, 7th January 1857.)

Fourthly, he was told by the Honorable Company's legal adviser to hand over the property to the widow, and he was again restrained from doing so, by the same Officer, an injunction to the contrary having been issued, (*vide* Extract Minutes of Consultation, 30th April, No. 312 of 1857, and Extract Minutes of Consultation, 5th May 1857, No. 254.)

7. Notwithstanding all these, had applicants soliciting been to remove the injunction, I would have recommended compliance, with the prayer of the petition, but in its present shape I recommend its rejection.

8. I have not the least doubts that the Dewan of the Durbar has made mistakes, in this transaction, perhaps great ones, and some perhaps that he might have avoided, but, on one week I was subpoenaed, for four complete days on this and another case, at the Supreme Court, when I found five contending parties represented at the Bar, and, with so much litigation, in which very large sums have been spent, it would be very wonderful indeed if any person, in the Dewan's position, could have escaped being laid hold of for mistakes committed.

9. But so soon as he shall be permitted to hand over the property to the Court's orders, to a Receiver or to the Administrator General, as he has before asked to do he will be compelled to render an account of every article and every pice that ever came into his possession, and if this

The property to the Receiver

Fort Saint George, Political Consultation, 22nd September 1857.

permission could be given him to-morrow, he must do it to-morrow, and make good any sum or the value of any article he cannot satisfactorily show to have legally employed.

10. I recommend for all these reasons non-compliance with petitioner's prayers; and that as early as possible the injunction be removed.

(Signed) EDWARD BALFOUR.

Government Agent.

No. 12. ORDER THEREON, No. 784; dated 16th September 1857.

In this letter the Agent reports upon a petition presented on behalf of Mahomed Banker Hoossain Khan Bahadoor and his infant niece Shurfoon-Nissa Begum, praying that the exemption afforded by Acts I of 1844, and XVIII of 1857, to Madamool-Oomrah Bahadoor, Dewan of the late Nabob of the Carnatic, may be suspended in order that he may be sued by them in the Supreme Court on matters relating to the Estate of the late Shasavur Jung Bahadoor, brother of the first petitioner.

2. The main points of the case are briefly as follows. In consequence of contending claims the Dewan has held on trust the Estate of the late Shasavur Jung. From this charge he was desirous of relieving himself by delivering over the property to the Supreme Court where litigation regarding it was going on, or to the widow of the deceased, Mohi-con-Nissa Begum, but there were legal objections to either course in consequence of Letters of Administration not having been taken out, and no Receiver having been appointed in the Equity Suit then pending.

3. Afterwards letters of administration were granted to the widow, and the legal objection to her receiving the property from the Dewan, and granting him a receipt for it was thus removed. But now a new difficulty arose in consequence of these petitioners applying to the Supreme Court for an injunction, by which she is restrained from receiving from the Dewan or any other party, "money, goods, chattels, and effects belonging to the Estate of Shasavur Jung Bahadoor."

4. Under these circumstances, Government concur in the opinion of the Agent that no sufficient cause exists for removing the protection afforded by Act XVIII of 1857, and allowing the Dewan to be dragged into the litigation which is now going on before the Supreme Court regarding this property. If the Petitioners withdraw the injunction which they obtained, the widow can receive the estate on the Letters of Administration which have been issued in her name, and as she is not included in the above mention Act, any claimants from whom she withholds portions of the Estate due to them, will have no difficulty in prosecuting their rights, or if the Petitioners induce the Supreme Court to appoint a Receiver in the Equity Suit pending before it, the Dewan will be able to hand over the property to that Officer.

Political Department

N^o 784

Abstract of Minutes of Council: Dated 16th September 1857

- Recd letter from Govt Agent
at Chikanah d 26 August 1857
No 224

In this letter the Agent reports upon a petition presented on behalf of Mahomed Banker Hoossain Khan Bahadoor & his infant niece Shurfoon-Nissa Begum, praying that the exemption afforded by Acts I of 1844 and XVIII of 1857 to Madamool-Oomrah Bahadoor, Dewan of the late Nabob of the Carnatic may be ~~suspended~~ in order that he may be ~~sued~~ in the Supreme Court on matters relating to the Estate of the late Shasavur Jung Bahadoor, brother of the first petitioner.

