Revenue Dept

G.C No 1251 of 14-9-58

Back No 64-5

Diary-14-9-58

No. 64. Read the following Extract from the Proceedings of the Board of Revenue, dated 5th August 1858, No. 2952.

Read again the following papers:

From Masulipatam, 10th in Con. 17th June 1858.
From do 19th June in Con. 1st July 1858.
From Nellore, 24th February in Con. 2d March 1858.
From North Arcot, 9th in Con. 13th March 1858.
From Vizagapatam, 30th June in Con. 1st July 1858.

In Con. 30th July 1857.

Resolved that the above letters be submitted for the orders of Government, with reference to Extract Minutes Consultation, dated 8th July 1857, No. 687, R. D.

Vizagapatam.

2. The Collector of Vizagapatam recommends that the Hill Zemindaries alone should be exempted from the operation of Act III. of 1857, and this would probably be advisable for the present. The "fines" noticed by the Board among the assets of some of the Estates prove to be fines levied on village servants, and not on cattle trespassing. The Board in a subsequent para. will allude to these. The question of claims to compensation will be reported on hereafter.

Masulipatam.

10*th June* 1858.
19*th do. do.*
* *In Con.* 30*th July* 1858, *No.* 687, *R. D.*
† *In Con.* 8*th June* „ *No.* 700, *R. D.*

3. In his report of the 10th Ultimo above recorded, the Collector of Masulipatam furnishes the information required by Government in Extract Minutes Consultation *8th July 1857, and †28th May 1858, regarding the compensation to be awarded to certain Zemindars, for the withdrawal of the privilege hitherto accorded to them, of levying fines on the owners of trespassing cattle.

4. The item of "fines" appears in the assets on which the permanent Settlement of 15 Estates was fixed, and the total amount so entered is Rupees 605-8-4. It however, includes three descriptions of fines; viz.

1. Cattle fines.
2. Fines on thefts of corn.
3. Fines on village servants.

It does not appear how much each description of fine was rated at, but the Collector states that the second produced most, and the third least, and he estimates the Cattle fines approximately, at $\frac{1}{3}$ of the whole. This would make the proprietors' receipts about Rupees 202, and the compensation to be allowed annually, would (if calculated according to the proportion which the whole Peshcush bears to the whole assets) amount to Rupees 128-1-10. This mode of calculation was adopted in 1821, when the Moturpha was resumed by Government, but that source of Revenue was especially interdicted by law. The Board are of opinion, that the principle recently laid down in the Extract Minutes Consultation noted in the margin, is the more equitable course, the contract between Government and the Proprietor, having been closed when the Peshcush was fixed. In other words, Government made over lands, &c. which by their own valuation yielded certain sums for a fixed annual payment, and so long as that payment is made, the Proprietor is entitled to whatever income he can derive; and as he cannot claim compensation if any particular source of Revenue falls short of the original calculation of Government, so Government on the other hand, cannot pay him less than the calculation if they resume any item. Strictly speaking in fact, a Proprietor is entitled to what each item now produces, and not to what it was rated at in a calculation in which he had no concern. The Board therefore recommend that the full amount entered in Col. 6 of the Collector's Statement No. 1, viz. Rupees 201-13-6, should he remitted and deducted from the Peshcush of the different Estates.

Dated 20th June in Consultation 6th July 1857, *No.* 613, *R. D.*

5. The Board remark that in four cases the Peshcush exceeds considerably, the entire assets of the Properties. The Collector will report whether these entries are correct, and if so, explain briefly to what cause the excess is owing.

6. The other two descriptions of fines seem to the Board, to be illegal and open to serious objection. The sharing system has its advantages and disadvantages ; but it is not compulsory on any Proprietor, and if he adheres to it from choice, he cannot claim to be vested with a power of arbitrary punishment, merely to protect his own interests. The Board consider the privilege opposed to every principle of justice, and do not see how it could be upheld by the Magistracy or the Courts.

7. The power of fining Village servants is equally objectionable. These Officers have duties to perform towards Government and the people, as well as the Zemindars, and lands and fees have usually been reserved for their payment, either specifically or generally under Sections IV. and V. of Regulation XXV. of 1802. It can scarcely be said, therefore, that they are paid by the Zemindars.

8. The Board therefore recommend that the powers above commented on, be withdrawn and compensation granted according to Col. 5, of the Collector's Statement for the full amount of all three descriptions of fines entered in the assets ; viz. Rupees 605-8-4, including the sum named in para. 3.

9. If Government assent to this proposal, the Board will ascertain whether similar powers are exercised in other Zemindaries.

Vide, Collector's Statement 2.

