Revenue Department

Minutes of Consultation.

27th July 1858

Back Nos 23 & 24

Order No 1024 23rd July 1858.

No. 33. Read the following letter from CLEMENT DALE, Esq., Government Pleader Sudr Udalut; to W. H. BAYLEY, Esq., Acting Secretary to Government; dated Madras 22nd June 1858, No. 65.

Sir,

Para. 1. With reference to the Extract from the Minutes of Consultation noted in the margin I have the honor to state to the Right Honorable the Governor in Council as my opinion that J. Narrainsawmy Naidoo has not any claim to profit by the circumstance of the Abkarry Farm of Chingleput having been resold for an amount higher than that for which he first purchased it.

M. C. 20th January 1858, *No.* 81, *Revenue Department.*

2. I return the 3 original papers which accompanied the Extract noted above.

No. 34. ORDER THEREON, No. 1024; dated 23d July 1858.

Para. 1. On the 27th May 1857 one Narrainsawmy Naidoo submitted for transmission to the Honorable Court of Directors a Memorial, in which he claimed the refund of a sum of Rupees 904-8 deposited by him with the Collector of Chingleput on account of his purchase of the Abkary Farm of that District, but adjudged to be forfeited to Government on account of Memorialist's failure to pay in the amount of two kists, or instalments, within one week from the date of sale.

2. The lease of the Abkarry revenue of the Chingleput District for a term of five years from fusly 1266 to 1270 was put up to sale by public auction on the 2nd June 1856, and purchased by Narrainsawmy Naidoo at an annual rental of Rupees 90,450. He deposited one per cent. of this amount, or Rupees 904-8, with the Collector, and gave that officer an engagement to deposit two months' instalments in a week, or on failure, to hold himself responsible for any deficiency that might accrue by a resale of the Farm. The stipulated period expired without Narrainsawmy Naidoo fulfilling his engagement, and the farm was resold on the 20th June 1856 at an annual rental of Rupees 92,650, or Rupees 2,200 per annum in excess of the first sale.

3. It is on the ground of this excess that Narrainsawmy Naidoo has memorialized the Honorable Court for a refund of his deposit of Rupees 904-8, though in his previous petitions to the Board of Revenue and to the Government he not only claimed this deposit but also the difference between his bid and the highest bid accepted at the second sale, on the strength of the condition contained in the engagement entered into by him that he was to make good any loss that might accrue to the State from such second sale.

4. Before despatching Narrainsawmy Naidoo's memorial to its address, the Government resolved to call for the proclamations that were issued on the occasion of both the sale and resale of the farm in question, in order to form a proper estimate of the claim adduced by the Memorialist. In complying with this requisition the Board observe 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 Memorialist; that the second proclamation, or that issued previous to the resale of the Abkarry farm contained nothing either to the advantage or prejudice of the first defaulting purchaser; and they were therefore of opinion that Narrainsawmy Naidoo had no claim to a refund of his deposit money.

Board's Proceedings 29th October 1857.

5. The Board however alluded to a defect in the advertisement 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 deposit; 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." They said that the agreement signed by the Memorialist supplied this defect so far as resale and contingent loss were concerned, but no provision was made for what actually occurred, viz., the resale of the contract for a sum exceeding the original amount by Rupees 2,200 per annum. As the claim of the Memorialist to profit by this contingency involved a legal question, the Board did not feel competent to pronounce an opinion on it.

6. The Government reviewed the whole subject in an Extract from the R sultation dated 2d December 1857, No. 1247; but before passing final orders, Shubrick to give a distinct reply to the statement of Memorialist that he had months' kist for the default of which his deposit money had been adjudged forfe lector's office, but that it had not been received; the Collector was also requ how far it was true that the indulgence refused to the Memorialist, viz. the regis names with his own, had been granted to previous and subsequent contractors.

7. These requisitions having been met by the Collector's reply of the 7th the Government in an order dated 20th January 1858, No. 81, resolved to for correspondence to the Government Pleader, with the view of ascertaining whether had any claim to profit by the circumstance of the Farm having been resold for a than that for which he purchased it, and if so to what extent. The letter recor of these Proceedings contains Mr. Dale's opinion which is against Narrainsawmy

8. The Government have given their attentive consideration to all the cir nected with this transaction, and referring to the opinions expressed by the Bo and the Government Pleader, they have arrived at the decision that the Memori claim either to the refund of the mon

Dy.	*23rd June*	1857, *Nos.*	52-53	him with the Collector, or to the profit
„	*22d September*	„ „	28-29	result of the Nursery Farm. They will
„	*8th December*	„ „	15-16	Memorial of Narrainsawmy Naidoo t
„	*26th January*	1858 „	9-10	Court of Directors together with the
„	*22nd June*	„ „	30-31	that has passed on the subject, and inti
	27th July	„ „		thority the conclusion at which they h

9. Ordered that Memorialist be informed in reply to his letter dated May Memorial, the subject of which has hitherto been under investigation, will be Honorable Court by the ensuing mail.

