Revenue Department

Minutes of Consultations

20th July 1858

Back Nos 37 & 38

Order No 978 Dt 16th July 1858

(@ 25 Days)

பாதுகாப்பு பிரிவு-1

செப்பமிடுபவர் பெயர்:

செப்பமிடுவதற்காக எடுத்துக்-
கொள்ளப்பட்ட நாள்

சரிபார்க்கும்
முதல் முதிர்வாள
கையொப்பம்

சரிபார்க்கும்
2ம் முதிர்வாள
கையொப்பம்

ஒருங்கிணைத்தவர்
உதவியாளர்
கையொப்பம்

No. 37. Read the following Extract from the Proceedings of the Board of Revenue; dated 1st June 1858, No. 1943.

Read again the following letters;—

In Cons. 8th Jan. 1857. From the Collector of Chingleput, dated 30th July 1856, stating that the application of the Petitioner in No. 1888 of 1856, for certain waste land had been refused in consequence of his having declined to pay fees to the Meerassidars of the village.

In Cons. 25th May 1858. From do. dated the 24th June 1857, stating with reference to Petition No. 672 of 1857, that according to the rule of the District, land cultivated by Pyakaries cannot be sold for arrears due by them, since it is not their own but the property of the Meerassidars, and that the offer of the Meerassidars to pay up the arrears and take the land had therefore been accepted.

In Cons. 25th May 1858. From do. dated the 5th October 1857, reporting that the Petitioner in No. 2211 of 1857, can obtain such portion of an extent of waste amounting to 115-8-8, as is not in the possession of the Meerassidars, as soon as he agrees to pay the usual fees.

In Cons. 25th May 1858. From do. dated the 23rd October 1857, expressing his opinion with reference to Petitions Nos. 3540 of 1856 and 1917 of 1857, that Meerassidars have a right to fees on lands cultivated by Pyakaries, and to prevent the cultivation of immemorial waste by other parties, unless undertaken with their permission and as their tenants.

In Cons. 25th May 1858. From do. dated the 9th January 1858, recommending payment to certain parties on the ground that the Meerassidars have a right to sell immemorial waste.

In the communications recorded above the Collector of Chingleput maintains what amounts to an absolute right on the part of the Meerassidars of his District over the immemorial waste, for he asserts;

1. That they can sell it.
2. That no one can till it except as their tenant.
3. That they can levy fees from Pyakary cultivators put in by Government.

2. The claims thus set forth by Mr. Shubrick on behalf of the Meerassidars go beyond any which, as far as the Board are aware, have ever hitherto been advanced; for even Mr. Ellis the warmest advocate of their rights, admitted that they could not break up immemorial waste without the consent of Government, and a fortiori could not sell it outright for their own benefit.

3. It is unnecessary now to advert particularly to the doctrines held by Mr. Ellis and others on this subject, for they have recently been fully considered by the Board in their Proceedings of the 14th May 1856, in reviewing which the Government made the following observations;—

From Govt. 23rd Jany. in Con. 31st March 1857, No. 93, R. D.

"It is doubtful whether this exclusive right (to "the immemorial waste) in the sense intended "by the Board, is upheld by any in the present "day; and it may perhaps even be doubted "whether the late Mr. F. W. Ellis himself intended it. The mention by him of productive trees in speaking of immemorial waste" refers evidently "to certain interests of Government, in such land," and if they have a claim "to tax on trees standing on such waste, it does not appear why they should not have a right to tax quarries also. But whatever may have been Mr. Ellis' opinion on that point, the Government do not apprehend that the doctrine combated by the Board is now held by any authorities." *The Government here refer specially to the doctrine that Meerassidars have a right to payment on unoccupied and unreclaimed waste, taken and held by others not through their agency.* They apprehend that the views on this subject recorded by Sir Thomas Munro would be generally acceded to; viz. *that Meerassidars have no rights over lands reclaimed by others without their agency, and that their rights in regard to immemorial waste are good against*

strange ryots but not against the Government; and it is the established rule prescribed by the Honorable Court, "that waste land in a village is not to be given to a stranger until it has been first offered to and refused by the resident ryots or Meerassidars."