10. In some other Estates old accounts shew that fines have been levied on trespassing cattle, &c. in past years; but as this source of income formed no part of their assets, compensation is not due.

Nellore.
Peshcush, Rupees 3,88,703.

11. The Collector of Nellore reports that the Zemindar of Vencatagherry claims exemption for his property, from the operation of Act III. of 1857. The Peshcush of this Estate was not fixed in the usual manner on a calculation of the assets available to the proprietor; but the sum paid under the Nabob's Government, was fixed as the future Peshcush ; an addition being made thereto, in consideration of the proprietor being relieved from the charge of keeping up a Military Force, to which he was previously liable. The Zemindar has exercised the right of levying fines on the owners of trespassing cattle.

12. The Mootialpaud Zemindary is somewhat similarly circumstanced; but, when the assets came under enquiry in 1819, the item of cattle fines was mentioned as part of them.

13. The Choondy Zemindary was assessed on the average "Beriz" of nine years, from Fusly 1237 to Fusly 1245, in two of which a sum of Rupees 76-7-11, appears as cattle fines.

14. The Collector recommends that these three Estates be specially exempted under Section XX. of Act III. of 1857, except in regard to fines for trespasses on roads or other public works. He thinks it probable that the owners of Shrotriums and Polliums may also claim compensation, and anticipates difficulty in preventing the owners of villages, not under Government management, from continuing to levy these fines.

North Arcot.

15. In North Arcot this right has been "exercised by and conceded to" only two Zemindars ; viz. those of Calastry and Cavetnugger, the property of the former being also partly situated in Nellore.

16. This item is entered in the assets of both Estates and their proprietors claim exemption from the Act, the operation of which, they maintain, would be an infringement of their Permanent Sunnuds. They also refuse to furnish any accounts of their receipts from this source.

17. Mr. Whittingham suggests for consideration, whether it would not be expedient to exempt these Estates from the operation of the Act.

18. The Board attach no weight in a case of this kind, to the argument which the Zemindars seek to found, on the permanency of their tenure. Proprietors of such Estates can claim no special exemption on this ground from the operation of such laws, as for the advantage or security of its subjects generally, the Government may from time to time find occasion to enact, and in fact the ordinary form of Sunnud provides for this contingency. So long as due and equitable compensation is allowed, for the withdrawal of advantages conceded to a

Bd. C. O. Book Vol. 1, *Appendix P.* 593, *Cl.* 13.

proprietor, the Board conceive that nothing in the character of the permanent settlement precludes Government from applying Act III. of 1857 in estates held on such tenure. The Board consider it objectionable in principle, that any private individual should possess the power of levying for his own benefit fines of any description, and on this ground they would be averse to continue permanently this privilege to the proprietors of the Estates above referred to ; but are doubtful how far its immediate withdrawal would be proper. On this point, however, they request the orders of Government.

19. There need be no difficulty, they think, in calculating the compensation to be paid to the Proprietors, as it can be computed on accounts of actual collections during the last five years, or during any other fixed term, if the original settlement accounts are not forthcoming, or if, as in the case of Vencatagherry, such never were framed. If the proprietor in any case refuses to produce his accounts, he will of course suffer for his contumacy. The mere fact of collection, however, confers no title to compensation, as in the Board's view the item must have been entered in the assets, or its collection recognised by Government. In the case however, of Zemindaries settled as Vencatagherry in Nellore was, without any specification of assets, the prescriptive exercise of the privilege would be sufficient.

20. As regards the petty shrotriums and polliums referred to by the Collector of Nellore, the Board see no grounds for an exception in their favor ; compensation being granted wherever justly claimable.

21. Some difficulty may be experienced in preventing the Proprietors, especially of the larger Estates from continuing to collect these fines ; but, the Board presume that the penalties in Section XIV. of the Act are applicable in such cases, and notice of them should be extensively circulated among the people, and duly conveyed to the Proprietors.

22. If Government should be of opinion that the Act should be only gradually extended to all places, and see fit to exempt these Estates from its operation, the Board would strongly recommend that the exception should be allowed as a present arrangement only, and in terms which would absolutely preclude its being held as an admission of the unqualified right of the Proprietors to this, or any similar concession.

23. The establishment of Pounds, to which the Collector alludes, does not fall within the province of the Board.

Guntoor, 21st Oct. in Con. 2nd Dec. 1857,
Cuddapah, 8th in Con. 12th Feb. 1858.
Kurnool, 20th in Con. 28th April ,,
South Arcot, 19th in Con. 23rd Jan. ,,
Tanjore, 26th in Con. 29th Jan. ,,

24. The Collectors of the Districts noted in the margin, have reported that no compensation is claimable in them, and that no Estate need be exempted from the Act.

