(1)

Revenue Department

Minutes of Consultations
8th Dec 1857
Back nos 15 + 16

Order no 1247 5/2nd Dec 1857

(1) Opinion

No. 15. Read the following Extract from the Proceedings of the Board of Revenue; dated 29th October 1857, No. 3669.

Read letter from the Collector of Chingleput dated 6th October 1857,* forwarding copies and translations of two proclamations preparatory to the sale and resale of the Abkarry Farm of his district for Fuslies 1266 to 1270.

* *In Consultation 29th October* 1857.

(Here enter No. 290.)

Resolved that the foregoing letter and its accompaniments be forwarded for the information of Government, with reference to Extract Minutes Consultation R. D., No. 960, dated 19th September 1857.

1. It will be seen that the penalty provided in the first proclamation for a failure on the part of the purchaser to pay in the amount of two kists within one week from the date of sale, was a forfeiture of his deposit money and that this stipulation was acted upon in the case of the Petitioner.

2. The proclamation issued previous to the resale of the Abkarry Farm contains nothing either to the advantage or prejudice of the first defaulting purchaser.

3. The Board are of opinion that the Petitioner has no just claim to a refund of his deposit money.

4. The advertisement however now appears to the Board defective in not containing a stipulation to the effect that failure to lodge the amount of two kists would not only entail the forfeiture of the first deposist; but would be followed by the resale of the farm at the risk of the defaulter who would bear all loss and forfeit all gain consequent on such resale.

Vide copy in his Petition.

5. The agreement signed by the Petitioner on the 3d June 1856, supplies this defect so far as resale and contingent loss are concerned, but no provision is made for what actually occurred, viz. the resale of the contract for a sum exceeding the original amount by Rupees 2,200 per annum.

6. The claim of the Petitioner to profit by this contingency involves a legal question on which the Board do not feel competent to pronounce an opinion.

7. To guard against future difficulties of this kind, the Board will request Collectors in all cases of renting public farms to enter an express stipulation to the effect above noted. They lately applied to the Honorable Company's† Solicitor for an amended form of Cowle and Moochilka, but his onerous duties have prevented him as yet from meeting their wishes.

† *To Honorable Company's Solicitor dated 26th June* 1856.
Reminder dated 2d April 1857.

(A true Extract.)

(Signed) J. D. SIM, *Acting Secretary.*

No. 16. ORDER THEREON, No. 1247; dated 2d December 1857.

With the Proceedings above recorded, the Board of Revenue submit a communication from the Collector of Chingleput, giving cover to copies, with translations, of the Proclamations issued for the sale, as well as resale, of the Abkarry farm of that District for Fuslies 1266 to 1270, called for in Extract Minutes Consultation dated 19th September 1857, No. 960, with reference to the Memorial addressed to the Honorable the Court of Directors by J. Narrainsawmy Naidoo, the purchaser of the farm at the first sale.

2. In his Memorial, Narrainsawmy claims the repayment to him of his deposit of Rupees 904-8-0, on the ground that, in the resale, the farm was sold for upwards of Rupees 2,200 above the amount for which he first purchased it; arguing thereby that the State suffered no loss from the failure imputed to him in the payment of the second deposit agreeably to one of the conditions of the purchase. It is observed that in his Petitions to the Board and Government, Narrainsawmy also claimed the difference between his bid and the highest bid accepted in the

second sale, on the strength of the condition contained in a Kararnamah executed by him, to the effect that he is to make good any loss that might accrue to the State from such second sale.

3. The Memorialist alleges that he waited on the Collector on the 9th June 1856, the date fixed for the payment of the 2d deposit, with the money, and requested him to register the farm in his name as well as in the names of his co-partners, who were also present; but that Mr. Shubrick declined to recognize any other but the Memorialist; and obtained the sanction of the Board to resell the farm, on the ground that the first purchaser (Memorialist) had failed to pay the second deposit. Narrainsawmy adds that the refusal on the part of the Collector was not in accordance with previous usage, and that the same officer has allowed the indulgence to the individuals who have since purchased the farm.

6th October 1857.

