Revenue Department

Minutes of Consultations

15th Dec 1857

Back No. 35 to 36.

Order No. 1293 dy 12th Dec 1857.

(8) Erwadon

செப்பனிடுபவர் பெயர்
செப்பனிடுவதற்காக எடுத்துக்
கொள்ளப்பட்ட நாள்
செப்பனிட்டு முடித்த நாள்
சரிபார்க்கும் ஆராய்ச்சி உதவி
மு. நி. பர. எ. யாளர்
கையொப்பம் கையொப்பம்

No. 35. Read the following letter from CLEMENT DALE, Esq., Government Pleader Sudder Udalut; to HENRY FORBES, Esq., Acting Secretary to Government; dated Madras, 11th December 1857, No. 134.

SIR,

Minutes Consultation 28th November 1857, *No.* 1235, *Revenue Department.*

Para. 1. I have the honor to acknowledge receipt of Extract from the Minutes of Consultation noted in the margin; and in reply to submit the following observations for the consideration of the Right Honorable the Governor in Council.

2. Legislation by reference to existing laws, is at all times attended with difficulty, but particularly so when the provisions, to which additions are to be made, or which are to be incorporated in the new legislation, are not entirely applicable to the new state of matters. In the present case it is proposed to make Regulation 28 of 1802, with a few exceptions, applicable to the collection of the public Revenue, that Regulation having been passed for a different object. I consider some of the provisions in that Regulation harsh, for instance where it is enacted that if the provisions of that Regulation are not strictly complied with, the distrainer shall not be entitled to recover the arrear for which the distress may have been levied; it is desirable to render a party liable to certain penalties, for the infringement or non-observance of a Regulation, but I submit it is not equitable to *debar* an individual of his *right* owing to some slight omission of an act required to be done (which in many of the cases are very unimportant) and which omission might be caused by fraud on the part of an Agent in collusion with the party distrained on. If the objection be valid as regards a private individual, who could place a greater check on his servants than a Collector could possibly do, and who might be actuated by feelings of a personal character against the tenant, which is not likely to be the case with a Collector, it appears to me that it is not safe to make such a provision applicable to cases where the Collector has to act through subordinates for the collection of the public revenue.

Vide Section 8 *(clause* 6*th)* 19 *(clause* 3*d)* 21-26.

Also Regulation 5 *of* 1822, *Section* 4 *clause* 5*th.*

3. Sections 10, 11, 30 and 31 appear to me to be inapplicable.

4. In the cases referred to by Mr. Shubrick the "limits of the estate" must be very confined, and (as it appears to me) those provisions could not be acted upon. In the Draft of the proposed Act I have added those Sections as excepted from the operation of the proposed Act.

5. Referring to Section 11 of Regulation 28 of 1802, I see no reason why there should not be an option to sell the standing crops, instead of imposing on the Collector, in all cases, the responsibility of reaping and gathering them in.

Vide Sections 6, 8 *(clause* 6*th)* 9, 13, 14, 15, 17, 19, *(clause* 3*d)* 21, 35.

6. From there being no provision in the proposed Act to exempt the Collector (who would be the distrainer) from the payment of damages in cases of default, &c., mentioned in the Regulation, and costs, I presume, it has not been deemed desirable to exempt him.

7. Referring to the 21st Section of Regulation 28 of 1802 and (in connection with it) Regulation V. of 1822, Section 4. The 1st, 2d and 4th clauses of that Section are inapplicable inasmuch as the distrainer would be the Collector, the very person to whom notice is to be given, and to whom appeal is to be made; and why should the property not be sold for 30 days?

8. Under Sections 24 and 26 of Regulation 28 of 1802, I apprehend a Collector distraining could not authorise a person to protect a sale; I submit that as a general principle, there is no valid objection to property distrained being purchased by a Collector *in his public* capacity; in many cases such property, from circumstances, may not realise its fair market value, unless protected from being sacrificed or surruptitiously purchased by interested parties; such a power, if fairly exercised, would in many instances prevent Government being defrauded by combination of the tenant with parties who might in small villages &c., constitute the only persons capable of purchasing; I apprehend Section 27 does not sufficiently meet the case.