25. The Collector of Rajahmundry, is requested to forward his reply to the Board's Circular on this subject. The Collectors of Ganjam and Vizagapatam, will also furnish the further information required from them, at their earliest convenience.

(A true Extract.)

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

No. 65. ORDER THEREON, No. 1251 ; dated 14th September 1858.

1. On the Acting Magistrate of Masulipatam requesting the instructions of Government, as to whether Zemindaries and proprietary estates in his District were excluded from the operation of Act III. of 1857, it being the practice there for proprietors to levy fines for their own benefit on trespassing cattle, the Government in Extract Minutes Consultation in the Judicial Department, dated 22d June 1857, No. 706, declared the practice to be objectionable in principle, and directed that orders should be at once issued through the Revenue Department, to put a stop to it, wherever these fines were not entered among the assets on which the peishcush was fixed. In those instances where they had been included, Collectors were to report the compensation to be allowed to proprietors ; and they were to state also whether from local peculiarities, it was advisable to exempt any estate from the operation of the Act, under the provisions of Section XX.

2. The Board of Revenue in the Proceedings recorded above, accordingly report certain cases in Vizagapatam, Masulipatam, Nellore and North Arcot. In the first named District, the Hill Zemindaries are recommended by the Agent for exemption from the operation of Act III. of 1857. In Masulipatam, it is reported that the item of "fines" appears in the assets

on which the permanent settlement of 15 estates was fixed, the total amount so entered being Rupees 605-8-4, including however two descriptions of fines besides that on cattle, viz. fines on thefts of corn and fines on village servants. The Board properly object to all three kinds of fines, and recommend the withdrawal of the power to levy them from the proprietors, granting them compensation to the full extent to which these sources of income were included in their assets Rupees 605-8-4. In Nellore, the Collector recommends that the proprietors of Vencatagherry, Mootialpaud and Choondy should be exempted from the operation of Act III. of 1857, under the provisions of Section XX. In North Arcot it is suggested by the Collector whether the Zemindars of Calastry and Cavetnugger might not be similarly exempted. The Board of Revenue observe that if Government should be of opinion that the Act should be only gradually extended to all places, and see fit to exempt these Estates from its operation, they would recommend that the exception be allowed as a present arrangement only.

3. In their order in the Judicial Department dated 23d July last the Government have already decided that no part of the Madras Presidency should be exempted from the operation of the Act, and from that resolution they see no reason to depart. It will however be open to the Agent at Vizagapatam to establish Pounds gradually in the Hill Zemindaries of his District, setting up at first a few only and at the most considerable places that the Zemindars and people may by degrees become acquainted with the working of the enactment.

4. The Government approve the grant of compensation Ruppes 605-8-4 recommended by the Board para. 8 in lieu of the fines levied in the 15 Estates of the Masulipatam District, and the necessary adjustments will be made in the Peishcush payable on those several Estates. The Board will submit for sanction the revised rates of Peishcush. The Board will pursue their enquiries whether the powers of collecting these fines (which include those on trespassing cattle) or powers of alike character are exercised in other Zemindaries, Polliums and Shotriums; wherever they are their further exercise must be absolutely prohibited and compensation given, calculated on the principle adopted for the Masulipatam Estates, where such sources of income were included among those on which the demand of Government was fixed. In the case of Zemindaries settled without specification of assets but where the power of collecting such fines as those has been exercised by prescription the compensation may be computed on the average collections of the last five Fuslies. The Government quite agree in the Board's remarks in para. 18 of the Proceedings except that they consider that the withdrawal of those powers should be immediate, that is as soon as the amount of compensation has been ascertained and tendered, which should be done without delay.

5. It is however to be clearly understood with reference to Mr. Secretary Hill's letter dated 21st May 1822, No. 378, on the Moturpha remission, that the compensation now authorized is granted not as a matter of right but as being fair and equitable under the circumstances. The Board point out that the levy of these fines was not like the collection of Moturpha specially interdicted by law, and the Government have consequently allowed the compensation to be calculated on a different principle and to be given to the holders of all Estates in the assets of which these items were included, or when, when there were no assets, the collection has been sanctioned by long usage. It may nevertheless be observed that if the levy of these fines be not specially forbidden by the terms of the permanent Sunnud it is at least not authorized by it, and that they form no part of the powers and privileges attaching to the possession of landed property, or of the rights which it was intended by the permanent settlement to convey. Some of the fines are indeed of the nature of judicial fines and it was evidently no part of the scheme of the permanent settlement to invest Zemindars with judicial powers.

Fines on thefts of corn.

