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Revenue Department

Minutes of Consultations

4th August 1857

Back Number 27-28

Order No 775 dated 3rd August 1857

DTP-(1)

பாதுகாப்பு பிரிவு-1

செப்பனிடுபவர் பெயர் த. கோ.

செப்பனிடுவதற்காக எடுத்துக் கொள்ளப்பட்ட நாள் 10/06

செப்பனிட்டு முடித்த நாள் 14/07

சரிபார்க்கும் முதல் மு.நி.பர்.எ. கையொப்பம்

சரிபார்க்கும் இ.நி.பா.எ. கையொப்பம்

ஆராய்ச்சி உதவியாளர் கையொப்பம்

Fort Saint George, Revenue Consultation of 4th August 1857.

No. 27. Read the following letter from W. MORGAN, Esq., Clerk of the Legislative Council; to H. FORBES Esq., Acting Secretary to the Government of Fort St. George; dated Fort William, the 17th July 1857, No. 106.

SIR,

I have the honor to acknowledge the receipt of your letter No. 657, dated the 27th Ultimo, relative to the enactment of a law empowering the Revenue officers of the Madras Presidency to sell either real or personal property of defaulting ryots for arrears of revenue; and to forward, for submission to the Right Honorable the Governor in Council, the accompanying Minute thereon by the Legislative Councillor for Bengal.

Minute on a letter from Acting Secretary to Government of Fort St. George; dated 27th June 1857.

This paper has been handed to me as the only Member now present of the Select Committee on the bill which eventually became Act XXIII. of 1856.

The Madras Government say that, in applying for an amendment of the law, it was their intention to obtain for Revenue officers power to sell either real or personal property at their discretion.

It is very true that, in the correspondence printed by Mr. Eliott in the annexure to his bill, mention was made of a proposal for superseding the existing law "by a plain and explicit enactment, embracing the distraint and sale of either the personal property or the land, unfettered by the dilatory action which was necessary under the present law." A Draft Act to this effect had indeed been prepared by the Board of Revenue, but it was not adopted by the Government; and it was understood to be the object of the Government, in the application actually made to the Legislature, merely to obtain for Collectors power to sell personal property, for arrears under ryotwar settlements, according to the provisions of Regulation XXVIII. of 1802.

This was expressly declared by Mr. Eliott to be the object of his bill, and his bill was couched in the same terms with the Draft Act sent up from Madras, omitting the final clause.

It appears to me that, if a law had been passed in the terms of the Draft Act, the effect would have been precisely the same as that of the law actually passed. The Draft Act declared that, whereas doubts have arisen whether Regulation XXVIII. of 1802 is applicable to arrears of Government revenue under ryotwar settlements, the said Regulation is and shall be available for the recovery of such arrears. Now the only ground upon which it could be held to be so available is that the collection of the revenue under a ryotwar settlement is a Khas collection within the meaning of the Regulation. Accordingly the Act as passed, which declares this, merely declares in express terms what was declared inferentially indeed, but not less certainly, in the Draft Act.

It seems that the Madras Government think it necessary that Collectors should have power to sell either land or personal property at their discretion, and that the mode of bringing land to sale prescribed in Regulation XXXVIII. is (as no doubt it is) inconvenient and unsuitable. The Bengal law contains a provision (Section XXV. Regulation VII. 1799), which does not appear to exist in that of Madras, by which lands under Khas collection, if saleable, may be brought to sale without the intervention of the Civil Court. But the enactment of such a provision for Madras would not apparently meet the views of that Government. Under these circumstances, and in the absence of the Legislative Member for Madras, I think the most satisfactory course will be for the Madras Government to send up the Draft of such an Act as they require, when measures can be adopted for its introduction in accordance with the standing orders.

Fort Saint George, Revenue Consultation of 4th August 1857.

I would respectfully suggest this course to the consideration of the Right Honorable the Governor in Council. In the mean time I shall move in Council that the Acting Secretary's letter of the 27th June be printed.

(Signed) E. CURRIE,
Member of the Legislative Council.

The 16th July 1857.

No. 28. ORDER THEREON, No. 775; dated 3d August 1857.

Ordered to be communicated to the Board of Revenue, who will be good enough to prepare a Draft Act in communication with the Government Pleader.