2. The ^{main} points of the case are briefly as follows. In consequence of contending claims the Dewan has held on trust the Estate of the late Shasavur Jung. From this charge he was desirous of relieving himself by delivering over the property to the Supreme Court

where litigation regarding it was going on, ~~but~~ or to the widow of the deceased. Maysoon Nissa Begum, but there were legal objections to either course in consequence of letters of administration not having been taken out, & no Receiver having been appointed in the Equity suit then pending.

3 - Afterwards ^{of administration} letters were granted to the widow & the legal ^{objection} ~~difficulties~~ about her receiving the property from the Dewan & granting him a receipt for it was thus removed. But now a new difficulty arose in consequence of these Petitioners applying to the Supreme Court for an injunction, by which she is restrained from receiving from the Dewan or any other party "money goods, chattels & effects belonging to the estate of Shikharwar Jung Behaudin."

4 - Under these circumstances Govt

concur in the opinion of the Agent that no sufficient cause exists for removing the protection afforded by Act XVII. of 1857 & allowing the Dewan to be dragged into the litigation which is now going on before the Supreme Court regarding the property. - If the Petitioners with-
draw the injunction which they obtained, the widow can receive the Estate on the letters of administration which ^{have been issued in her name} ~~she holds~~, & as she is not included in the above mentioned Act, any ~~rightful~~ claimants from whom she withholds portions of the Estate due to them, will have no difficulty in prosecuting their rights. - or if ~~the~~ ^{they} Petitioners induce the Supreme Court to appoint a Receiver in the Equity suit pending before it the Dewan will be able to hand over the property to that officer.

To the Govt Agent at Lucknow - Dated 22^d 1857
W. H. Addis Esq. Secretary to Government
Banker Hossain Khan. P. O. Maysoon Nissa Begum, Dated 22^d

Petition by Mr. Waddell for M. Banker Hoofain Khan,

and he said to his
infant niece

Memo

Estate of Shah Lowan Jung.

July/56.

The Petitioner made in the office
exhibits clearly the correspon-
-dence which has passed in this
case - down to May last.

It appears that on the death of
Shah Lowan Jung, the agent, to secure
the old man's belongings from the
looters who were fighting for it,
charged the Dewan with the custody
of all the effects, & called in the
Police to afford him protection
in securing, & making inventories
of the property.

Decr/56

Subsequently the Dewan asked leave
to deliver over every thing to the Supreme
Court, as certain claimants had
procured from that Court notices
addressed to him, charging him with
to distribute any portion of the effects.

& who, it seems, he
was about to do, un-
der a decree of the
Mahakamish.

3/1-57.

2. The H.C. Solicitor advised that the
Dewan should retain custody until an
administration was appointed, or a
Receiver under the Equity suit was
pending. This advice he reiterated (9-2-
-57) on the Dewan's requesting to be allowed
to deliver over & get a full discharge from
the widow of the deceased.

3. at least, in April following, the Supreme

Court granted letters of administration to the widow, & the H. C. Solicitor advised that the Dewan might now make over the estate to her, & get her formal receipt.

4. Meanwhile, the deceased's brother the present petitioner, joining with his deceased's child (a girl of five & whose next friend he sets himself up to be, to the exclusion of her mother, deceased's widow) filed a Bill of complaint on the Equity side of the Court, praying for an injunction against such transfer & against any meddling with the effects whatsoever, on the ground that the Dewan, in collusion with the widow, was paying off her debts with the money which forms the share of the said brother and child (who, under the Mahomedan law, take (especially the child) very considerably).

4. Injunction was issued accordingly, but before the lapse of the time allowed the Dewan to file his answer, Act XVIII of 1857 came into operation! He is consequently

exempt from all process of Court. & has taken no further steps in the matter.

5. It is therefore prayed that Govt. will give Petitioners the power to sue him at once; it being apprehended that he & the widow will squander the entire estate. If Petitioners' right to sue is in abeyance until the expiration of the term of the said Act.

6. The Agent sees no reason for compliance with his prayer, but asks that the "Injunction" of the Court, restraining the Dewan from giving over the effects be removed!

