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Revenue Department

Minutes of Consultation

11th May 1858

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செப்பனிடுபவர் பெயர்

செப்பனிடுவதற்காக
எடுத்துக்கொள்ளப்பட்ட நாள் 6/08

செப்பனிட்டு முடித்த நாள் 8/08

சரிபார்க்கும் அதிகாரி
மு. நி. பா. ஏஜெண்ட்
கையொப்பம்.

ஆராய்ந்து உதவியாளர்
கையொப்பம்

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Fort Saint George, Revenue Consultation of 11*th May* 1858.

No. 1. Read the following Minute by the Honorable D. ELIOTT, Esq., Member of the Legislative Council for the Madras Presidency; dated Calcutta 7th April 1858.

The letter from the Acting Secretary to the Government of Fort St. George, No. 261, dated 26th February last, forwarded to me a Draft Act to amend Act XXIII. of 1856, with certain correspondence relating thereto, and I am particularly referred to the Resolution of Government dated 30th January, for a precis of the correspondence and of the discussions that have taken place with the Board of Revenue and the Government Pleader on the subject of the proposed law.

In the 2d para. of that Resolution it is stated that Act XXIII. 1856 had scarcely come into operation when it was discovered that its provisions did not fulfil the intention of Government, and that in practice it created difficulties other than those previously experienced. The difficulties alluded to are explained to be these, that "although the revenue in Ryotwar Districts was collected under Regulation XXVII. of 1802 prior to the enactment of Act XXIII. of 1856, the officers of Revenue had no power under the new Act to take advantage of the older law, and that bound by the provisions of Clause 7, Section XXXIV. Regulation XXVIII. they could sell landed property only after the expiration of the Revenue year, and then only through the intervention of the Zillah Court."

It does not appear that *this* construction of Act XXIII. of 1856 has been given judicially by any competent Court. Among the papers I find only one judicial construction of the Act on the point in question. This construction is given in a decision of the Subordinate Court of Combaconum in the District of Tanjore upon an application of the Collector to sell the lands of a defaulter under the said provisions of Regulation XXVIII. of 1802, which application is refused by the Court on the ground that Act XXIII. of 1856 does not supersede, or in any way interfere with the operation of Regulation XXVII. of 1802, and that Collectors notwithstanding that Act have still the power of putting up land to sale under Regulation XXVII. of 1802.

While this decision stands, with no overruling or counterdecision on record, it can hardly be affirmed that Act XXIII. of 1856, requires amendment, as positively obliging Collectors, when it is necessary to sell land for arrears, to follow the cumbrous and inconvenient process laid down by Regulation XXVIII. of 1802.

Tanjore, I suppose, is the District in which it is most desirable that the Collector should have the power of selling land before the close of the Fusly, and by the more convenient process laid down in Regulation XXVII. of 1802, and under the decision in question *this* is the only course that can be taken in that District.

I see no reason why the Revenue officers should not take this decision for their guide in practice, so long as it is not superseded by the judgment of a Court of higher authority.

It seems to me improper to apply to the Legislature to pass a new law to authorize what a competent Court in the only case that has come under judicial cognizance has decided to be authorized by the law as it stands, merely because it is thought that there are grounds on which that decision may be challenged.

I am not indeed prepared to say that in my opinion the decision is right, as intimated in the last para. of my Minute dated 20th November 1856, I then inclined to think that by making the provisions of Regulation XXVIII. of 1802, applicable to the recovery of arrears under Ryotwar settlements it would follow that the attachment and sale of the lands of defaulters must be made agreeably thereto. But I was not so clear on the point as to warrant my introducing into the bill the modifications of Section XXXIV. of the above Regulation which on that view seemed to me advisable, without previous communication with the Government, for which there was not then time.

It is however to be observed that it was expressly stated in the explanation annexed to the bill when it was submitted to the Legislative Council that the particular object of making the provisions of Regulation XXVIII. of 1802, applicable to the recovery of Ryotwar arrears was to arm the Collectors with power to distrain and sell the *personal* property of defaulters.

The above objections to carrying the proposed bill before the Legislative Council which have occurred to me in limine, I think it proper to submit for the consideration of Government.

I have not overlooked the improvements in the rules for the distraint and sale of moveable property which are proposed in the bill, but I apprehend that if the above objections to applying to the Legislature for the amendment of Act XXIII. of 1856, in the face of the judicial decision referred to, be held good, it will not be deemed necessary to ask for those special amendments of the existing law in anticipation of the general revision of the whole Revenue Code which is in contemplation, as intimated in the 6th para. of Mr. Forbes' letter to the Clerk of the Legislative Council dated 27th June last.

No. 2. ORDER THEREON, No. 583; dated 5th May 1858.

Ordered to be communicated to the Board of Revenue.

(Signed) W. H. BAYLEY,
Acting Secretary to Government.

Minute from the Hon'ble the Chief Secretary

The letter from the Acting Secretary to the Government of Fort St. George, No. 261 dated 26th. February last, forwarded some a Draft Act to amend Act XXIII of 1856, with certain correspondence relating thereto, and Sam particularly referred to the Resolution of Government dated 20th January, for a precis of the correspondence and of the discussions that have taken place with the Board of Revenue and the Government Pleader on the subject of the proposed law.

