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Revenue Department

Minutes of consultations

19th May 1857

Back N^o 34-35

Order no 461 dated 16th May 1857

130/10000

பாதுகாப்பு பிரிவு-1		
செய்ப்புரிபவர் பெயர்	மா. விஜயலக்ஷ்மி	
செய்ப்புரிவதற்காக	8106	
சுருத்துக்கொள்ளப்பட்ட நாள்	10/06	
செய்ப்புரி முடிந்த நாள்	28/12/07	
சரிபார்க்கும்	சரிபார்க்கும்	சரிபார்க்கும்
முதல் மு.நி.பா.எ.	2ம். நி.பா.எ.	உதவியாளர்
கையொப்பம்	கையொப்பம்	கையொப்பம்

Fort Saint George, Revenue Consultation of 19th May 1857.

No. 34. Read the following Extract from the Proceedings of the Board of Revenue dated 4th May 1857, No. 1406.

Dated 20th April in Con. 4th May 1857. Read letter from the Acting Collector of Masulipatam enclosing copy of the Decree of the Civil Court in the matter of the Vissanapett Mootah, and asking for instructions.

(Here enter No. 45.)

In this case Government sued for possession of the Mootah in question, as an escheat, free and discharge from all incumbrances. The circumstances out of which the suit arose are briefly as follows. The last male Mootadar Vargondah Ravanapah died in the year 1810 without issue and without leaving authority to his widow to adopt his son. His widow Vargondah Lutchmedavamah succeeded to the property. In the year 1838 or 28 years after the demise of her husband, Lutchmedavamah mortgaged 12 out of 14 villages comprising the estate, to her nephew Cavelly Vencata Lutchmiah on account of sums of money said to have been advanced by the latter at different times; but Lutchmedavamah failing to act up to the terms of the mortgage, her nephew brought his claims before the Civil Court in O. S. No. 18 of 1838 and obtained a Decree *ex parte*. The entire estate was ordered to be sold in satisfaction of the Decree. The parties then entered into a postpone agreement, according to which the debt was to be liquidated by instalments, at protracted periods, terminating in October 1848, and on failure of payment of any portion of the sums due, the Court was to enforce the same or place the Decree holder in possession of the property. No portion of the instalments was paid. The widow died in 1849 when the estate was attached by the Collector and finally retained by him as an escheat.

2. Cavelly Lutchmiah dying, his son C. Vencatanarayanapah became the holder of the Decree. This person in 1849 and 1850 and again in 1853 endeavored to obtain execution of the postpone agreement, but was opposed by the Collector on behalf of Government and by certain persons styling themselves the heirs of the last male Mootadar. In 1854† the Sudr Adawlut passed an interlocutory order in the case, requiring the Decree holder to be put in possession, in the following words:

"The Court of Sudr Adawlut consider it unnecessary that they should enter on the disputed question of, whether the Collector of Masulipatam has held possession of the Zemindary in issue, subject to the orders of the Civil Court for its eventual disposal, or as devolving to his charge as an escheat to the Government. The Collector objects to the order of the Sudr Adawlut of 13th February last, directing that the said estate be made over to the Petitioner Cavelly Vencata Narainapah in execution of the Rajeenamah held by him, on the ground that the estate has become the property of Government by escheat. It suffices that this plea be dealt with. The Court of Sudr Adawlut have to observe with regard to this point, that by holding the estate on such tenure, the Government do not remove the property from liability under the said Rajeenamah. The Rajeenamah was entered into by the late Zemindar in liquidation of the obligations incurred by her to C. Vencata Narainapah. Her act would be binding upon herself, and by consequence upon her heirs. In default of natural heirs the Collector claims the estate for the Government as an escheat; that is, the Government, in default of other heirs, are represented to have obtained the property, as ultimate heir. The Government thus, in the opinion of the Sudr Adawlut, stand in respect of this property in the position of heir to the late Zemindar, and as such are liable to fulfil all obligations relative to the property incurred by the Zemindar."

Fort Saint George, Revenue Consultation of 19th May 1857.

*Extract Pro. of Civil Court of Masulipatam, 24th June 1853, No. 1 in from Collr. 5th In N. C. Cons. 15th June 1854.

† From Mr. Norton to Govt. 14th March 1855, in letter from Govt. 21st April 1855, No. 299, Judicial Dept. 27th July 1855, in letter from Collr. 19th September 1855, No. 107.