7. The widow certainly is not one of the 'exempt'. & if the Dewan made her over the property (for the injunction not to do so is nothing to him now) litigation could be proceeded with briskly, & the estate disposed of without any undue delay!

J. B. C. 1/5/57

Note

- But according to Mr. Boyson's letter of 1st April 1857, the injunction is not directed to the Dewan, but to the Widow forbidding her to receive the Estate.

& the H. C. Solicitor warned Govt (1/5/57) that the Dewan must obey it

Precis of Correspondence regarding the
Estate of Shah Sowar Sing Bahadoor

1. In his letter of 17th Sep 1856, the Govt.
agent reported the steps he had taken to secure
the property of Shah Sowar Sing Carnatic
stipendiary, 10432, son of H.H. the late Naba
Rondill ool Sonnah Bahadoor, and one of
the parties exempt from the jurisdiction of
British Courts; and that he had nominated
Kazee ool Moolk Bahadoor and Shroff
Bahadoor with two others named by the
Devan, to make an inventory. He also
requested, with the consent of the Devan,
that Kazee ool Kazaat Moolvie Mahomed
Charruf Sahib of the Subor Court, might be
permitted to sit with the Kazee ool Moolk
Bahadoor of the Circar Maha Kamah on
the day of deciding the cases of the indi-
viduals claiming to be Shah Sowar
Sing's heirs. He noticed that the deceased
had a half brother Bakir Hoopair Khan also
a Carnatic stipendiary, but that a woman
and her daughter claimed to be regarded as
his wife and child.

2 Govt. saw no objection (C. P. L. 37 Sep 56)
to Kazee ool Kazaat sitting with the
Kazee ool Moolk Bahadoor of the Circar

C 12 Sep
R 15

Mahkamah provided he was disposed to give his assistance. They left it to him to set or not as he thought proper, and stated that they would in no way interfere with the settlement of the claims either in this or any other particular.

3. On the 6th Aug. following the Chepauk Agent submitted a letter from the Dewan of the Durbar enclosing copies of petitions received from Banker Hussain Khan, brother, and Mehr-un-Nisa Begum, Nikaah widow of the deceased Shah Nawaz Jung, and requested the orders of Court thereon. The Petitioners complained of a slave girl, belonging to the house of the Jung, who withdrew her case from the Mahkamah and resorted to the Supreme Court for the purpose of proving herself to be his daughter; and requested that Court would direct that Court not to admit her complaint. The reasons assigned by the Agent for forwarding these communications to Court were, 1st because he considered them to stand now in the same relation to the Dewan as the Babsh did before, and 2^d because the question of heirship was one peculiarly devolving on the Court.

4. The Court stated in reply (13 Aug/57) that they had no orders to give in this matter, and referred the Dewan to C. M. L. 31st Aug/57.

No 280 (vide para 2. above)

5. On the 19th of Decr/56 the Chepauk Agent transmitted a communication from the Dewan wherein he requested that necessary measures be taken for his delivering over to the Supreme Court the money belonging to the estate of Nawaz Jung as he had received notices from that Court, on the motion of certain individuals pretending to be the heirs of the deceased, not to distribute it.

6. This communication with the previous papers having been referred to the Hon'ble Court Solicitor for his opinion, that officer advised (3rd Janr/57) that the Dewan should retain in his possession the property and assets of this estate until Letters of Administration had been granted to one of the several parties who applied for them, or to some other party considered to have had a ~~preferable~~ preferable right thereto, or until a Receiver had been appointed in the Equity suit then pending for the purpose of realising the deceased's estate; and that when any person claiming to be Administrator or Administratrix or Receiver applied to the Dewan for payment and delivery of the property in question, he (the Solicitor) should be further consulted as to the right of such party and his or her competency to give a valid and effectual discharge for the property. He

was also of opinion that the Award or Decree of the Makhkamah ~~Court~~ should not be in any manner recognized or acted upon.

7 This letter was forwarded (7 Jan 57) to the Chapank Agent for communication to the Dewan with instructions carefully to conform to the course indicated by the H.B. Solicitor.

