

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No.

171

Press

171

Dated

9-3-1935

Not to be folded or roughly handled

Fort Saint George, Political Consultation, 12th March 1858.

No. 28. From H. D. PHILLIPS, Esq., Commissioner of Tanjore; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated Vellum, 18th January 1858, No. 261.

SIR,

Para: 1. I have the honor to reply to Extract Minutes of Consultation, dated the 5th November last, No. 942, in which I am directed to make further enquiry regarding certain points.

Paras: 6 and 11. 2. The first relates to the adoption, by the late Saithbava Sawmy, of the individual who now opposes the Widow's claim to succeed to possession of the Sawmy Enams.

3. From the enquiries recently instituted by me in several quarters and in personal communication with some of the respectable members of the late Durbar and others, there can be no doubt, I apprehend, of the completeness and formality of the adoption of the Nephew in question, which occurred, I now find, about three and half years previous to the demise of the late Sawmy. His induction into the Priestly office seems also to have been formal and public. But although there had been a temporary coolness between the Rajah and the old Sawmy, this person does not appear to have relinquished his position as the late Rajah's spiritual adviser, up to the period of his own death, which preceded that of the late Rajah, by about twelve months, adverting to the fact of the office of domestic Priest having for the past three generations, descended in the late Sawmy's family from father to son, the young man adopted as above stated, entered, in the usual course, on the discharge of his late adoptive father's functions and is known to have held several discourses in public Durbar, but there was a difference in the degree of estimation in which the father and son were held by the late Rajah. The father had the Rajah's fullest confidence and seems to have been regarded by him in former years as his respected and valued personal friend, but these feelings had, it is represented to me, from various causes, somewhat cooled at a later period. For the adopted Nephew, however, the Rajah always exhibited warm and increasing affection and esteem, which continued unabated until the period of the Rajah's demise. The late Commissioner's supposition that the adoption took place whilst the late Sawmy was on his death-bed, and which from the fact of its having been placed on record, I had accepted and acted on as correct, I have now ascertained, beyond doubt, to be erroneous.

4. Also, as far as my present information enables me to form an opinion, there is no legal objection to the adoption whether on account of age or otherwise. It was made in the most open formal way and in a manner which indicated the extreme interest taken in the event and ceremony by the late Rajah himself.

5. On that score therefore, there would be no obstacle to the transfer of the Enams to the adopted son, the present Sawmy, if the Government should be pleased to decide on their continuance in this person's favor.

6. In the propositions submitted with my former communication, I have been drawn into an erroneous estimate of the position of these grants by what I have regarded as the views of the Government. I refer to the declaration by the Government Pleader that Regulation XXXI of 1802 did not apply to the case then under notice, that case being one in which was involved the legality of attaching an Enam granted prior to A. D. 1792, as shown in my communication of date 5th February 1857. Receiving that declaration without remark by the Government, I have been doubtful whether my own original impression of the bearing of the Regulation could be justified.

7. As now instructed, I observe that the Enams would necessarily fall into the hands of the adopted son, whom the widow might sue, if so disposed, in order to the establishment of what she is understood to declare was an illegal and invalid adoption.

Para: 13. 8. The second point of enquiry to which my attention has been directed, is the former mode of superintendence of these Enams.

Para: 11.

9th September 1857, No. 224.

Minutes of Consultation, 9th April 1857, No. 287.

Ramakistnyen

versus

Mr. Cherry and others.

No. 108, para: 10.

Fort Saint George, Political Consultation, 12th March 1858.

9. I am unable to discover that they were ever under management by the Servant or Agent, as such, who had charge of the Rajah's Estates. By the term used in the Minutes of Consultation under reply, I understand the Government to mean the Head of the Rajah's Cutcherry in the Revenue Department called the "Dimmut" established in 1826. It is true that subsequent to 1826 the person who happened to be Manager for the Sawmy, also once became the Manager of the Dimmut, but the system which gave a Manager to the Sawmy's affairs, had been in force many years prior to the Dimmut coming into existence and an occurrence of that accidental character had no effect on the ordinary mode of superintendence of the Priest's Enams. From the result of my enquiries, I am quite satisfied that the Enam proceeds did not reach the Rajah's Servant, as such, and that their income was not by him handed over to the party who held, in the Rajah's family, the Office of domestic Priest.

