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MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 280 Press ~~Mis.~~ Original

Dated 5th July 1873. 5-b

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No. 8. Read the following letter from A. MACGREGOR, Esq., Collector of Malabar, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Calicut, 23rd June 1873, No. 60 :—

I have the honour, with reference to the question of the peculiar character of the Cannanore Rajah's title to the so-called house-tax, to forward copy of an appeal decision passed by the Civil Judge of Tellicherry in 1857.

2. The houses regarding which ground-rent was claimed in this case were officers' bungalows situated within the Military Cantonment.

3. In the original suit the Principal Sadr Amin found that "the Beebee had proved her jenm right to the ground on which the defendants' houses were built, and that she was, therefore, entitled to nigidy or quit-rent."

4. As to the point when the arrears should date he decided that they could only date from the G. O., No. 117 of 1844, and must be restricted in the manner provided in that order to the highest rate of quit-rent at which grants had been given, which in Cannanore was 3½ Rupees per annum per house.

5. In his appeal decision, the Civil Judge observes "that it appears that most of the land within the cantonment belongs to the Beebee, and that she has long exercised a modified kind of taxation over certain parts, and even over that portion where the families of European Soldiers reside, nor does it appear that her authority in this respect has been disputed or assumed by any engagement or proceedings on the part of Government."

6. After discussing the point of whether the Beebee was restricted in her demand to the sum of 3½ Rupees, the Judge concluded by concurring with the Lower Court in holding that the Beebee had proved her proprietary title to the land, and declaring her entitled to quit-rent, adding that, as defendant paid no quit-rent to Government, he could not complain because he was placed on a footing with all other persons holding grants for houses built on Government land.

7. Although the quit-rent is thus spoken of in one place as a modified kind of taxation, it is clear that, in effect, it was adjudged on the ground of the Beebee being the actual jenmi or proprietor of the land, and I learn, on inquiry, that throughout the Karar, including the town, the so-called house-tax stands on the same footing, the Rajah being the actual jenmi of the land.

8. The main difference that appears to exist between the tenants of the Rajah and the tenants of ordinary jenmies in other municipal towns is in the mode of collection.

9. In the case of ordinary jenmies the quit-rent for houses is brought by the tenant and presented as a nuzzur twice a-year. In Cannanore, on the other hand, the Rajah's rent collectors collect the quit-rent together with the ordinary instalments of land-rent. The Rajah's quit-rents for houses (other than European bungalows) varies from 4 Annas to 2 Rupees, the latter sum being never exceeded. These are not excessive as compared with the rents levied by ordinary jenmi, though in the generality of cases ordinary jenmies mortgage the land, fixing a certain lump sum as rent in which the quit-rent for house-tax is merged, and not separately shown. The Cannanore Rajah's land is none of it mortgaged.

10. The imposition of a municipal house-tax in addition to these quit-rents would not, under these circumstances, appear to subject the inhabitants of Cannanore to any exceptional hardship.

Appeal Suit No. 241 *of* 1855.

Plaintiff claims ground-rent to the extent of Rupees 2,607-3-0 on certain houses belonging to the defendants in the Cantonments of Cannanore, and she makes her demand for eighteen years, viz., from 1834 to 1851.

The defendants contest the right, asserting that their father purchased the houses at auction with the adjoining ground, and up to the present moment their father or themselves never paid, and never supposed any person had right to demand quit-rent, which during a period of fifty years was never so much as asked for.

In this decree the Principal Sadr Amin declares the plaintiff has proved her jenmom right to the ground on which the defendants' houses are built, and that she is entitled to nigidy or quit-rent from defendants and all others having houses on her lands. That the G. O., No. 117 of 1844, shows what rent was to be collected within the limits of cantonments, and leaves plaintiff the right and title to claim and recover what may be reasonably assessed on houses on her land. But as plaintiff has delayed to institute a suit she is not entitled to interest, and the above order determines her right and title to quit-rent to commence from 1844. That the amount claimed is excessive, and must be restricted within the limits of Rupees 3½ defined by Government for each house on Government ground or within cantonments.

Second defendant appeals on the ground of the suit having been barred by the Statute of Limitations; that interest not having been sued for, ought not to have been awarded, and the plaintiff's witnesses being her servants and retainers, were, as interested parties, undeserving of much credit.

Respondent answers to refute the objection on the score of lapse of time, and that she has only not sooner obtained quit-rent because people refused to pay it, and her right to ask it was discussed and questioned by numerous authorities, who at length directed her to substantiate it by a civil action.

Judgment.

The object of this suit was to decide the plaintiff's right to demand and levy quit-rent within the cantonments of Cannanore, and to recover the same for eighteen years.

The Principal Sadr Amin decided that the plaintiff had a right to demand and levy quit-rent, but objected to the amount and period for which it was demanded.

The amount he thought ought to be 3½ Rupees per house; to be levied from 1844, when a G. O. G. fixed that sum for parties possessing houses within the limits of cantonments.

Second defendant appeals from this award on the ground of the Statute of Limitations being a bar to the institution of this suit, and contends that as his father purchased the lands and houses at public outcry, and he and they (*i.e.*, his father, himself, and brother) have since been in their unmolested enjoyment for upwards of fifty years, it is too late now to advance claims, which, if good, would have been advanced long before, or even when the purchase was effected. Against this argument of time it may be sufficient to observe that allowing it bars, as the Acting Civil Judge conceives it must, the claim to arrears of rent, it does not destroy a proprietary title to the land and the rights consequent upon it when authoritatively determined.

