

Revenue Department

Minutes of Consultation

9th April 1858

Back no 35 + 36

Order no ~~17~~ 442 74th

April 1858

①
Fort Saint George, Revenue Consultation of 9th April 1858.

No. 35. Read the following Extract from the Proceedings of the Board of Revenue, dated 1st March 1858, No. 761.

In Con. 1st March 1858.

Read letter from the Acting Collector of Masulipatam, dated 18th November 1857.

(Here enter No. 216.)

In Con 11th November 1857.

Resolved that the above letter be submitted for the orders of Government with reference to Extract Minutes Consultation 9th November 1857, R. D. No. 1139.

2. The Board are aware that it is not obligatory on Government to continue Enams to those who would be the legal heirs of private property but as in the present case the grant was anterior to the date fixed in Regulation XXXI of 1802, they would under the circumstances pointed out by Mr. Knox, request permission to modify their previous recommendation and to propose that the widow, who is childless, should be left in the enjoyment of the entire Enam of her deceased husband; the whole lapsing finally to Government on her death.

(A true Extract.)

(Signed) J. D. SIM, Sub-Secretary.

No. 36.

ORDER THEREON, No. 442; dated 7th April 1858.

Read also again the papers disposed of in Extract Minutes Consultation No. 1139, Revenue Department, dated 9th November 1857.

1. On this further reference by the Board of Revenue regarding the two Enams in Masulipatam, lapsed by the death of Chullah Cunniah, the Government having reconsidered the whole facts of the case resolve to issue the following orders in modification of those contained in Extract Minutes Consultation dated 9th November last, disposing of it.

2. The deceased Chullah Cunniah was in possession of portions of two Enams the first of which was granted to his Grand-father A. D. 1755, while the second was purchased by his father in 1831, from the son of the original grantee, to whom it appears from Mr. Oake's Register to have been originally granted A. D. 1759.

3. Both of the original grants were thus prior to the date fixed in Regulation XXXI. of 1802, all Enam grants made before which, in the Northern Circars, were to be considered valid, the date fixed for that portion of the Presidency being 26th February 1768.

4. The first of these two grants was expressly a perpetual one, and its validity was moreover confirmed by Doombalahs issued by the Collectors in 1796 and 1800.

5. The Sunnud under which the second was granted is not forthcoming, so its terms cannot be ascertained, but it had evidently been treated as an hereditary Enam, and in the order dated 17th February 1835, issued by the Collector in consequence of the sale which took place by order of Court in satisfaction or execution of a decree, the rights of the purchaser are expressly stated to be the same as those of the original Enamdar.

See Board's C. O., 11th August 1853, Volume 2, page 161, and note 2.

6. These Enams were thus of precisely the same nature as any other heritable property, and could only escheat to Government on the utter failure of legal heirs.

The question then to be decided is whether the deceased left any legal heirs.

7. The legality of the adoption by him of his nephew, is questioned by the Board on the ground that the latter was an only son, but putting aside the fact that prior to the nephew's birth his natural father had himself adopted a son in despair of obtaining a son, of his body, and that thus he was scarcely in the position of an only son, as his birth did not nullify but only modified the previous adoption, it is to be remembered that the adoption of the only son of a brother is not illegal according to Hindoo Law.

மாநகராப்து பரிசு - 1

செப்பலிபெயர் பெயர் :

செப்பலிபெயர்க்காக எடுத்தல் -
கொள்ளப்பட்ட நாள்

செப்பலிபெயர்
முதல் செப்பலி
கொள்ளப்பட்ட

செப்பலிபெயர்
2ம் செப்பலி
கொள்ளப்பட்ட

செப்பலிபெயர்
உதவியாளர்
கொள்ளப்பட்ட

Fort Saint George, Revenue Consultation of 9th April 1858.

8. But supposing that this objection raised by the Board is entitled to all the weight they attach to it, it still would not leave the deceased (who was a Member of a divided family) without legal heirs, for undoubtedly his childless widow would still be entitled to inherit his property on his decease, and after her, his divided brother, and his legal heirs in succession, and such being the case, there is evidently no legal escheat to Government in this instance.

The Government therefore resolve to direct the Board of Revenue to cause the widow of Chullah Canniah to be put in possession of both the Enams held by her late husband, and of all the produce thereof now in Government deposit, immediately on receipt of these orders.

(Signed) H. FORBES,

Acting Secretary to Government.

No. 761.

Extract from the Proceedings of the Board of Revenue, dated 1st March 1858.

Read letter from the Acting Collector of Masulipatam, dated 18th November 1857.

(Here enter No. 216.)

Resolved that the above letter be submitted for the orders of Government with reference to Extract Minutes Consultation 9th November 1857, R. D. No. 1139.