4. For reasons stated at some length, the Government Pleader considered the order of the Sudr Adawlut to be erroneous, and expressed himself in strong terms in regard to the doctrine of liability in cases of escheat like the present, enunciated by that authority. Mr. Norton had no doubt that the widow was heir to her husband, though with limited powers over the property. He thought it was very desirable that those powers should be authoritatively laid down, which had scarcely been done as yet, and considering that the Government came in only in default of heirs, all heritable blood having become extinct, he advised that they should surrender the estate to the Decree holder according to the order of the Sudr Adawlut and proceed by regular suit to eject the defendant, with the assertion of its claims to the property as paramount to those of defendant, since the widow had no power under the provisions of the Hindoo Law to alienate the Mootah or any part thereof in perpetuity, or to pledge the same, if at all, for any period beyond that of her own life as against those entitled to the said Mootah as next in succession to herself.

5. Mr. Norton also held that even supposing there was no collusion in the Decree 18 of 1838, the Rajeenamah was void as against Government for the reasons above stated. The Decree No. 18 of 1838, as against Government, by parity of reasoning would fall with the Rajeenamah; but Mr. Norton considered the question as to the collusive character of that judgment, of secondary importance; because if decided in the affirmative, it would not raise the issue of Law which the Government demurs to, as laid down by the Sudr's ruling, and would probably prevent any decision being obtained on that ground, although it might result in this particular estate being declared to belong to Government.

6. The Estate was made over to the Decree holder and the Collector proceeded by regular suit as directed. Copy of the Decree of Court in the case is now forwarded. On reference to this document, it is seen that as regards the main issue, the Court is of opinion that the widow had power to dispose of her estate, to such extent as was necessary, to save it from sale on account of arrears of Public Revenue, but that it had no where been shewn that it was necessary to alienate the entire property for that purpose. "Judging," the Court observes, "from the value of such property generally, the quantity appears to have been greatly in excess of the exigencies of the case." Partly for this reason and partly on account of its testamentary character; for it declared that 2 villages, not included in the original mortgage, should become the property of defendant, on the death of the widow, the postpone Rajeenamah is declared to be illegal and is accordingly quashed. The Decree in O. S. No. 18 of 1838, is upheld and is "to be enforced in its integrity by the sale of the property therein alluded to, or so much thereof as may be sufficient to meet the balance of the award then made, and to no later period, the whole to be exposed at an upset price equal to that demand; and on failure to realize the sum decreed, the property itself is to be made over to defendant." In the event however of the sale proceeds exceeding the amount of award, the property is adjudged to Government as an escheat.

3. This order in was desired to have cancelled, as the Decree in O. S. No. 18 of 1838 was stated to have been collusively obtained, to which effect the Civil Court of Masulipatam had expressed an opinion in 1853.* The widow also, it was urged by the Collector on behalf of Government, had only a life interest in the property and could not alienate it to the prejudice of parties who had a reversionary interest in it. In order to determine the course to be pursued, the whole matter was brought under the consideration of Mr. Norton, the Government Pleader, whose views are contained in the letters noted in the margin.†

Fort Saint George, Revenue Consultation of 19th May 1857.

7. In forwarding copy of this Decree, the Acting Collector seems to think that an error was committed in not assailing at once the quality of the claim in O. S. No. 18 of 1838; but the Government Pleader gave strong reasons which have been already stated, why that course should not be taken; and it will be seen on reference to the present Decree, that although the character of the claim was not specifically brought in question in the plaint, yet the Court of its own accord has declared that the necessity on the part of the widow to borrow money has not existed throughout, at least that no attempt has been made to shew that necessity either in the present or previous suits. In noticing this the Court also observe that not a single Rupee had ever been paid of the original debt or mortgage bond up to the date of the widow's decease. The whole subject has been waived, it is added, for some reason unexplained and left to inference. The remarks of the Court are virtually declaratory of the untenable character of the claim preferred in 1838, and of the collusive nature of the Rajeenamah Decree in that suit. Under these circumstances, it is open to consideration, whether Government were not entitled, on the arguments of the Judge, to an unqualified decision in their favor.

8. The Acting Collector requests instructions as to whether a new suit should be instituted, in order to amend the defect, according to his view of the present suit on the point noticed in the foregoing para., or whether an appeal should be made to the Sudr Adawlut.