10. Taking a lively interest in the affairs of the late Sawmy's predecessor, the Rajah Serfojee after paying off certain of the latter's pecuniary liabilities, laid down as a rule, and the rule had continued to be observed in the time of the last Rajah, that the Sawmy's domestic Establishment should be superintended by a Manager whom the Sawmy might select but whom he, the Rajah, was to approve or reject as he thought fit. This servant, who thus became the Steward of the Sawmy's household, also superintended all matters in connection with the cultivation and renting of the Enams and other landed possessions of the Sawmy. No account of these was rendered to the Rajah himself or to any one about his Durbar or person. The revenue derived from the Enams, as well as the Enams themselves, were in no wise interfered with by the Rajah or his Dimmut Cutcherry and the Sawmy was quite free to hoard or dissipate their produce, as to him seemed best. In respect of the nomination by the Tanjore Rajahs of "*Managers*" I would mention that a measure of the kind appears frequently to have been adopted in regard to persons and families for whom the Rajahs entertained feelings of regard.

11. The rule which the Rajah prescribed was, however, not very rigidly observed as respects the Sawmy, for I learn from a brother of the person first elected by the Sawmy to the Managership, that when after a time the Sawmy took a dislike to him and the matter was reported to Rajah Serfojee, the latter replied that the Priest must have his own way, that what had been done was done for his own advantage and comfort and that if the arrangement did not suit him, he must do as he pleased.

12. It was, however, necessary that the Manager should be an individual not personally disagreeable to the Rajah, as all the ceremonials and communications which passed between himself and his Priest before their actual meetings, were conducted through the medium of the Manager. The Rajah therefore still to a certain extent controlled the selection, but neither personally nor through his Durbar or Dimmut were the affairs of the Sawmy's Enams subjected to any financial control whatever, or to any superintendence beyond that of the Sawmy's own managing Steward so to designate him.

No. 29. ORDER THEREON, No. 171; dated 9th March 1858.

In Extract Minutes of Consultation, 5th November last, reference was made to the Commissioner of Tanjore on two points connected with the Saithbava Sawmy Enams.

1st. In regard to the alleged adoption of a son by the late Sawmy.

2nd. Whether the lands were in the Rajah's time under the management of the Servant or Agent who had charge of the Rajah's Estates, and the income handed over to the parties holding the Office of Family Purohit, and consequently were Service lands Endowments attached to the Priestly Office and not personal grants.

2. As to the first point the adoption of the son who now claims the Enams seems conclusively established.

Fort Saint George, Political Consultation, 12th March 1858.

3. For the second, Mr. Phillips has not found that the lands were managed in the manner supposed. He adheres to his view that they were not conferred for the performance of duty but bestowed from favor and affection as personal grants.

4. Under these circumstances, as the adoption has been fully proved, the Right Honorable the Governor in Council directs that the Enams, known as the Saithbava Sawmy Enams and held by the late Saith Ramasawmy bava, be released from attachment and be made over to his Nephew, adopted son and rightful heir,—the personal grants unconditionally,—those assigned for the maintenance of Chuttrums charged with the support of the institutions for which they are granted.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. J. A. Wilson.

I thought that Philbrick is
right in his apprehension
and that the two parties
are needed. and that
there are rising against
him. I am not sure
that the interest that is taken
in the cause is so great
as has formerly obtained
in the case of the
the local interest.
They are in possession of
the late the same side,
but the fact before them
is palpably to be seen

in the 18th century
 to the present the
 Commission on
 - James H. H. H.
 grasping at the
 little under the
 and the other 1/2
 of the population
 of the world, need to
 be recognized, or if
 it be any different
 in any other way
 to the

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The President of the University.
S. J.

Memo.

permanently in E. M. 5 Nov 57 made
to Commission of Inquiry on two
matters connected with these facts -
on Swamy Enam -

1st in regard to the alleged adoption
of a son by Mr. Loh Swamy -

- Whether Reg was in the Rajah's time
under the ~~old~~ management of the
Swamy or agent who had charge
of the Rajah's estates, and the in-
-come handed over to the party hold-
-ing the office of Family Provision - &
consequently ~~that~~ Reg was service

lands - endowments attached to the Priory
Office - and not personal grants -

As to the first point the adoption of
the son who now claims the lands
seems conclusively established -

For the second Mr Phillips has
not found that the lands were transferred
in the manner supposed - He adheres to
his view that they came not in fee
for the performance of duty - but were
- bestowed from favor & affection as personal
grants -

In whichever of these two aspects they
may be viewed they would look to

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their antiquity, & a date long anterior to
1772, rather to the heir of the late Sir Henry
if as senior grant, burdened with the
obligation of service - if as personal
grants unconditionally -

If this be a senior grant it can-
not devolve on the widow of the late
Sir Henry under any circumstances
as she could not hold the Priory
Office -

The adoption having been proved the
question is it shall vest in the adopted son
as the heir to his adoptive father - whether
the grant be for service or personal -