In the 2nd para: of that resolution it is stated that Act XXIII. 1856 had scarcely come into operation when it was discovered that its provisions did not fulfil the intention of Government, and that in practice it created difficulties greater than those previously experienced. The difficulties alluded to are explained to be three - that although the revenue in Ryotwar Districts was collected under Regulation XXVII of 1802 prior to the

enactment of Act XXIII of 1856, the Officers
of Revenue had no power under the new
Act to take advantage of the older law, and
that bound by the provisions of Clause 7
Section XXXIV Regulation XXVIII they could
sell landed property only after the expira-
tion of the revenue year, and then only through
the intervention of the Zillah Court."

It does not appear that this Con-
struction of Act XXIII of 1856 has been given
judicially by any competent Court. Among
the papers I find only one judicial Construc-
tion of the Act on the point in question.
This construction is given in a decision of the
subordinate Court of Ambacamme in the
District of Sanjore upon an application
of the Collector to sell the lands of a defaulter
under the said provisions of Regulation
XXVIII of 1802, which application is refused
by the Court on the ground that Act XXIII
of 1856 does not supersede in any way
interfere with the operation of Regulation
XXVII of 1802 and that Collectors notwith-
standing that Act have still the power
of putting up land to sale under Regu-
lation XXVII of 1802.

While this decision stands, with
no overruling or counter decision on record,
it can hardly be affirmed that Act XXIII
of 1856 requires amendment, as positively
obliging Collectors, when it is necessary to
sell land for arrear, to follow the cumbrous
and inconvenient process laid down by Re-
gulation XXVIII of 1802.

In Sanjore I suppose is the District
in which it is most desirable that the
Collector should have the power of selling
land before the close of the Fasly, and by
the more convenient process laid down
in Regulation XXVII of 1802, and under
the decision in question this is the only
course that can be taken in that District.

I see no reason why the Revenue
Officers should not take this decision for
their guide in practice, so long as it is
not superseded by the judgment of a Court
of higher Authority.

It seems to me improper to apply
to the Legislature to pass a new law to autho-
rize what a competent Court in the only
case that has come under judicial cog-
nizance has decided to be authorized by

by the law as it stands, merely because it is thought that there are grounds on which that decision may be challenged.

I am not indeed prepared to say that in any opinion the decision is right. As intimated in the last para of my minute dated 20th November 1856 I am inclined to think that by making the provisions of Regulation XXVIII of 1802 applicable to the recovery of arrears under Ryotwar settlements it would follow that the attachment and sale of the lands of defaulters must be made agreeably thereto. But I was not so clear on the point as to warrant my introducing into the Bill the modifications of Section XXXIV of the above Regulation which on that view seemed to me advisable, without previous communication with the Government, for which there was not then time.

It is however to be observed that it was expressly stated in the explanation annexed to the Bill when it was submitted to the Legislative Council that the particular object of making the provisions of Regulation XXVIII of 1802 applicable to the recovery of Ryotwar arrears was to arm the Collectors with power to distrain and sell the personal property of defaulters.

The above objections to carrying the proposed Bill before the Legislative Council which have occurred to me in limine I think it proper to submit for the consideration of Government.

I have not overlooked the improvements in the rules for the distraint and sale of moveable property which are proposed in the Bill but I apprehend that if the above objections to applying to the Legislature for the amendment of Act XXIII of 1856, in the face of the judicial decision referred to, be held good, it will not be deemed necessary to ask for those special amendments of the existing law in anticipation of the general revision of the whole revenue Code which is in contemplation as intimated in the 6 para: of Mr Forbes letter to the Clerk of the Legislative Council dated 27th June last.

Calcutta 7th April 1858.

I have the honor &c
(signed) D Elliott
Member of the Ld Council

To H. Forbes Esq
Offg Secy to Govt N.W.P.

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2 to Com.rs Mar. 1/58 to 22 Aug.
" 2 " May " 10 Nov.
" 30 " June " 57 - 38 Dec.
" 9 Dec. " 58 - 10 Feb.

Train Bd. of Rev. & Sp. Ds.
June 58 C.R. 279 inst.

Extn. 20 July 58 C.R. 165 inst.

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stands, merely because it is thought that there are grounds on which that decision may be challenged; and observing that it was expressly stated in the explanation annexed to the Bill, that the particular object of enacting the provisions of Regulation XXVIII of 1802 as applicable to the recovery of Revenue arrears was to arm the Collectors with power to distrain and sell the personal property of defaulters

No. 2 [illegible]

Revenue 1858 Dept.
2 to Cons. 11 May

No. 557

Minute by the
Hon'ble D. Eliott Esq.
Member of the Legis.
Council for the Madras
Presidency.

Dated 7 April 1858.
Rec'd 15

No. 583. 6 May 1858.

Stating that it seems to him improper to apply to the Legislature to pass a new Law, to authorize what a competent Court, (in the only case that has come under judicial cognizance) has decided to be not authorized by the Law as it stands, With an order

No. 583

Ordered to be communicated to the Board of Revenue.

Fort St. Geo. 5 May 1858

Copies to Rds. & Revs. Circ. C. 6

[illegible] 19 April R 27