Board are aware that it is not obligatory on Government to continue Enams to those who would heirs of private property but as in the present case the grant was anterior to the date fixed in XXI of 1802, they would under the circumstances pointed out by Mr. Knox, request per- modify their previous recommendation and to propose that the widow, who is childless, be in the enjoyment of the entire Enam of her deceased husband; the whole lapsing finally to on her death.

(A true Extract.)

Sub Secretary.

L. FORBES, Esq.

*Acting Secretary to Government,
Revenue Department.*

Cons. 10. November 57 N^o 44

Rev. 1858 Department.
App. to Cons. 9^o April

N^o 300

Extract from the Proceedings
of the Board of Revenue.

Dated 1^o 9^o March 1858.
Rec^d 4^o 3^o

1. Encl. Returned
1^o 7^o 61.

S^c N^o 442. 7^o April 1858.

Submitting a letter from
the Acting Collector of District
patent, and recommending the
continuance of the Lapsed Enam
therein referred to, to the notice
of the late incumbent.

N^o 35

Q. 10^o March 1858 C 22-1857

(4)

The I circulated the
case of a Lapsed Enam
in Kumbhikaran for
order.

The Enam was granted
of the original grantee.
His father was I have
enjoyed the whole Enam
but it was divided between
the Enam and his
son's brother.

The original grant is
dated in the year corresponding
to A.D. 1755. and the
duration of the Enam
was 10 years. I have
been questioned of the

In the question the
authority of the Enam
to a private land in fact
is not clear but it is the

which is expressly
a perpetual one.

in 1802. Inquiries as

valid all grants of land free
land made in the U. States
prior 226 February 1768.

However it was subsequently
confirmed by Doonbala's
issued by the collector in
1796 and 1800.

The Deceased was
also in possession of
a portion of an Indian
purchase by his father
in 1831. at a sale under
a decree of Court.

The Deceased belonged
to this Indian does not exist.
but in W. Dakota register
it is stated that the grant
was made in July 1808.
corresponding with A.D. 1759.

It was purchased from the
son of the original grantee.
and has within the been
treated as an ordinary
Indian. In the order of the
Court of 17. May 1835. the
right of the purchaser

⑤ all that is left of the original
as three of the original
Deceased.

The Deceased left a
son. and an adopted
son. The adoption took
place about 1850. but
was not reported to the
Court as required by the
C.O. of July 1846.

The adopted son was
the child of the younger
brother of Deceased.
which brother had him-
self adopted a son before
the birth of this child.

The collector referred the
question to the Board of
Survey and their opinion
was that the adoption was
invalid as being that of
an only son and therefore
contrary to Indian law.
and they therefore re-
commended the trans-
fer of the inherited Indian
and the continuance of
that acquired by purchase

2nd the widow for life. she being
no other means of support.

The Dr. acquiesces in this
view. and in the order passed
states that the ancestral
portion has lapsed for
want of heirs.

On further reference
I then from the facts the
Dr. have now recommended
that in consideration of
the date of the death of the
family man. it also
may be continued to
the widow for her life. and
that the whole of the manors
held by the deceased shall
or her due to lapse to
Government.

It appears that
the whole case demands
further consideration -
The Dr. declare their
opinion that the adoption
of the only son of a widow
is contrary to Hindu
law. but they appear to
have lost sight of the

Dec. 9. Nov. 1837.

Hon W. P. Crookman
dissenting from the
Dr's opinion of the date
of the case

* of the son of a man
who has also an adopted
son. legally adopted.

See Strang's Manual
pp. 18. 19.

was enough to decide who
is the heir - for my opinion
he had been to the property
under discussion with respect
to the case of the - the adoption
of a child only son - is allowed
but setting his words about the
in the death of his must be looked
because he was at the time his father had been alive

fact that his father had
adopted a son previous
to his birth. and that
his adoption was not
cancelled by his birth
although the rights of the
adopted son were not
I cannot say whether
from it laid down that
such an adoption is
illegal. and then appears
much reason to think
that it is not so. for the
beginning of the adoption
of the only son of a
widow is asserted.
by some. and the fact
of his natural father being
also an adopted son is
not strong the probability
but putting this aside.
or supposing that was the
the adoption made by the
Dr. is not bound to
involving reason of it.
it having been duly
reported - the question

get names. Further
the Decree did without
legal heirs as laid
down in Art. of 9th Nov.
last.

Mr. Knox has in his
letter raised the question
as to the widow's right
in herit. and it certainly
appears from that note
that she legal heir
of the Decedent. But
that on her death the property
went to the widow
brother of the Decedent
and so I think those
adoption by the Decedent being
supposed to be invalid.

his natural right to remain
unaffected by it. and
though the law as declared
in Strachan's case (page 25)
will not preclude his
interest as his father
and he would still be

(2) The estate as his natural
heir. supposing that
his own father adopted
him is dead. which the
fact appears to be
the case. though
I do not know for what
is stated.