9. I now proceed to review the draft of the proposed Act.

10. Referring to the preamble, I apprehend that the term Ryotwary would not receive from the Courts such an extended signification as would embrace the cases referred to by Mr. Shubrick; I would suggest for consideration that it should not be so confined; and that it would be desirable to strike out "Ryotwary Districts" notwithstanding Act 23 of 1856, and insert the words "payment of the public Revenue." I would also omit the word "Ryotwary" in the 8th line of the preamble.

11. Section II. I would alter as shewn in red ink.

12. With referrence to that Section I would however observe that I have not discovered that a Collector possesses power to distrain personal property not situated in his own Zillah; or landed or personal property within the limits of the Supreme Court; should I have over-looked provisions to that effect I should wish to be referred to them; if however there are no such provisions, I submit that to make the proposed Act complete, provision should be made for effecting those objects.

13. I have suggested in the remaining Sections of the proposed Act some alterations which appeared to me to be desirable, the draft of which so altered I have the honor to return herewith.

No. 36. ORDER THEREON, No. 1293; dated 12th December 1857.

Ordered that the letter from the Government Pleader, with the Draft Act received from the Board of Revenue bearing Mr. Dale's original notes, be sent to the Board for any remarks they may wish to make, and a request that they will retransmit it to Government in time for consideration, and despatch to Calcutta by the Steamer of the 28th Instant.

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

3/1293

No. 134

From Clement Dale Esquire, Government Pleader Sudr Udalat.

To Henry Forbes Esquire Acting Secretary to Government

Madras 11th December 1857

Sir,

Para 1 I have the honor to acknowledge receipt of Extract from the Minutes of Consultation noted in the Margin, and in Reply to

M/C 28th November 1857 No. 1235 Revenue Department

submit the following observations for the consideration of The Right Honorable the Governor in Council

2. Legislation by reference to Existing Laws, is at all times attended with difficulty, but particularly so when the provisions, to which additions are to be made, or which are to be incorporated in the new legislation, are not entirely applicable to the new state of matters. In the present case it is proposed to make Regulation 28 of 1802, with a few exceptions, applicable to the Collection of the Public Revenue; that Regulation having been passed for a different object. I consider some of the provisions in that Regulation harsh, for instance where it is enacted that if the provisions of that Regulation are not strictly complied with the Distrainor

Vide Sec. 8 (Cl 6) 19 (Cl 3d) 21-26
Also Reg. 5 of 1822 Sec. 4 Cl 5.

shall not be entitled to recover the arrear for which the distress may have been levied; It is desirable to render a party liable to certain penalties, for the infringement or non observance of a Regulation, but I submit it is not Equitable to debar an Individual of his Right. owing to some slight omission of an act required to be done (which in many of the cases are very

unimportant) and which omission might be caused by fraud on the part of an Agent in Collusion with the party distrained on. If the objection be valid as regards a private Individual, who could place a greater check on his Servants than a Collector could possibly do, and who might be actuated by feelings of a personal character against the Tenant, which is not likely to be the case with a Collector, it appears to me that it is not safe to make such a provision applicable to cases where the Collector has to act through Subordinates for the Collection of the Public Revenue.

3. Sections 10 - 11 30 and 31 appear to me to be inapplicable.

4 In the Cases referred to by Mr. Shubrick the "limits of the Estate" must be very confined, and (as it appears to me) that those provisions could not be acted upon In the Draft of the proposed Act I have added those Sections as Excepted from the operation of the proposed Act

5. Referring to Section 11 of Regulation 28/1802 I see no reason why there should not be an option to sell the standing Crops, instead of imposing on the Collector, in all cases, the Responsibility of reaping and gathering them in

6 From there being no provision in the proposed Act to exempt the Collector (who would be the Distrainer) from the payment of damages in Cases of default &c. mentioned in the Regulation and Costs I presume it has not been deemed desirable to exempt

vide Sections 6-8 (Cl 6th) 9 & 14 - 15 - 17 - 19 (Cl 3) 21 - 35

4/1293 7. Referring to the 21st Sect. of Regulation 28/1802 and (in connection with it) Regulation 4/1822 Section 4 The 1st 2d and 4th Clauses of that Section are inapplicable inasmuch as the Distrainer would be the Collector, the very person to whom notice is to be given, and to whom appeal is to be made, and why should the property not be sold for 30 days?