4. The conclusion thus come to by Government and which has been circulated to all Collectors, seems directly opposed to the views held by Mr. Shubrick. It denies the right of Meerassidars to fees for land held by others not through their agency, and if the claims of the Meerassidars are not good against Government, they cannot require Government to pay for waste taken for their own purposes; nor can they refuse to admit a strange Ryot whom Government may put in to till immemorial waste after the Meerassidars have declined to cultivate it and pay its assessment. Their claims to such powers as are advocated by Mr. Shubrick were fully considered and pronounced against by the Board in their Proceedings adverted to above, to the views contained in which Government as shewn in the preceding para. have signified their assent.

5. It would be sufficient therefore to draw Mr. Shubrick's attention to the Government order, and desire him to dispose of the several cases which are the subject of his letters in accordance with them, were it not that Decrees have been passed by the Zillah Court of Chingleput, and the Provincial Court of the Centre Division, which may appear to deny that Government possess the right assumed by the Minutes of Consultation cited above.

From Chingleput 10*th Dec.* 1839 *in Cons.* 23*rd Jan.* 1840.
To Govt. 27*th Jan.* *do.* *do.*
From Govt. 11*th in Cons.* 17*th Feb.* 1840, *No.* 183, *R. D.*
„ *Collector* 2*nd in Cons.* 30*th April* 1840.
To Govt. 4*th May* *do.*
From Govt. 6*th in Cons.* 22*nd June* 1840, *No.* 340–636, *R. D.*
„ *Collector* 19*th Sept. in Cons.* 8*th October* 1840.
To Govt. 8*th October* 1840.
From Collector 20*th November in Cons.* 7*th Dec.* 1840.
„ *Collector* 15*th Dec.* 1841, *in Cons.* 3*rd Jan.* 1842, *No.* 1594, *R. D.*
„ *Collector* 26*th Feb. in Cons.* 17*th March* 1842.
„ *Collector* 16*th in Cons.* 24*th Nov.* do.
„ *Collector* 9*th in Cons.* 16*th Jan.* 1843.
„ *Collector* 8*th in Cons.* 20*th Feb.* *do.*
To Govt. 2*nd March* *do.*
From Govt. 28*th in Cons.* 30*th March* 1843, *No.* 323, *R. D.*
„ *Govt.* 8*th in Cons.* 24*th Oct.* 1844, *No.* 1056, *R. D.*

6. The Decrees alluded to were passed in O. S. No. 90 of 1836, before the Zillah Court of Chingleput and in A. S. No. 46 of 1840, before the Provincial Court Centre Division, and gave rise to the correspondence noted in the margin. The Decree of the Provincial Court related to the same case as that of the Zillah Court which latter it confirmed.

7. The Zillah Court's Decree asserts that "no one ever attempted to dispute the inherent "right of Meerassidars to the waste "land. it is evident that without "the consent of the proprietors of "the soil, the Collector has no authority to deliver any part of these lands to other persons."

8. The Provincial Court in noticing this assertion pronounces it to be in entire accordance with the law of Meerassie laid down by Mr. Ellis; and adverting to the opinion of that gentleman that the consent of the Cirkar is necessary to any beneficial change in the appropriation of lands observes;—"This restriction has no reference whatever to a limitation of right on property but "to the power of its conversion except for beneficial purposes, the Government having a voice "in the case of such conversion being equally interested as the Meerassidars in its effects."

9. The decree of the Provincial Court further contains the following strong passage;—"Although many authorities concur on this point, I have not met with one which vests in "the Cirkar power over Meerassie lands further than is necessary for the protection of the Re"venue in default of its being provided through the means of the Meerassidars; nor have I found "any authority which distinguishes the right over waste (as property) and cultivable land except "in the purpose of their respective application. Every village has a certain portion of waste land "attached to it, which neither the Meerassidar nor the Government can break up unless for "mutual benefit."