The question however arises in
what manner or into whose hands shall

the lands be given up -

At the time of the attachment the
lands were in possession of the widow &
were actually taken from her - In 1885
however states that she had taken them
so palpably in order to prevent the commis-
sioner assuming them and conveying
into the title under which they were held,
that he questions if her possession so
obtained need be recognized or prevent
their being at once given up to the adopted
son -

If the lands were returned to the
widow as the party from whom they
were taken the son - with whom she is
on bad terms, would have to sue her
for them in Court - which would involve

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a long & expensive -

The matter too seems to me one
with which the Court should take deal as
the dominant power - as an arrange-
ment connected with the extent of
the Rajah's Raj - than a question
of ordinary procedure - The Govt.
in exercising its right decide whether
the parties should be regarded as
final - or if so who is really entitled
to them - and they carry out their decision
and insist on their rightful claimant
whether he may be - and whether he was
in possession when the claims were
suggested or not

There appears no doubt that the
rightful possession is the adopted
law. But whether for can ever
achieve them over to him. is a
question. Which should be referred to
the appropriate Court.

The question of title - as between
the lands are held free or with
services. Should also be decided. Some
legal advice - - At -

certified by W.E.

Well.

10V
.8

There is no doubt as
to the lands in question
being common lands -

But it is decidedly
of opinion that they
are personal property.

The adoption of the
law by the Court is con-
sidered proved -

The law for the restoration
of the land - when the
land was attached
it was in possession

of the deceased's
widow - who desires
to adopt him -

The widow would of
course to have been
in possession for
about one year -
at least the death
of her husband or
curse about
one year previous
to the death of her
husband - but no
adoption was
ever had

possession - no
adoption is given
of him by the Act
of 1850 -

is however the adoption
is given - and wished
there can be no
doubt but that
this adoption was
as per the Act
of 1850 - and may have
led to the possession
being given to the widow
but the adoption was
not a legal one
as per

Now I must see how
dealing with the
question - as to the
right to succeed
to an Estate - The
course for the G. to
follow. You will see
as to deduct the
property into the
possession of the
rightful heir - and
as the adopted son -

Will

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Public Department.

No.

Extract from the Minutes of Consultation.

Dated February 1858.

Read the following letter
from the Commissioner of
Tanjore.

(Here enters 18th Jan. 1858. No. 261.)

In Extract Minutes
of Consultation 5th a No. 1
last reference was made to the
Commissioner of Tanjore on
two points connected with
the death - bara - Swamy
Estate.

1st In regard to the
alleged adoption of a son
by the late Swamy.

2nd Whether the lands
were in the Rajah's time
under the management
of the servant or Agent
who had charge of the
Rajah's estates, and the
income handed over to the
parties holding the Office
of Family Priest and
consequently were service
lands - and under the
attack.

H.

W. M.

attached to the Trusty
Office, and not personal
grants.

As to the first point
the adoption of the man
who now claims the Enam,
seems conclusively esta-
blished.

For the second, Mr.
Phillips has not found
that the lands were ana-
maged in the manner
supposed. He adheres
to his view that they
were not conferred for
the performance of duty,
but bestowed from favor
and affection as personal
grants.

3. In whichever of these
aspects they may be viewed,
whether as service or as per-
sonal grants, they are as
already observed of very an-
cient date, and the Govern-
ment therefore would not
interfere with them as to
prevent their passing to the
heir of the late Enam.
If as service grants burdened
with the obligation of service,
if as personal grants

unconditionally. — A question
however arises, in what man-
ner or into whose hands
should the Enam be given.
3. — At the time of the
attachment the lands were
in possession of the Widow
and were actually taken
from her. — The Govern-
ment however learn from
Mr. Forbes, the then Com-
missioner, that she had
palpably taken them in
order to prevent the Com-
missioner assuming them
and engraving into the title
under which they were held.
If the Enam be regarded
as service Enam held for
the discharge of the Trusty
Office, this evidently
could not be discharged
by a female. —

4. — The Right Hon-
orable the Governor in Council
resolves to forward the
Commissioner's present re-
port and previous correspon-
dence to the Advocate Ge-
neral, and to ask his
opinion

C. M. C. 10th Nov. 1844

opinion:-

1st Whether the Enam
should be considered
as service grants or
personal.

2nd To what party
the Enam should be
surrendered.

J.P.

I should like to know
what the opinion is
There is no doubt
I have been informed
that the Enam is
surrendered - the only legal
document to be surrendered
the rest is a mere form
as in the case of the
Enam.

H. P. S. L.
C. S. L.

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H. P. S. L.
C. S. L.
10/10/10
10/10/10