The latter course is that which naturally suggests itself, with reference to the views of the Government Pleader, who observed that Government could not in any way be bound by the Decree in O. S. No. 18 of 1838, as they were

not a party to that suit. But the Board are of opinion that sufficient grounds have been shewn in the preceding paras. for a review of judgment; and should Government be pleased to concur in this view, they will instruct the Collector to make the necessary application. Failing compliance on the part of the Court, or in the event of the revised Decree being adverse to Government, an appeal may be made in due course.

9. Should it be ultimately determined to appeal, possession of the estate should be sought by Government as suggested by the Acting Collector.

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

No. 35.

ORDER THEREON, No. 461; dated 16th May 1857.

In Ex. M. Cons. 6th March 1855.
" From Govt. Pleader 14th " "
" Ex. M. Cons. 21st April " No. 299.
" Ex. M. Cons. 24th July " " 521.
" From Govt. Pleader 27th July " "
" Ex. M. Cons. 13th August " " 570.
" From Govt. Pleader 22d " " "
" Ex. M. Cons. 31st " " " 623.

Ordered that the above Proceedings of the Board of Revenue, and papers therewith transmitted, together with the Decree of the Civil Court of Masulipatam in O. S. No. 103 of 1855, relative to the Vissanapetta Mootah, be forwarded to the Government Pleader, with reference to the correspondence noted in the margin, for his early opinion. In the mean time, the Board will instruct the Acting Collector

of Masulipatam to apply, if necessary, for time to appeal, or to move for a review of judgment.

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

Revenue Department.

Excerpt from the Proceedings of the
Board of Revenue dated 15 May 1837.

Dated 20 April in
Com. 15 May 1837.

Read letter from the acting
Collector of Madulipatam, enclosing copy of
the Decree of the Civil Court in the matter
of the Vissanapett Mortah and asking for
instructions.

(Here Enter No. 115)

In this case Government sued
for possession of the Mortah in question, as
an Escheat, free and discharged from all
incumbrances. The circumstances out of
which the suit arose are briefly as follows.
The last male Mortadar Varegondah Ravana-
pah died in the year 1810 without issue and
without leaving authority to his Widow
to adopt a Son. His Widow Varegondah
Lutchmederamah succeeded to the property.
In the year 1838 or 28 years after the demise
of her Husband, Lutchmederamah mortgaged
12 out of 14 Villages comprising the Estate,
to her Nephew Cavelly Veneata Lutchmiah
on account of sums of money said to have
been

been advanced by the latter at different times; but Latchmedaramah failing to act up to the terms of the Mortgage, her Nephew brought his claims before the Civil Court in O. S. No 18 of 1838 and obtained a Decree exparte. The entire Estate was ordered to be sold in satisfaction of the Decree. The parties then entered into a postpone agreement, according to which the debt was to be liquidated by instalments, at protracted periods, terminating in October 1848, and on failure of payment of any portion of the sums due, the Court was to enforce the same or place the Decree holder in possession of the Property. No portion of the instalments was paid. The Widow died in 1849 when the Estate was attached by the Collector and finally retained by him as an Escheat.

2 Cavally Latchimiah dying, his son C. Venkatanarayanaiah became the Holder of the Decree. This person in 1849 and 1850 and again in 1853 endeavored to obtain execution of the postpone agreement, but was opposed by the Collector in behalf of Government and by certain persons styling themselves

Ex. Min. Com 16 July 1850
No 676, Rev. Sept.

21 Oct 1854, Enc. in the
Mandate No 19, Jan'y, 1855.
No 676, Rev. Sept. 1855.

themselves the Heirs of the last male Mortgagor. In 1854 the Sudr Adawlat passed an interlocutory order in the case, requiring the Decree holder to be put in possession, in the following words.

The Court of Sudr Adawlat consider it unnecessary that they should enter on the disputed question of, whether the Collector of Masulipatam has held possession of the Zemindary in issue, subject to the orders of the Civil Court for its eventual disposal, or as devolving to his charge as an Escheat to the Government. The Collector objects to the order of the Sudr Adawlat of 13th February last, directing that the said Estate be made over to the Petitioner Cavally Venkata & Varainapah in execution of the Rajenamah held by him, on the grounds that the Estate has become the property of Government by Escheat. It suffices that this plea be dealt with. The Court of Sudr Adawlat have to observe with regard to this point, that by holding the Estate on such tenure the Government do not remove the property from liability under the said Rajenamah. The Rajenamah was entered into

into by the late Zemindar in liquidation
of the obligations incurred by her to C.
Vereata Narainpatt. Her act would be
binding upon herself, and by consequence
upon her heirs. In default of natural
heirs the Collector claims the Estate for
the Government as an Escheat, that is the
Government, in default of other heirs, are
represented to have obtained the
Property, as ultimate heirs. The Government
thus, in the opinion of the Sudr Adawlat,
stand in respect of this property in the
position of heirs to the late Zemindar,
and as such are liable to fulfil all
obligations relative to the property
incurred by the Zemindar.

