(1)

Revenue Department

Minutes of Consultations

11th July 1857

Back Numbers 22 - 23

order No. 695 dated 11th July 1857

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7 Dec Bi

பாதுகாப்பு பிரிவு - 1

செப்பனிடுபவர் பெயர்

செப்பனிடுவதற்காக எடுத்துக் கொள்ளப்பட்ட நாள்

செப்பனிட்டு முடித்த நாள் 7/11/07

சரிபார்க்கும் முதல் மு. நி. பா. அ. கையொப்பம்

சரிபார்க்கும் மு. நி. பா. அ. கையொப்பம் 17/11/07

அ.ந.க. 625/08

சரிபார்க்கும் உதவியாளர் கையொப்பம்

Fort Saint George, Revenue Consultation of 14th July 1857.

No. 22. Read the following Extract from the Proceedings of the Board of Revenue, dated 2nd July 1857, No. 2258.

Read letter from the Acting Collector of Masulipatam dated 5th June 1857.

(Here enter No. 98.)

The land under litigation is situated in what was the Goodoor Zemindary, an estate which was held under Reg. XXV of 1802, and which passed into the possession of Government in 1851.

2. Plaintiff claims the land on behalf of a Pagoda of which he represents himself to be the Trustee.

3. The claim is based on a grant dated in Fusly 1174, A. D. 1764, and Plaintiff asserts that the right of the Pagoda was recognised by Mr. Cazalet in Fusly 1207, A. D. 1797, that the land was excluded from the Permanent settlement of the Goodoor estate, that in 1813 the lands were let on a 7 years' lease, but after the lesses had enjoyed the land for 3 years, the Zemindar interfered and assumed it, that Plaintiff filed a suit which led to a rajeenamah and the relinquishment of the land by the Zemindar.

4. The grant held by Plaintiff being dated previous to 1768 was valid at the passing of Reg. XXXI of 1802, unless the lands

(1) had escheated, or (2) had been resumed and assessed between 1768 and 1802 or (3) were not enjoyed previous to 1768

5. The defence does not explicitly plead any of these exceptions or adduce evidence in support of such pleas, nor is the genuinenes sof the grant apparently disputed.

6. As far therefore as Reg. XXXI of 1802 is concerned the grant is valid.

7. The right however may have since lapsed by resumption though illegal (which it would be if the land were reserved as Lakhiraj) by the Zemindar and failure on the part of Plaintiff for more than 12 years to appeal against the resumption (legal or illegal as it might be) to any competant authority. This is the plea on which the defence mainly proceeds, but it seems to the Board insufficient, for the Zemindar waived his privilege of pleading the statute of limitations and restored the land, and it seems to the Board that no private person acquiring the estate subsequently could take advantage of that statute. This course appears to them to be equally closed against Government for the Act of the Zemindar being illegal was null ab initio and Government moreover could not maintain that his resumption was an assessment to the public revenue within the scope of Section IV. Regulation XXXI. of 1802. The Acting Collector maintains that the transfer of the land by the Zemindar was collusive, but the Court did not entertain this view.

8. For the reasons above stated the majority of the Board consider it useless to appeal against the decision of the Civil Court.

9. As regards other suits of a similar character, which the Acting Collector thinks will be instituted at once, the Board will be prepared to give an opinion on them when application is made for the permission of Government to defend them at the public expense.

Ordered that copy be forwarded to the Acting Collector, to Government and also to Mr. Dale, in case of his having recently received instructions from the Acting Collector counter to the Board's views. In this case Mr. Dale must of course exercise his discretion.

(A true Extract.)

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

No. 23. ORDER THEREON, No. 695; dated 11th July 1857.

Before passing orders on the Board's communication above recorded, a copy of which appears to have been sent to the Government Pleader, the Government resolve to request Mr. Dale to favor them with his opinion in the present case, as well as on the course to be pursued in the event of other similar suits being filed.

2. The original enclosures received with the Board's Proceedings will be sent to Mr. Dale with a request that they may be returned with his reply.

(Signed) H. FORBES,

Acting Secretary to Government.

Revenue Department.

№ 2258

Extract from the Proceedings of the Board of Revenue, dated 2nd July, 1857.

Read letter from the acting Collector of Masulipatam dated 5th June 1857.

(Here Enter № 98)

The land under litigation is situated in what was the Goodoor Zemindary - an Estate which was held under Reg: XXV of 1802, and which passed on to the possession of Government in 1831.