8 On the 28th Decr/56, Ellabroon Missa Begum, widow of the late Shah Sower Sing, submitted a petition to Govt. begging that the case as decided in the Nabob's Makhkamah should remain undisturbed and not be transferred to the Supreme Court. The enclosed copy of the Decree of the former Court whereby $\frac{1}{4}$ of the estate was ~~assigned~~ allotted to Ellabroon Missa Begum (the wife) $\frac{1}{8}$ to Shurfoomessah Begum (the daughter) and $\frac{1}{8}$ to Mohammed Bankhen Hopain Khan Bahadur (the half brother). This Petition was referred (14 Jan 57) to the Govt. Agent, and he ~~was~~ to communicate to petitioners the orders of Govt. of 7th Jan 57 (vide para 7 supra)

9. On 14th Feb following, the Chapank Agent submitted that as the functions of the Dewan would in a short time cease, and for other reasons, the legal adviser of Govt. would see fit to meet his wishes in releasing him from the responsibility

of the custody of the money; and on the 28th that officer submitted a further communication from the Dewan, wherein he transmitted a petition from Ellabroon Missa Begum and wherein he stated that she, being the widow of the late Shah Sower Sing, was legally entitled to receive his property and assets & competent to give an official discharge: He requested to be favored with the form of discharge to be taken from the Begum should the parties ^{who} for letters of administration without an then applications.

10. The opinion of the Honble Company's Solicitor was asked on these dates (9th Feb 57) and he stated in reply ^(9 Feb 57) that he still considered it absolutely necessary for the furtherance of justice and the Dewan's own security that he should adhere to the course pointed out by him in his letter of the 28th ult. (vide para 6 supra). He further stated that the course suggested by the Govt. Agent could not be adopted as there was not an officer of the Supreme Court to whom payment & the delivery of the property could be made; and the practice of the Court did not admit of such a process as that apparently contemplated by the

Chief Agent. Mr Boyson also remarked that the right of the Begum to Letters of Administration formed the subject of litigation in the Supreme Court, and that it would be in the highest degree improper and unsafe for the Dewan to assume to himself the right and responsibility of deciding this question or to take upon himself the risk of parting with the property.

11. On the 22 April, the Chepauk Agent reported that the Supreme Court had granted Maharoos Nissa Begum Letters of Administration to the Estate of the late Shah Lowas Jung, and that the allowance granted to her might cease. Govt. accordingly directed that officer (6 Apr/57) to see that the whole amount disbursed on account of the deceased was recovered from his estate.

12. The Chepauk Agent further submitted (6 April/57) a letter from the Dewan enquiring whether, on the production of the Letters of Administration by the Begum, he was to deduct from the Estate the sum hitherto allowed her from the Treasury and pay her the remainder or not.

13. On a reference to the Hon'ble Counsel Solicitor, he was of opinion that the property might be made over and a formal receipt taken from the Begum, showing that in

detail. But he considered it desirable that no deductions of any kind should be made by the Dewan from the money in his hands belonging to the Estate. Immediately after such payment, ^{whereby} he added, the Dewan might call upon the Begum as administrator for the reimbursement of certain items specified by him, as legitimate claims against the Estate. But that advances to her for the subsistence of herself and daughter were not claims against the Estate, but were personal demands against the Begum herself, if indeed she be bound to repay them which seemed doubtful. Mr Boyson suggested, with a view to advising definitely on this point, that he should be furnished with a detailed statement of all the circumstances connected with these advances.

14. In forwarding this letter to the Chepauk Agent for communication to the Dewan, Govt. desired (20 Apr/57) that before the effects of the Estate were made over to the administration, the affair should ^{settle in} ~~settle in~~ consultation with the Solicitor whether the advances were to be recovered.

15. On the 1st of May the Hon'ble

Company's Solicitor reported that an injunction had been issued from the Supreme Court restraining the Begum from receiving the money, goods, chattels and effects belonging to the estate of the late Siraj Bahadur; and that consequently neither the Dewan nor Col. Boulderson should make over the property.

Pol. Dept. 15 July 1857
Pm 10@13

10-15-1857

Political 1857 Department

87-784

Extract Min. Court

16th September 1857

666

25-8-57

Passing Order on the
Petition of Mahomed
Bunker Hooftsein Khan
praying that the exemp-
tion afforded by Act I
of 1844 and XVIII of 1857
to a Nadar Col Buraah
Bahander may be
suspended.