(Signed) T. PYCROFT,
Chief Secretary.

Revenue Department.

No. 8 Revenue No. 139

Extract from the Proceedings of the Board of Revenue, dated 12th January 1858.

Read Extract Minutes Consultation dated 8th July 1857 R. D.

(Here enter No. 687)

In the above Extract Minutes Consultation the Board were directed to instruct Collectors to put a stop to the practice of Proprietors of Estates levying fines on trespassing cattle for their own benefit whenever these fines are not included among the assets of the Estate, to report the compensation that should be allowed in lieu of them where they are so entered and to state whether any particular Estates should be exempted from the operation of Act III of 1857 under its twenty sixth Section.

Chingleput 3 in Cons 15th October 1857.
Salem -- 10 in Cons 17th August --
Trichinopoly 21 in Cons 26th September --
Coimbatore 8 in Cons 15th September --
Malabar 6 in Cons 15th August --
Canara -- 20 in Cons 10th December --
Madura 25 Coll. in Cons 18th December --
Tinnevelly 2 in Cons 18th December --

2. In the 8 Districts noted in the margin the practice of proprietors levying such fines does not obtain and the Collectors are of opinion that Act III of 1857 should be operative

operatine throughout them.

3. The Collector of Ganjam reports that these fines are not included in the assets of the Zemindaries, though very probably, claims would be prefered if the prospect of compensation were held out. He however omits to mention whether any estate should be exempted from the operation of the Act. This omission will now be remedied.

Ganjam
2d. Adjt. Genl. to Bd. 24th Augt. 1857.

4. Similar omission occurs in the reply of the Collector of Bellary but this is of no consequence as there are no Zemindaries or Proprietary Estates in that District.

Bellary.
12th Inclosure to Govt. 4th September 1857.

5. In Vizagapatam the Settlement accounts of one Division have been lost, in the other two Fines appear among the assets under the head of Savoy Summah, and the Acting Collector considers it advisable that this system should be continued.

Vizagapatam
27th Aug. Inclosure 7th Sept. 1857.

6. In this view the Board do not concur, the practice has been disapproved for obvious reasons by Government, who evidently intend that it shall be discontinued as soon as it can be ascertained what compensation is payable to the Proprietors for

for the loss of this source of Revenue.

7. Mr. Reade will make enquiries on this point and carefully guard against fraudulent claims being admitted. The fact of these fines being included in the assets of 2 Divisions leads to the presumption that they were also included in the third, but the Acting Collector will require the Proprietors to substantiate their claims. He will also state explicitly whether any Estate should be exempted from the operation of the Act.

8. The Collector of Tinnevelly will carry out the orders in Para 2 of the Extract Minutes Consultation and cause all fines to be appropriated in the manner provided by the Act. As regards Para. 3 of his letter the Board remark that there can be no objection to compromises provided they are voluntary.

9. The Extract Minutes Consultation under reply does not apply to Madras.

From Madras 3d. Inclosure 7th September 1857.

The reports from the remaining Districts have been called for and will be laid before Government when received.

Ordered

10 Ordered that a copy of these Paras be submitted to Government, and that copies of Paras 3. 5. 6. 7 and 8 be sent to the Collectors concerned.

(A true Extract)

J. D. Lucie
Ag Secretary.

To

R. Forbes Esq.
Ag Secretary to Government
Revenue Department.

D. Fuls.

Rev Dept.

5

N° 1251.

Extract from the Minutes of Consultation
Under date the 14th September 1858.

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

(Were enter 5th August 58 N°2952)

1. On the Acting Magistrate of Masulipatam requesting the instructions of Government as to whether Zemindaries and Proprietory Estates in his district were excluded from the operation of Act III of 1857, it being the practice [Tapal] for proprietors to levy juries for their own benefit on trespassing cattle, the Government in the Mis Consn in the Judicial Department dated 22d June 1857, N° 706 declared the practice to be objectionable in principle, and directed that orders should be at once issued thro' the

Rev: 14 July 1858

Revenue 1858 July
Cons: 26th January
N° 42.

Extract from the Proceedings of the Board of Revenue

Dated 19th Nov 1857.

Read a Letter from the Collector of Salem, dated 9th Sept 1857 No 98/100. 26 Cases 1858 submitting for orders a Petition from certain Villagers, Ryots of certain Villages in the Attaore Talook, relative to the Pasturage in certain Reserved Districts of Forests in the Talook of Rasipooram.

Ordered, that the Petitioners be informed that the Board have no power to grant the request contained in their Petition.

No 48.