On an attentive perusal of the proceedings, it appears that most of the land within the cantonment of Cannanore belongs to the plaintiff, the Beebee, and that she has long exercised a modified kind of taxation over certain parts, and even over that portion where the families of European Soldiers reside, nor does it appear that her authority in this respect has been disputed, or assumed by any engagement, or proceedings on the part of Government; but, as no buildings could be constructed or ground occupied within the limits of the cantonments without the sanction of the Military authorities, Her Highness could exercise no control or authority in the matter of buildings and improvements carried on under the directions of the local power for any public or private objects or advantage. It must be borne in mind that most of the land is utterly worthless for all but building purposes, and if local improvements or houses were to be left to the financial control or direction of Her Highness' agent and tax-gatherer, very few houses would ever be built, and still fewer improvements attempted. Consequently some restraint over the liberty of taxation was

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5th July 1873.

inevitable, and the course which has long been pursued of restricting it to 3½ Rupees for house or ground was necessary for the people, and actually beneficial to Her Highness, who, with no control over the disposal of her land, steps in and asserts the privilege of taxation when it is rendered valuable by the building of houses or partial cultivation—contingencies consequent solely on Cannanore being a Military Cantonment.

Previous to 1844 the manner of collecting the Government quit-rent in Cannanore seems to have been very uncertain and undergone various changes, but in that year an order was passed directing quit-rent on land and houses situated within the limits of all cantonments to be assessed at the invariable sum of 3½ Rupees. This order is without restriction, and must be supposed to include all persons and property, and not as the plaintiff assumes merely the property of the Government, for, as previously stated, it was absolutely necessary some restrictive rules should be enforced regarding the privilege of taxation, and authorities who had an undoubted right to forbid or allow the erection of buildings or occupation of land had certainly an equal right, for the public good, to restrain or restrict any financial excesses on the part of individuals. The Government since 1844 refrained from demanding more than 3½ Rupees for houses or gardens, and it is not easy to conceive what possible right any person, who cannot control or interfere with the buildings, and whose land is only valuable in consequence of them, can have to demand more. It must be remembered that this suit is instituted to contest a disputed claim which affects the interests of numerous classes in Cannanore, who have, with the sanction of the Military authorities, built houses or cultivated gardens free of all present taxation. Since the institution of this suit the defendants appear to have disposed of their houses, and, as the claims are on property and not on persons, their liabilities have gone with, and will be transferred to, their property.

The Court concurs with the Principal Sadr Amin in thinking the Beebee has proved her proprietary title to the land on which these houses are constructed; the evidence on this point is clear and beyond controversy, but as she was apparently ignorant or uncertain of her rights, and omitted for many years to advance her claims, and as defendants were incapable of divining or appreciating them until decided by a competent tribunal, the Court differs in opinion as to the time when the obligation of paying rent attaches to defendants. Until the Principal Sadr Amin passed his decree the title was in abeyance and the claims could not be allowed on the mere assertion of plaintiff, and so late as 1849 the Board of Revenue, without allowing or denying them, directed the plaintiff to substantiate them if she could in the ordinary manner. That has now been done, and the plaintiff's rights and defendants' obligations commence at the same time, viz., from the moment they were legally defined by the decision of the original decree. The defendants, who pay no quit-rent to the Government, cannot complain because they are placed on a footing with all other persons holding grants for houses built on Government land.

With this modification as to time, by dismissing all claims prior to the date of the original decree, the Principal Sadr Amin's decision is confirmed, the appeal dismissed, and both parties to bear their own costs.

(Signed) R. CHATFIELD,
Acting Civil Judge.

4th August 1857.

No. 9. ORDER THEREON, 5th July 1873, No. 280.

The Governor in Council fully recognises the right of the Cannanore Rajah, in common with all other landed proprietors, to levy quit-rent on house-sites of which he possesses the "Jennom" or proprietary right.

2. The levy of a municipal tax on the buildings is in no way inconsistent with the levy of quit-rent by the landlord, nor will the houses within the Karar limits be placed on any exceptional footing by the extension of the municipal taxation to them.

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5th *July* 1873.

3. The Collector of Malabar will furnish the Cannanore Rajah with copy of these Proceedings.

(True Extract.)

Chief Secretary.

To the Collector of Malabar.

Exd. J. Wright.

Govt. of {1873} Madras.

POLITICAL.

To

THE COLLECTOR OF MALABAR.

Dated July, 5th.

Recd. *Encl.*

G. O., 5th July 1873, *No.* 280.

JULY.
Nos. 8-9.

Cannanore Municipality.—The right of the Cannanore Rajah, in common with all other landed proprietors, to levy quit-rent on house-sites of which he possesses the "Jennom" or proprietary right recognised, and the levy of municipal tax on houses built thereon not considered exceptional.

ovt. of {1873} Madras.

Political

To the Collr of Malabar.

ated July 5
ecd.

Encl.

G. O. 5 July, 1873, No. 280.

Nos. 8-9.

15948

Will thereon, not considered objectionable

...amore Grant. The right ... Rajah ... in ... with all other ... proprietors, to ... rent on Houses ... of wh. he possessed ... Janmom" or proprietary ... acquired, the land ... tax on houses