

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 405

Press

~~Mis.~~

Dated

7-10-1918

Not to be folded or roughly handled

*Proceedings of the Madras Government, Political Department,
7th October 1862.*

No. 9. Read the following letter from JOHN MILLER, Esq., Acting Government Solicitor, Madras; to the Honorable T. PYCROFT, Chief Secretary to Government, Madras, dated 30th September 1862, No. 432.

Ghoolam Mahomed Niamud
Khan.
per S.M.S.,
Clement Dale.

1. I have the honor to forward herewith a copy of the special case pending before the High Court, between the parties noted in the margin.

2. This special case was filed by the Plaintiff against the Receiver of the Carnatic Property, with the view of obtaining from the High Court at Madras a declaration of his right and title to certain property situate at Trichinopoly and Arcot granted to him by the late Nabob of the Carnatic on the 30th April and 4th June 1845.

3. The Plaintiff appears to have had no actual possession of this property, but there is no doubt that he received the revenues thereof which were paid to him by the Dewan.

4. The Officers of the Circar retained possession of the premises up to the Nabob's death, and after that event the property passed into the hands of the Receiver.

5. The Receiver does not dispute the genuineness of the two grants, nor the payment of the revenues to the Plaintiff, but he contends that the gardens and premises formed part of the Public or State property belonging to the Carnatic Raj or Circar, and that it could not therefore be alienated by the late Nabob, or if the Nabob possessed any power of alienation that it did not extend beyond his own life.

6. The Receiver also raises other questions with the view of getting the Court to pronounce against the Plaintiff's title, as for instance, he urges that the two grants relied upon by the Plaintiff are void for want of sufficient consideration, that such grants do not convey any legal interest in the premises to the Plaintiff, that they are rendered nugatory and inoperative in consequence of possession or seizin of the premises not having been given during the life of the late Nabob and that even if the grants were valid as an *enam*, then that forfeitures had accrued by the acts of the Plaintiff, viz., in mortgaging the property and by reason of the Plaintiff's having applied for the benefit of the Act for the Relief of Insolvent Debtors, and his Estate having become vested in the Official Assignee.

7. The case came on for argument before the Judges of the High Court on the 17th September 1862.

8. During the argument of the case, the High Court intimated that they could not decide the questions raised before them upon this special case unless the Secretary of State was a party to the proceeding, and appeared by Counsel on the argument of it, and they permitted the further hearing of the case to stand over to enable the parties to place themselves in communication with Government.

9. I have since been urged by the Receiver and his Solicitors, as well as by the Plaintiff and his Solicitors, to communicate with Government on the subject, and to solicit their consent to being made a party to the special case.

10. Before however acceding to this request, I considered it expedient to submit the matter for the consideration of the Advocate General, with whom I have also conferred upon the case.

11. It will be very desirable to get the questions raised by this special case settled if possible upon that case, and this can only be done by Government's consenting to be made a party to it, otherwise, the Plaintiff may be driven to institute a suit for the administration of the late Nabob's Estate, a proceeding which it is highly expedient to render unnecessary.

12. I have the honor to annex a copy of the Advocate General's opinion, and to await the orders of Government upon this application.

Proceedings of the Madras Government, Political Department,
7th October 1862.

COPY—OPINION.

Government will see the case stands shortly thus: The disputed premises had been restored in 1802 by the East India Company to the Nabob—and had since then descended from Nabob to Nabob, and the revenues were entered in the Dewani Mahl as income of the *Circar* or *State*—and never were entered in the *Jéb-i-khas* or private accounts.

The *Circar* Officers always remained in possession, and the gardens passed to the Carnatic Receiver.

The Plaintiff claims possession under two grants from the Nabob, 30th April and 4th June 1845.

No doubt these grants are genuine; but possession was never given under them, and doubtless never was meant to be given. The explanation why possession was not given, (according to the Plaintiff's account) is set out in the several writings set out in paras. 33 to 37 and 43. These letters are genuine, but whether *bond fide* or merely colorable is the question.

No doubt the Dewan paid the Revenues to the Plaintiff on his receipt.

When the special case was in draft, the Plaintiff objected to its being stated that Government had taken these gardens as an act of State, and I consented to expunge the words, as I felt the facts could not be got over.

At the hearing of the case the Court was of my opinion, and declined to hear the case further as a matter beyond its jurisdiction, unless the Government became a party to it, and agreed to submit the matter to the Court.

From what I know of what passed after the late Nabob's death, and from the terms of the Preamble to Act XXX of 1858, I feel no doubt that Government did take and did mean to take all the Nabob's property, public and private, as an act of State, and of its own will and pleasure resolved thereout to pay his just debts, and provide for his family, &c., rendering no account to any one of the surplus.

Still, if Government deem it fit so to do, for special reasons, in any particular case, they are at liberty to take the Court's opinion, submitting to be bound thereby. For instance, they might submit here the question whether the gardens in question were public or private property of the late Nabob, undertaking to let the Plaintiff have them, if the Court shall consider them to have been private property, and shall be of opinion that his gift thereof was valid.

I am strongly of opinion that the gardens were public or State property, not private: the Nabob's own grants call them *Circar* property.

It is admitted there was no consideration for the grants beyond the words "for services rendered" in the grants, the Plaintiff was a paid servant, and was paid his arrears under Act XXX of 1858; and if he rendered any other services, they are believed to have been of an immoral nature.

The only reason why Government should even give this matter a single moment's consideration is in order to avoid a suit for the Administration of the Nabob's Estate, which will be very dilatory, troublesome, and expensive. The gardens I understand are not worth above Rupees 8,000 or Rupees 9,000.

(Signed) T. SYDNEY SMYTH,
Advocate General.

25th September 1862.

(True Copy.)

(Signed) JOHN MILLER,
Acting Government Solicitor.

No. 10. ORDER THEREON, 7th October 1862, No. 405.

Under the opinion given by the Advocate General, the Government accord their consent to being made a party to the special case referred to, between Ghoolam Mahomed Niamud Khan, Plaintiff, and the Receiver of the Carnatic Property, Defendant.

Exd. T. O'Connor,

(Signed) T. PYCROFT,
Chief Secretary.

Order thereon. 7th Oct. 1862 No. 405.

Under the opinion given by the Advocate General, the Government accord their consent to being made a party to the Special Case referred to, between Ghoolam Mahomed Niamud Khan, Plaintiff, and the Receiver of the Carnatic Property, Defendant.

To the Govd Solicitor
Receiver of the
Carnatic property. } dispd 7th