4. Mr. Shubrick in his letter to the Board now before Government, explains that the penalty prescribed for failing to pay the amount of the two Kists within the specified time was the forfeiture of the amount of deposit first made on the day of sale, that it is this forfeiture the Memorialist wishes may be returned, but that he has got no legal claim whatever to it.

5. The Board are also of opinion that the Memorialist has no just claim to a refund of the deposit money, but they observe that his claim to profit by the circumstance of the farm having been resold for an amount higher than that for which he first purchased it, involves a legal question on which they do not feel competent to pronounce an opinion.

6. Before passing any orders on the subject, the Right Honorable the Governor in Council finds it necessary to call for further information on one point. The Memorialist, as already stated, alleges that he brought the two months Kists, or the second deposit, to the Collector, but that the money was not taken. The Collector does not give any explanation on this point, and the Government do not see any thing in the papers before them which could throw light on the circumstances which in that officer's opinion justified his refusal of the money. The Board will therefore desire Mr. Shubrick to give a distinct reply to the Memorialist's statement, as also to report how far it is true that the indulgence refused to him, viz. the registration of other names with his own, has been granted to previous and subsequent contractors.

7. The Board have very correctly adverted to the defects in Mr. Shubrick's advertisements and the Government are of opinion that it will be better, at an early date, to prescribe proper forms for these documents in communication with the Honorable Company's Solicitor.

(Signed) H. FORBES,
Acting Secretary to Government.

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Revenue Department.

No. 3669

Extract from the Proceedings of the Board of Revenue, dated 29th October 1857.

Read letter from the Collector in Cons. 29th Oct. 57. of Chingleput dated 6th October 1857 forwarding Copies and translations of two Proclamations respecting the sale and resale of the Athany Farm of the District for Fasli 1266 & 1267.

(Received 29th Inst.)

Resolved that the foregoing letter and its accompaniments be forwarded for the information of Government with reference to Extract from the Consultation R.C. No. 3960 dated 19th September 1857.

1. It will be seen that the period of 7 days provided in the first Proclamation for a failure on the part of the purchaser to pay in the amount of the Kists within one week from the date of Sale, was in consideration of the deposit money, and that this stipulation was acted upon in the case of the Petitioner.

2. The Proclamation issued previous to the Resale of the Athany Farm contains nothing either to the advantage or prejudice of the

the forest departing purchaser.

3. The Board are of opinion that the Petitioner has no just claim to a Refund of his deposit money.

4. The advertisement however now appears to the Board defective in not containing a stipulation to the effect that parties tendering the amount of the Note will not only forfeit the performance of the Contract but will be followed by the sale of the Trees at the risk of the defaulter who will then be liable and forfeit all claim thereupon

in such Estate.

5. The Agreement signed by the Petitioner on the 3d June 1826 stipulates that deposits on Sales are to be as Resale and contingent loss are thereby secured, no provision is made for what is justly accruing over the resale of the Contract price same varying the original Amount by Rupees 2200 per annum

6. The claim of the Petitioner is for it

by this contingency involves a legal question on which the Board do not feel competent to pronounce an opinion.

7. To guard against future difficulties of this kind the Board will request the Collectors in all Cases of exacting public Sums to enter an express stipulation to the effect above noted. They lately applied to the Honorable Company's Solicitor for an amended form of Bond and Receipt like but his onerous duties have prevented him as yet from meeting their wishes.

Extract from Consultation dated 2nd June 1826. Received by 2nd April 1827

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I am &c

(Signed) A Ross

Acting Secretary

To

H. Porter Esq

Acting Secretary to Government

Western Department

Ext. to Coll.

proceed

Revenue Dept

No 1247

Extract from the Minutes of Consultation
Under date the 2d December 1831.

Read the following

Extract from the Proceed-
ings of the Board of
Revenue.