(Signed) T. PYC

C

2

£85

2/104

Assignment Deed Esquire Government Under Secy Madras

To W. K. Bayley Esquire Acting Secretary to Government

Madras 22d June 1858

Sir

Para 1 With reference to the Extract from the Minute of Consultation noted in the Margin

G.O. 20th January 1858 No 81 I have the honor to state to the Right

Revenue Department Honorable the Governor in Council as

my opinion that T. Narrainsawmy Naidoo

has not any claim to profit by the circumstance

of the Nursery Farm of Chingleput having been

resold for an Amount higher than that for which

he first purchased it.

2 I Return the 3 Original papers which

accompanied the Extract noted above

I have the honor to be

Sir

Your most Obedient Servant

Wm. Clarke

Govt. Reader

R.D.

No 1024. 4/1024

Extract from the Minutes of Consultation

Under date the 23rd July 1858.

Read the following letter

from the Government Pleader

Sudr Adalut.

(Recevied 22nd June 1858 No 65.)

To

W. Morgan Esqr

Offg Register Sudr Adalut

Sir

On the 27th May 1857 one Vurrumkanony Nandoo Sub-
=mitted for transmission to
the Honorable Court of Directors
a Memorial, in which he
claimed the refund of a
Sum of Rupees 90n-8 that
he had deposited by him with the
Collector of Chingleput on
account of his purchase of
the Collectorship of the Pooloor of
the Cobbarry Fourm of that
District ~~—————~~ subsequently to his
~~Loss~~ forfeited 8 part on account of Memorialists
failure to pay in the amount
two kist instalments within the week from the
date of sale.

Rec'd 24th January 1859 & Entered
Sudr Adalut Proceedings
Vol 1858 Page 1

Rec'd 1858 Sudr Adalut Proceedings
Vol 1858 Page 1

From Govt Pleader
Sudr Adalut
Dated 22nd June 1858
Rec'd 23 ——

No 1024. 23rd July 1858.

1 Of opinion that the
Memorialist has not
any claim to refund of the
Consideration for the Collectorship
Sum of Rupees deposited from
Recd for an Account of his
Non-fulfilment of the Con-
-ditions

2 Original Papers to be returned
Sudr Adalut Proceedings Vol 1858 Page
January 1859 No 81

Entered

2 ~~The execution~~

~~of the engagement by the~~

The lease of the Abkarry
revenue of the Chinglepute
District for a term of five
years from fasly 1266 to
1270 was put up to Sale
by public auction on the
2d June 1856, and purchased
by Narrainsawmy Naidoo
at an annual rental of
Rupees 90,450. He deposited
one per cent of this amount
or Rupees 904-8 with the
Collector, and gave that
officer an engagement to
deposit two Months instal
=ments in a week, or on
failure, to hold himself
responsible for any defici
=ency that might accrue
by a resale of the Farm -
~~It appears that~~ the Stipulated
period

6/12x period expired without a
Narrainsawmy Naidoo ful=
=filling his engagement, and
~~that~~ the Farm was resold on
the 20th June 1856 at an annual
rental of Rupees 92,650 or an
Rupees 2,200 per annum in
excess of the first sale -

3 ~~It is on~~ the ground of
that
this excess Narrainsawmy
Naidoo memorialized the
Honorable Court for a refund
of his deposit of Rupees 904-8,
thought in his previous
petitions to the Board of
Revenue and to the Govt
he ~~only~~ claimed this deposit but
also the differ=
=ence between his bid and
the higher bid accepted
at the second sale, on the
strength of the condition
Contained in the engagement
entered into by him that the

word

was to make good any loss
that might accrue to the
State from such second sale.