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

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Minute on a letter from the Acting Secretary to Government of Fort St. George, dated 27th June 1857.

This paper has been handed to me as the only Member now present of the Select Committee on the Bill which eventually became Act XXIII of 1856.

The Madras Government say that in applying for an amendment of the law, it was their intention to obtain for Revenue Officers power to sell either real or personal property at their discretion.

It is very true that, in the correspondence printed by Mr. Elliott in the Annexure to his Bill, mention was made of a proposal for superseding the existing law "by a plain and explicit enactment, embracing the distraint and sale of either the personal property or the land, unfettered by the dilatory action which was necessary under the present law." A Draft Act to this effect had indeed been prepared by the Board of Revenue, but it was not adopted by the Government, and it was understood to be the object of the Government, in the application actually made to Council

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the Legislature, merely to obtain for Collectors power to sell personal property, for arrears under Ryotwar Settlements, according to the provisions of Regulation XXVIII of 1802.

This was expressly declared by Mr Elliott to be the object of his Bill - and his Bill was couched in the same terms with the Draft Act sent up from Madras, omitting the final Clause.

It appears to me that, if a law had been passed in the terms of the Draft Act, the effect would have been precisely the same as that of the Law actually passed. The Draft Act declares that, whereas doubts have arisen whether Regulation XXVIII of 1802 is applicable to arrears of Government Revenue under Ryotwar Settlements, the said Regulation is and shall be available for the recovery of such arrears. Now the only ground upon which it could be held to be so available is that the collection of the Revenue under a Ryotwar Settlement is a Khas Collection within the meaning of the Regulation. Accordingly the Act as passed, which declares this, merely declares in express terms what was declared inferentially indeed, but not less certainly, in the Draft Act.

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It seems that the Madras Government think it necessary that Collectors should have power to sell either land or personal property at their discretion, and that the mode of bringing land to sale prescribed in Regulation XXXVIII is (as no doubt it is) inconvenient and unsuitable. The Bengal law contains a provision (Section XXV Regulation VII. 1799), which does not appear to exist in that of Madras, by which lands under Khas collection, if saleable, may be brought to sale without the intervention of the Civil Court. But the enactment of such a provision for Madras would not apparently meet the views of that Government. Under these circumstances, and in the absence of the Legislative Member for Madras, I think the most satisfactory course will be for the Madras Government to send up the Draft of such an Act as they require, when measures can be adopted for its introduction in accordance with the Standing Order.

I would respectfully suggest this course for the consideration of the Right Honble the Governor in Council. In the mean time I shall move in Council that the Acting Secretary's letter of the 22d June be printed.

The 16th July 1857.

Member of the Legl Council

I.C.O

No 106 (5)

From

W. Morgan Esquire
Clerk of the Legislative Council

To

H. Forbes Esquire
Acting Secretary to the Government
of Fort St George

Dated Fort William the 17th July 1857

Sir,

I have the honor to acknowledge the receipt of your letter No 657 dated the 27th Ultimo relative to the enactment of a law empowering the Revenue Officers of the Madras Presidency to sell either real or personal property of defaulting Ryots for arrears of Revenue; and to forward, for submission to the Right Honble the Governor in Council, the accompanying Minute thereon by the Legislative Councillor for Bengal. -

I have the honor to be
Sir,-
Your Most Obedient Servant

W. Morgan
Clerk of the Council

Encs: 30 Lines & Ext. 40.

Revenue 1857 Dept.
Dto Encl 4th Augt.

No. 846

From W. Morgan Esqr.
Clerk of the Legislative
Council.

Dated 17th July 1857.
Rect. 25th

Enclosing Minute by
Legislative Council for
Bengal, relative to the
enactment of a law, em-
powering the Revenue Officers
of the Madras Presidency,
to sell either real or
personal property of
defaulting Ryots for
arrears of Rent.

From the Secretary of the Legislative Council
dated 12th Novr. 1857 Cons. 14th 34. Encs 2
Recd 4th Augt. 1857
With an order
No 775. 3rd August

No. 27 & 28.

Cons. July 24th Augt.

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No. 775.

Ordered to be com-
municated to the Board of
Revenue who will be good
enough to prepare a despa-
tch in communication with
the Government Pleader.

Fort Saint George
3d August 1857

Copies to the Advocate General.