In any case I think
it appears from that
the right of the widow
after her death of the Decedent
brother of the Decedent
I think there is no
is undoubted. Their
date precluding their
reumption by her
long no legal heirs
are in existence.

The first Decree has
been in the family of
the original grantee
for upwards of a
century - and the
second the acquired

by purchase the preceding
 years I have been a bona
 fide transaction the
 sale was made under orders
 of the Court in execution or
 satisfaction of a decree
 and the purchaser expressly
 avowed that the purchaser
 had acquired all the rights
 of the seller & had
 obtained it by inheritance.

The Court then the Court
 by the Act of the Officers
 in such a case it
 may be considered
 as its order of
 6. March 1858.

and I am
 your obedient servant
 J. H. [Signature]

With the same pleasure (this case
 has been presented - The grant
 the by an incompetent authority
 the before to May 1788 who he continued
 to the last time who was then married
 I think too the antiquity of the purchase
 grant of the land was sold
 suitable to the purpose to an inheritance a divided family - I think
 but I have continued to the widow
 for life of this I think is sufficient to be treated as such for
 her conformity with the course adopted
 in similar cases the
 memorandum proposed
 on 10th March by the Court in
 Council 9. 1858

The widow is clearly
 the heir of her husband
 he leaves a number of
 a divided family - I think
 be treated as such for
 both properties -
 when she dies it
 will be

Her Dep

8 N^o 452

Extract from the Minutes of Consultation
 Under date the 7th March 1858.

Read & approved by
 the Court of Directors
 7th March 1858

Read also again the papers
 deposited in the Court of Directors
 dated 9th Nov. 1857.

has been
 the Court of Directors

My dear Sir
 I am
 your obedient servant

will

On this further reference
 by the Court of Directors regarding
 the two claims in relation
 to the purchase of the
 estate of Charles Sumner,
 the Government having
 reconsidered the whole
 facts of the case and
 given the following order
 in the disposition of the
 estate in the Court of
 Directors dated 9th Nov. 1857.

The General Court
Criminal was in possession
of portions of the Indian
the first was granted
to David Fisher Oct.
1755. While

The second was purchased
by his father in 1831 from
the son of the original
grantee, & when it
appears from W. Bates'
Register I have been
originally granted
A.D. 1759.

Both of the original
grants were therefore
of the date fixed in
the 1st of 1802. I have
checked all Indian grants
made before Sept. 1st 1802.
were to be considered
valid, the date fixed

its validity was moreover
confirmed by Dorchester
issued by the Collectors in
1796 and 1800.

9
Section of the Presidency
line 26. Feb. 1768

The first of these
grants was & possibly
a perpetual one.

The second was granted
the second was granted
is not forthcoming.
its terms cannot be
ascertained. But
it had evidently been
treated as an Indian
grant, and in the order
dated 17. Feb. 1835. issued
by the Collectors in consequence
of the sale
which took place by order
of the President in satisfaction
in payment of the debt.
the 2d of the purchase
was & possibly treated

Let the same as those of
the original, I mean that
these I mean were thus
of precisely the same
nature as any other
hereditary property, and
could only be kept
down by the water feature
of legal heirs.

See W.D.C.O. 11. Aug. 5/53.
Vol. 2. page 161. and note 2

The question then I have
decided is whether the
I mean left any legal
heirs.

The legality of the adoption
by him of his nephew, is
questioned by the B.C. on the
ground that he was an
only son. But putting
aside the fact that prior
to the adoption he had
adopted a son in defiance
of the law and on of his body.

(10)

and that this he was
seriously in the position of
an only son as his
B.C. did not nullify but
only modified the previous
adoption. It is for the
purpose of the only son
for the purpose of the
adoption according to the
law.

But supposing that
the objection raised by
the B.C. is entitled with
the weight they attach
to it, it still would
not leave the deceased
who was a member of
a divided family by birth
at legal heirs for
the purpose of his children
who would be entitled
to his property
in his lifetime and
after his death his divided

The Govt therefore
has been! I direct the
Ad. J. Sec. I came
to bidder of Charles
Cromwell I believe in
possession of the house
held by her late husband
and of all the produce
thereof now in Govt.
Dated

~~This is proved by
Scribble that there is no~~

before the weather of the night
in every case where laid for
allowing in money or material

后

20. March 58.

2 Copies to the Pres. & Sec. of the
with an Hon.

Revenue 1858 Deput.
Dy to Cons: 9th April

No 442
Extract mins. of Cons.
Dated 7th April /58

Directing the Secy of
Rev. to cause the widow of
Challah Lunnah to be put
in possession of the two shares
in the land at one, held by
her late husband, & of all the
produce thereof was in Govt.
deposited.

No 35036

22nd March 1857

192