4 Before despatching
Norrinsorry Naidoo's Memorial
to its address, the Government
resolved to call for the
proclamations that were
issued on the occasion of
both the sale and resale of
the farm in question, in
order to form a proper
estimate of the claims ad-
duced by the Memorial-
-ist. In complying with
this requisition the Board
observed that the penalty
provided in the first
proclamation for a failure
on the part of the purchaser
to pay in the amount of
two Rixts within one week
from the date of sale, was

Pt Pro: 29th October 1857.

or

3

6/1024 a forfeiture of his deposit
money, and that this stipu-
lation was acted upon in
the case of the Memorialist;
That the second proclamation,
or that issued previous to the
resale of the obstinate farm contained
nothing either to the advantage
or prejudice of the first de-
faulting purchaser; and
they were therefore of opinion
that Norrinsorry Naidoo
had no claims to a refund
of his deposit money.

5 The Board however
alluded to a defect in the ad-
vertisement in not Con-
-taining a stipulation to the
effect "that failure to lodge
"the amount of two Rixts
"would not only entail the
"forfeiture of the first deposit,
"but would be followed by
"the resale of the farm at the
risk

risk of the defaulter who
would bear all loss and
forfeit all gain consequent
on such resale. They held
that the agreement signed
by the Memorialist did not affect
this defect to your as resale
and contingent loss were
concerned, but no provision
was made for what
actually occurred. For the
resale of the contract for a
sum exceeding the original
amount by Rupees 2,200
per annum & the claim
of the Memorialist to profit
by this contingency involved
a legal question the Board
did not feel competent to
pronounce an opinion on
it.

6 The Government
reviewed the whole subject
in

1/84 in an Extract from the Minutes
of Consultation dated 22 December
1857 ~~#12473~~ and noted ~~thereon~~
but before passing
final orders, called ~~allegations of the memorialist,~~
upon Pollock to ~~to explanations of the Collector~~
give a distinct reply ~~must the Board's opinion rested~~
to the statement of Mess^rs ~~in favour Rice and Bowmer~~
that he had brought ~~on him & recorded further~~
the two matters last information ~~was necessary~~,
to the defaulter which
his despatch in reply had ~~and before passing orders~~,
been judged affected ~~the Government resolved to call~~
the Collector's Office for it ~~for its view of the allegations~~
as had been received. The of the Memorialist that he
Collector was also re- brought the two months rent,
quested to ~~or the second deposit to the~~
Collector but that the money
was not taken. The Collector
gave no explanation on this
point, nor does he say anything
in the paper to throw light on
what the subject he was requested
to give a distinct reply to this
Statement, and to report how
for it was true that the an

indulgence

indulgence refused to the memorialist but the registration of other manner with his own, had been granted to previous and subsequent Contractors.

4. These requisitions having been met by the Collectors reply of the 1st December 1857, the Government in our order dated 20th January 1858 No 81 referred the whole Correspondence to the Government Pleader with the view of ascertaining whether the memorialist had any claim to profit by the circumstance of the Farm on having been resold for an amount higher than that for which he purchased it, and if so to what extent.

Mr

The letter recorded at the head of these Proceedings contains Mr Dades opinion which is against Narrainswamy's claim:

The Government have given their attentive consideration to all the circumstances connected with this transaction, and referring to the opinions expressed by the Board of Revenue and the Government Pleader they have arrived at the decision that the Memorialist has not any claim either to the refund of the money deposited by him with the Collector, or to the profit arising from the resale of the Ookkary Farm. They

will now forward the Memorial of Narrainswamy Naidoo

Nandoo to the Honorable
Court of Directors together
with the Correspondence that
has passed on the subject,
and intimate to that en
conclusion
authority the ~~decision~~ at which
they have arrived.

Encl. letter dated 28th May 1858 forwarding memorial of Narrain Sammy Nandoo praying to be allowed for information as to the disposal of the memorial ~~addressed by him to the Honorable Court of Directors~~ this he will now be informed that the subject of his appeal has been under investigation, and that the memorial with the whole of the proceedings taken in the Government will be forwarded to the Honorable Court by the ensuing mail.

J. A.

Ex. 4

23rd June 1857	No. 52-53
25th Septr.	28-29
8th December	15-16
28th January 1858	9-10
23rd June	30-31
July	

J. A. Read that memorialist be informed in reply to his letter dated May 28 1858 that his memorial for subject of which has hitherto been under investigation

Revenue 1858 Department.
Dr. to Govt. 27th July.

No. 1024.

Extract Minute of Council
of 23d July 1858.

Recording opinions on the claim advanced by one Narrain Sammy Nandoo to a refund of the sum deposited by him with the Collector of Chinglepet on account of his purchase of the Abkarry farm of that District and resolving to forward his Memorial to the Honble Court by the Ensuing Mail.

No. 33434.

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