3 This order it was desired
to have cancelled, as the Decree in C. S.
No 18 of 1838 was stated to have been
collusively obtained, to which effect
the Civil Court of Masulipatam had
expressed an opinion in 1853. The Widow
also, it was urged by the Collector on behalf
of Government, had only a life interest
in the property and could not alienate
it to the prejudice of parties who had

Extract from Civil Court
of Masulipatam,
24 June 1853.
No 1 in C. S. No 5, 1853.
C. C. Court 15 June 1853.

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a reversionary interest in it. In order to deter-
mine the course to be pursued, the whole
matter was brought under the consideration
of Mr. Norton the Government Pleader, whose
views are contained in the letters noted in the
margin.

4 For reasons stated at some length,
the Government Pleader considered the order of
the Sudr Adawlat to be erroneous, and expressed
himself in strong terms in regard to the doctrine
of liability in cases of Escheat like the present,
enunciated by that authority. Mr. Norton
had no doubt that the Widow was heir to
her Husband, though with limited powers
over the Property. He thought it was very
desirable that those powers should be
authoritatively laid down, which had scarcely
been done as yet, and considering that the
Government came in only in default of heirs,
all heritable blood having become extinct,
he advised that they should surrender the
Estate to the Decree Holder according to the
order of the Sudr Adawlat and proceed by
regular suit to eject the Defendant, with the
assertion of its claims to the property as
paramount to those of Defendant, since the
Widow had no power under the provisions

of

of the Hindu Law to alienate the Mortgag-
or any part thereof in perpetuity, or to
pledge the same, if at all, for any period
beyond that of her own life as against those
entitled to the said Mortgag as next in succession
to herself.

5. Mr Norton also held that ^{14th March 1855}
even supposing there was no collusion in ^{in S. Govt 21st April}
the Decree 18 of 1838, the Rajenamah ^{1855 No 299, Just Dept}
was void as against Government for the ^{In Jan 26 April 1856}
reasons above stated. The Decree No 18
of 1838, as against Government, by
parity of reasoning would fall with
the Rajenamah, but Mr Norton con-
sidered the question as to the collu-
sive character of that judgment,
of secondary importance, because ^{Mr S}
if decided in the affirmative, ^{24th Jan}
it would not raise the issue of
Law which the Government
demands to, as laid down by the
Sudri's ruling, and would probably
prevent

702
prevent any decision being obtained on that
ground, although it might result in this
particular Estate being declared to belong
to Government.

6. The Estate was made over to
the Decree holder and the Collector proceed-
ed by regular Suit as directed. Copy of the
Decree of Court in the case is now forward-
ed. On reference to this document, it is
seen that as regards the main issue, the
Court is of opinion that the Widow had
power to dispose of her Estate, to such extent
as was necessary to save it from sale on
account of arrears of public Revenue, but
that it had no where been shown that it
was necessary to alienate the entire prop-
erty for that purpose. Judging, the Court
observes, from the value of such property
generally, the quantity appears to have been
greatly in excess of the exigencies of the case.
Partly for this reason and partly on account
of its testamentary character, for it declared
that 2 Villages, not included in the ori-
ginal mortgage, should become the prop-
erty of Defendant, on the death of the
Widow.

Widow, the posthumous Rajeenamah is declared to be illegal and is accordingly quashed.

The Decree in C.S. No. 13 of 1838 is upheld and is to be enforced in its integrity by the sale of the property therein alluded to, or so much thereof as may be sufficient to meet the balance of the award then made, and to no later period, the whole to be exposed at an upset price equal to that demanded, and on failure to realize the sum decreed, the property itself is to be made over to Defendant. In the event however of the sale proceeds exceeding the amount of award, the property is adjudged to go to Government as an ischeat.