8. Under Sections 24 and 26 of Regs. 28/1802 I apprehend a Collector distraining could not authorise a person to protect a Sale; I submit that as a general principle, there is no valid objection to property distrained being purchased by a Collector in his public capacity; in many cases such property, from Circumstances, may not realise its fair Market Value, unless protected from being sacrificed or surreptitiously purchased by interested parties. Such a power, if fairly exercised, would in many instances prevent Government being defrauded by Combination of the Tenant with parties who might in small villages &c constitute the only persons capable of purchasing. I apprehend Section 27 does not sufficiently meet the case

I now proceed to review the Draft of the

9 proposed Act.

10 Referring to the preamble I apprehend that the term Ryotwary would not receive from the Courts such an extended signification as would embrace the Cases referred to by Mr. Shubrick; I would suggest for Consideration that it should not be so confined, and that it would be desirable to strike out "Ryotwary Districts in the ensuing Act 23 of 1856" and insert the

the words "payment of the public Revenue" I would also omit the word "Apotwary" in the 8th line of the preamble.

11 Section II I would alter as shewn in Red Ink

12. With reference to that Section I would however observe that I have not discovered that a Collector possesses power to distrain personal property not situated in his own Zillah, or landed or personal property within the limits of the Supreme Court. Should I have over looked provisions to that Effect I should wish to be referred to them; If however there are no such provisions, I submit that to make the proposed Act Complete, provision should be made for Effecting those objects.

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I have the honor to be
Sir
Your most Obedient Servant

Govt. Pleader

5/1093

Revenue 1857 Sept 18
Petition 15th Dec.

No 1558

From the Govt Pleader
Sudr Dewanny

Dated 11th December 1857
Rec'd 12th
R. & O. 12th 23rd 19 Dec

Submitting his observations on the draft Act for Empowering the Revenue Officers of Mofussil Provinces to sell on Personal property of defaulting Ryots for arrears of Revenue.

Copy to the Bd of Rev
" Secy to Legislative Member
" Mr Ingles
" Mr Grant
" Mr Peacock
" Mr Dorin
" Mr Hill.

6/1293

Revenue Departt.

No. 1293.

Extract from the Minutes of Consultation
Under date the 12th December 1851

Read the following
letter from the Govern-
ment Pleader - Sudr
Adalut.

Recd on the 11th Decr/51 at 2

Ordered that the
letter from the Govern-
ment Pleader, with the
draft act received from
the Board of Revenue
bearing on Mr Dale's ori-
ginal notes, be sent
to the Board for any
remarks they may wish
to make, and a request
that they will be return-
ed

ment at Tolgavernment
in time for consideration,
and despatch to Calcutta by the Steamer
of the 28 Instant.

Rd.
Copy to the Bd of Rev
with Copy of the Letter Dispt 12
& 277 Ack.
2 Printed do — Dispt 14

16.6.12

Revenue 1857 Sept.
Dt. to Cons. 15th Decr.

No 1293.

1 C

Extract Mins of Cons.
Dt 12th December 57.

Extract from Do of the Bd of
Revt dt 24 Dec. 57 C No 10 Rev.
2 Feb 58

7/1293

Forwarding to the
Board of Revenue, the letter
from the Government Pleader,
with the Draft Act bearing
his original notes, regarding
the proposed modification of
certain Sections of Regulation
XXVIII of 1802, for any remarks
they may wish to make.

Copy of the Remarks
of the Legislative
Council for
Madras - 26 Feb/58
No 261

No 35 & 36.