Here enter 29 October 1831
No 3669

With the Pro-
ceedings above recorded
the Board of Revenue
submit a communication
from the Collector of
Chingleput, giving cover
to copies, with translations,
of the Proclamations
issued

Farm was sold for upset
price of Rupees 2200
above the amount for
which he first purchased
it, proving thereby that
the state suffered no
loss from the failure
imputed to him in
the payment of the
second deposit agreeably
to one of the conditions
of the purchase. He
also avers that in his
Petition to the Board
and Government, Sarvo
Narrain Mudaly also claimed
the return of the
deposit with the
interest thereon, or the
allowance of the condition

Continued

issued for the sale, as
well on resales, of the
Abkarry Farms of that
District for Fasles
1266 to 1270 as stated for
in Direct Municipal Con-
sultation dated 19th Sept
1867 No 960, with reference
to the Memorial and
Address to the Honorable
the Court of Directors
by J. Narrainsamy
Naidoo, the purchaser
of the Farms at the
first sale.

2. In his Memorial,
Narrainsamy claims
the repayment to him
of his deposit of Rupees
90 - 8 - -, on the ground
that, in the resale, the

Farms

contained in a Karrarna-
-rrah executed by him,
to the effect that he
is to make good any
loss that might accrue
to the state from such
second sale.

3. The Memorialist
alleges that he waited
on the Collector on the
9th June 1856, the state
fixed for the payment
of the 2d deposit, with
the money, and requested
him to register the
Farm in his name
as well as in the name
of his Co-partners who
were also present, but
that Mr Shubrick
declined to recognize
any

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any other but the
Memorialist, and
obtained the sanction
of the Board to resell
the Farm, on the
ground that the
first purchaser (Me-
morialist) had failed to
pay the second deposit
pursuant to the
Act — that refusal on
the part of the Collector
was not in accordance
with the previous
usage, and that the
Board Officer had
neglected the indulgence
to the individuals
who have since pur-
-chased the Farm.

4. Mr Shubrick
in

in his letter to the Board now before Government explains that the penalty prescribed for failing to pay the amount of the two Kists within the respective periods was the forfeiture of the amount of deposit which made on the day of sale; that if the Memorialist wishes may be returned, but that he has got no legal claim whatever to it.

6. October 1857.

5. The Board are also of opinion that the Memorialist has no just claim to a refund of the deposit money.

but

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but they observe that his claim to profit by the circumstance of the Sum having been resolved for an amount higher than that for which he first purchased it involves a legal question on which they do not feel competent to pronounce an opinion.

6. Before passing any orders on the subject, the Right Honble the Governor in Council finds it necessary to call for further information on one point. The Memorialist, as already stated, alleges that he

he brought the two Months
Rent, or the second de-
-posit, to the Collector,
but that the Money
was not taken. The
Collector does not give
any explanation on
this point, and the Board
do not see any thing
in the papers before
them which throws light on
circumstances which
in that Gentleman's opinion
justified the refusal
of the money. The
Board will therefore
desire Mr Shubrick
to give a distinct answer
upon this point to the
Memorialists Statement,

as

as also to report how
far it is true that
the indulgence refused
to him, with the
negotiations of other
nature with Rice and
have been granted to
previous and subse-
-quent Contractors.

7 The Board
have very correctly
adverted to the defects
in Mr Shubrick's advert
-isements, and the
Government are of
opinion that it will be
better, at an early date,
to prescribe proper
forms for these docu-
-ments in communi-
-cation with the
Navy Board

Honorable Company's
Solicitor

Cons 22 Sept 57. № 280

Revenue 1857 Deputt. R
Do to Cons 8th Decr.

№ 1247

Copy ... a Letter to E.
of 5th Augt 1858. № 35

Extract Minis. of Cons
Of 2d. Decr. 57.
Ext. Ord. 18. of Rec. Of 22d Decr 57
Con. 2d 1619 inf. 26 Jany 58.

Requesting the Bd. of
Rev. to desire Mr. Shubrick to
give a distinct reply to the
Statement of J. Narainsa
Naidoo the first purchaser of the
Abkarry Farm of Chingleput
for Fasli 1266 & 1270, re-
garding his refusal of
the two Months Tists, or the
second deposit brought to
him by the Contractor, as
also to report how far
it is true, that the indul-
gence refused to him, viz.
the registration of other
names with his own, has been
granted to previous & subsequent
Contractors.

№ 1247

№ 1514 16.

C20 Nov 1858