2. Plaintiff claims the land on behalf of a Pagoda for which he represents himself to be the Trustee.

3. The Claim is based on a grant dated in Fasly 1175 or A.D. 1765 and Plaintiff asserts that the right of the Pagoda was recognised by Mr. Cazalet in Fasly 1207 / A.D. 1797, that the land was excluded from the Permanent Settlement of the Goodoor Estate that in 1863 the lands were let on a 7 years lease but after the

the lessees had enjoyed the land for 3 years the Zemindar interfered and assumed it- that Plaintiff filed a suit which led to a razeenamah and the relinquishment of the land by the Zemindar.

4 The grant held by Plaintiff being dated previous to 1768 was valid at the passing of Reg XXXI of 1802, unless the lands

(1) had escheated or (2) had been resumed and assessed between 1768 and 1802 or (3) were not enjoyed previous to 1768.

5 The defence does not explicitly plead any of these exceptions or adduce evidence in support of such pleas nor is the genuineness of the grant apparently disputed.

6 As far therefore as Reg: XXXI of 1802 is concerned the grant is valid.

7 The right however may have since lapsed by resumption though illegal (which it would be if the land were reserved as Lakhiraj) by the Zemindar and failure on the part of Plaintiff for

for more than 12 years to appeal against the resumption (legal or illegal as it might be) to any competent authority. This is the plea on which the defence mainly proceeds but it seems to the Board insufficient for the Zemindar waived his privilege of pleading the Statute of limitations and restored the land, and it seems to the Board that no private person acquiring the estate subsequently could take advantage of that Statute. This course appears to them to be equally closed against Government for the act of the Zemindar being illegal was null ab initio and Government moreover could not maintain that his resumption was an assessment to the public revenue within the scope of Sect IV Reg XXXI of 1802. The acting Collector maintains that the transfer of the land by the Zemindar was collusive but the Court did not entertain this view.

8. For the reasons above stated the majority of the Board consider it useless to appeal against the decision

of the Civil Court.

9. As regards other suits of a similar character which the acting Collector thinks will be instituted at once, the Board will be prepared to give an opinion on them when application is made for the permission of Government to defend them at the public expense.

Ordered that Copy be forwarded to the acting Collector, for Government and also to the Cole, in case of his having recently received instructions from the acting Collector counter to the Board's views. In that case Mr Cole must of course exercise his discretion.

(A true Extract)

S. D. Sim
Ag Secretary

To H. Forbes Esqr
Ag Secretary to Government
Revenue Department

ad D. Civil.

Rev. 1857 Depart.t
Dt. to Cus: IIIs. 11th July

No. 67

Extract from the Pro:
of the Board of Revenue
Dated 2d
Received 3d } July 1857

3. Encls. No. 225 of
Sent to Govt. Madras

S. E No. 695. 11th July

Submitting with
an expression of the
Board's views thereon
a letter from the Asst. Coll.r
of Masulipatam forward
=ing the Decree in O. S.
No. 141 of 1855 on the file
of the Civil Court of that
District.

No 22.

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2d July R 10th

Rev. Dept.

N.° 695

Extract from the Minutes of Consultation

Under date the 11th July 1857

Read the following

Extract from the Proceedings

of the Board of Revenue.

Received 2nd July 1857 N.° 2250

Before passing

orders on the Board's

Communication above

recorded, a Copy of which

appears to have been sent

to the Government Pleader,

the Government resolves

to request Mr. Dale to

favor them with his

opinion on the present

case, as well as on the

course that should be

to be pursued in the
event of other similar
Suits being filed.

The original enclosures
received with the Board's
Proceedings will be sent
to Mr. Dale with a re-
quest that they may
be returned with his
reply. [illegible]

3 Copies to the Bd of Rev Divn 13
1 do to Govt Pleader
with 3 Encls

Revenue 1857 Dep.t
Do to Cons.s 14.th July

No 695.

Extract Mins.s of Cons.s
Dy 11.th July 57.

From the Govt. Pleader Sudr
Adalut dy 4th July 57 C. No 809
in 2 pcs.
From Do. 15 Oct 57
in 29 -

Requesting Mr Dale to
favr them with his opinion in
the case of the Decree in O.S.
No. 161 of 55, on the file of the
Civil Court of Masulipatam as
well as on the course to be
pursued in the event of other
similar Suits being filed, also
directing the enclosures
received with the Rots Proc.s to
be sent to him, that they
may be returned with
his reply -

No 22 + 23.

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