Cfg. Diary 1822.

the Revenue Department, to put a stop to it wherever these fines were not entered among the assets on which the peishcush was fixed. In those instances where they had been included, Collectors were to report the compensation to be allowed to proprietors; and they were to state also whether from local peculiarities it was advisable to exempt any estate from the operation of the Act, under the provisions of section XX.

2. The Board of Revenue on the Proceedings recorded above, accordingly report certain cases in Vizagapatam, Masulipatam, Nellore, and North Arcot. In the first named district, the Bill zemindaries are recommended by the Agent for exemptions from the operation of Act III of 1857. In Masulipatam, it is reported that the item of "Fines" appears in the assets

assets on which the permanent settlement of 15 estates was fixed, the total amount so entered being Rupees 605-8-4, including however two descriptions of fines besides that on cattle, viz fines on the sale of corn and fines on village servants. The Board properly object to all three kinds of fines, and recommend the withdrawal of the power to levy them from the proprietors, granting them compensation to the full extent to which these sources of income were included in their assets Rupees 605-8-4. In Nellore, the Collector recommends that the proprietors of Venkatachery, Mottialpand and Choondy should be exempted from the operation of Act III of 1857, under the provisions of section XX. In North Arcot it is suggested by the Collector whether

whether the Zemindars of Calastry and Cavelinggar might not be similarly exempted. The Board of Revenue observe that if Government should be of opinion that the Act should be only gradually extended to all places, and see fit to exempt these Estates from its operation, they would recommend that the exception be allowed as a present arrangement only.

3. In their order in the Judicial Department the Government have already decided that no part of the Madras Presidency should be exempted from the operation of the Act and from that resolution they see no reason to depart. It will however be open to the Agent at Vizagapatam to establish Pounds gradually in the Hill Zemindaries of his District setting up at

dated 23 July last

at first a few only and at the most considerable places that the Zemindars and people may by degree become acquainted with the working of the Enactment.

4 The Government approve the grant of compensation Rupees 605-8-4 recommended by the Board para 8 in lieu of the fines levied in the 15 estates of the Masulipatam District and the necessary adjustments will be made in the Peishcush payable on those several estates. The Board will submit for sanction the revised rates of Peishcush. The Board will pursue their inquiries whether the powers of collecting these fines (which include those on trespassing cattle) or powers of a like character are exercised in other Zemindaries, Polliems and Shotrums wherever they are their further exercise must

be

be absolutely prohibited and compensation given, calculated on the principle ~~of~~ adopted ~~accepted~~ for the Mauritius estates, where such sources of income were included among those on which the demand of Govt was fixed. In the case of Zemindaries settled without specification of assets but where the power of collecting such fines as those has been exercised by prescription the compensation may be computed on the average collections of the last five Fasles. The Government quite agree in the Board's remarks in para 18 of the proceedings except that they consider that the withdrawal of those powers should be immediate that is as soon as the amount of compensation has been ascertained and tendered which should be done without delay.

It is however to be clearly

with
clearly understood ~~that on~~ upon ~~the grounds explained~~ in Mr Secretary Hill's letter dated 21 May 1832 ~~No 1378~~ on the Mauritius remissions that the compensation now authorized is granted not as a matter of right but as being just and equitable under the circumstances. The Board point out that the levy of these fines was not like the collection of Mauritius specially interdicted by Law and the Government have consequently allowed the compensation to be calculated on a different principle and to be given to the holders of all estates in the assets of which these items were included or when, when there were no assets, the collection has been sanctioned by long usage. It may nevertheless be observed ~~by them~~ that if the levy of these fines be not specially forbidden

by

by the terms of the per-
-manent Summud it is
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the rights which it was
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-nent settlement to convey-
Some of the fines are in-
-deed of the nature of
judicial fines and it
was evidently no part
of the scheme of the per-
-manent settlement to
invest — zemindars
with judicial powers-

Fines on the sale of
Crn

JP

16 Copies to the Bd of Revl Dated 18th Sept with 19 Encls.
1 — a — a Account Genl ✓
1 — a — a Genl Audr ✓
5 — a — Jud Depts ✓

Revenue 1858 Dept.
Cons: 14th Septr.

N.° 1251.

Dep. cons 14 July 57 No 6-7
— do — 1 June 58 8-27-8

Extract Mins of Cons:
D.° 14th September 1858.

Extract from the Board of Revs Proc.s 21st Decr 58
& 1st 1970 in Cons: 25 January 59

Pro of the Board of Rev.e 24th
October 1866 N.° 3878.
Board's Pro. 15 December 1866
N.° 4549.

The levy of fines by Zemindars on Cattle trespass &c.a in their Estates, to be strictly prohibited, and compensation given them.

N.° 64 865.

4th Sep. R 10th