7. In forwarding copy of this Decree the Acting Collector seems to think that an error was committed in not assailing at once the quality of the claim in C.S. No. 13 of 1838, but the Government Pleader gave strong reasons which have been already stated, why that course should not be taken, and it will be seen on reference to the present Decree, that although the character of the claim was not specifically brought in

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in question in the Plaint, yet the Court of its own accord has declared that the necessity on the part of the Widow to borrow money has not existed throughout, at least that no attempt has been made to show that necessity either in the present or previous Suits. In noticing this the Court also observed that not a single rupee had ever been paid of the original debt or mortgage bond up to the date of the Widow's decease. The whole subject has been waived; it is added, for some reason unexplained and left to inference. The remarks of the Court are virtually declaratory of the untenable character of the claim preferred in 1838 and of the collusive nature of the Rajeenamah Decree in that Suit. Under these circumstances it is open to consideration, whether Government were not entitled on the arguments of the Judge to an unqualified decision in their favor.

8. The Acting Collector requests instructions as to whether a new Suit should be instituted, in order to amend the defect, according

according to his view of the present suit
on the point noticed in the foregoing para,
or whether, an appeal should be made to
the Sudr Adawlut. The latter course is
that which naturally suggests itself with
reference to the views of the Government. From Mr.
Pleader, who observed that Government ^{in terms of}
could not in any way be bound by the De.
-crees in O.S. No. 13 of 1838, as they were not
a party to that suit. But the Board are of
opinion that sufficient grounds have
been shewn in the preceding paras for a
review of Judgment; and should Government
be pleased to concur in this view, they will
instruct the Collector to make the neces.
-sary application. Failing compliance on
the part of the Court, or in the event of
the revised Decree being adverse to Govern.
-ment, an appeal may be made in due
course.

9. Should it be ultimately
determined to appeal, possession of
the Estate should be sought by
Government as suggested by the
Acting

Acting Collector.

(A true Extract)

906
J. S. M.
Secretary.

To
A. Forbes Esq.
Secretary to Government,
Revenue Department

Encl.
Whitby

Conto 16th July 50/147 418
 Sub. 24th July 50th 1074
 " 24th July 25726
 " 14th August 18746
 " 14th Sept 13846

1001

Decr. 1837 Chapin
 In Conto 14th May
 No. 1082

Received from the Pro.
 -are group by the B. & H. Co.

Dated 14th 3rd May 1837.
 No. 3rd 3

5 inch. sent to the B. & H. Co.
 No. 1406

S. E. No. 161. 16th May

Submitting a letter
 from the Acting Col. of
 of Massachusetts enclosing
 copies of the Decree of the
 Civil Court in the matter
 of the Westchester Mount.
 and stating the views of
 the B. & H. Co. as to the
 to be pursued in reference
 to the past judgements
 -concerning connected with
 the case.

1234

12 May 1837

No 461

Extract from the Minutes of Consultation
Under date, the 16th May 1857.

Recd the following
Extract from the Proceedings of
the Board of Revenue.

(Here enter the 16th May 1857 No 1406.)

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LL
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Ordered that the
above proceedings of the Board
of Revenue, and papers there-
with transmitted, together
with the Decree of the Civil
Court of Masulipatam in
O.S. No 103 of 1855, relative to the
Viswanapetta Mootah, be
forwarded to the Government
Pleader, with reference to the
Correspondence noted in the
Margin, for his early opinion.

En

- Ex: Mr. Coun. 5th Nov 1855.
- Ex: Gov. Pleader 14th " "
- Ex: Mr. Coun. 21st April 1856 No 299
- Ex: Mr. Coun. 21st July " 521
- Ex: Gov. Pleader 29th July " "
- Ex: Mr. Coun. 13th August " 570.
- Ex: Gov. Pleader 22nd " " "
- Ex: Mr. Coun. 31st " " 623.

In the mean time the
Board will instruct the
acting collector of Masuli
to apply if necessary
for time to appeal or to
move for a review of judg-
ment. *R.R.*

Copies to the Secy of Secy.
Dir. 16

In Govt. Pleader
with 5 Encls.

** Return of Secy. 16*
the 16th inst. 630 of 1857.

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Revenue 1857
to the Secy of Secy.

10/10/57

Contract of Secy.
10/10/57

From the Govt. Pleader of the
And. District of 13 June 57
C. No. 100 of 1857
From the Govt. Pleader of the
C. No. 100 of 1857

Ordering that the Proceed-
ings of the Board of Revenue &
papers therewith transmitted
together with the Decree of
the Civil Court of Masuli
relative to the 1000
un-pettah Mootah be forward-
ed to the Govt. Pleader with
reference to the corresponding
order noted, requesting the
to instruct the Coll. of Masuli
to apply if necessary for
time to appeal or to move for a
review of judgment.

10/10/57

10/10/57