10. In their despatch of the 3rd July 1844, the Court of Directors commenting on the above Decree, consider it to be in accordance with their order that waste land in a village is not to be given to a stranger until it has been first offered to and refused by the resident Ryots

In from Government 8th in Con. 24th October 1844, *No.* 1056, *R. D.*

and Meerassidars, and supposed that it left the question still undecided whether Government possesses the right in the event of the "Meerassidars, refusing to cultivate or to give security for the Revenue to alienate to waste land in Meerassy villages to Paracoody cultivators either for a term or in perpetuity." The Board however fear that the Court at Chingleput like the Collector would be of a different opinion, and hold that the precedent goes to the length of recognizing the right of the Meerassidar to decline to cultivate himself or to allow any one else to cultivate.

11. The essential importance of power resting in Government to put in a ryot permanently in the event of the Meerassidars not electing to make themselves responsible for the rent of waste land has been so fully shewn in the Board's Proceedings of the 14th May 1856, adverted to above, that it would be a waste of time to adduce arguments to prove it here. The question for consideration is in what manner the effect of the Decrees quoted about to prevent the exercise of such power may be most conveniently removed.

12. The alternative would appear to be, either to direct the Collector of Chingleput to act as if no such Decrees had been passed; and in the event of the Meerassidars declining to make themselves responsible for the tax on immemorial waste for which offers had been made by other persons to deliver the same to those persons for the Government tax only, and with full privileges of ryots, defending the Act in the Civil Courts should litigation ensue, or to pass a law defining and limiting the rights of the Meerassidars in conformity with the views entertained by the Government.

13. The Board incline to the former course. It will be seen that the Decisions of the Civil Court of Chingleput and the Provincial Court of Centre Division never came before the Sudder Adawlut. It was proposed in the first instance to prefer a special appeal; but as the option of cultivation had not been given to the Meerassidar and the case was altogether a weak one, it was eventually thought undesirable to carry it further. The points involved therein have not therefore been decided by the highest Court, and the reasonings of the lower Courts can, the Board think, be controverted without much difficulty. The Judge of the Provincial Court was not justified in considering the doctrines on the subject laid down by Mr. F. W. Ellis to be the law of Meerassie. They can be shewn to have been questioned by the Board in

Pro. to Govt. 11th December 1823, 1823, and to have been condemned by Sir Thomas Munro. It may be argued also that they are not consistent with themselves, or compatible with the just rights of Government whose right to the unassessed waste has been always practically acted upon by their taking it for various purposes (roads, travellers' bungalows, and other public buildings—as also for endowments for Chuttrums, &c.) without making any payment to the Meerassidars. It is unnecessary, however, to notice them any further here as the whole subject is fully discussed in the Board's Proceedings of the 14th May 1856.

14. It is very probable, the Board think, that with the knowledge of the subject which is now possessed, the Government would be able to obtain a favorable decree in the Courts, should their right to give land to a stranger under the circumstances supposed be contested. Should however the result be different, the course of Legislation will still be open to them. It is inexpedient to resort to this extreme measure, till the ordinary modes of procedure have been tried and failed.

15. The Board cannot perceive that the Collector is borne out even by the Decree of the Provincial Court in his opinion, that the right of the Meerassidar to the immemorial waste extends to its sale. The Judge admits that it cannot be converted without the permission of Government, and its alienation by sale which might lead to its appropriation to other purposes, yielding no revenue to Government, would appear to come under the head of conversion.

16. The question of the right of the Meerassidar to exact fees for waste converted to arable by Pyakaries put in by Government, seems no where directly touched upon in the Decree of the Provincial Court; but the following passage* may perhaps be thought to bear upon it;—"If a Meerassidar "be so reduced in circumstances as not to be able to bring under cultivation his share of the Waraput, or if he should have abandoned agriculture for other pursuits, it is incumbent on him to provide for its culture

* *This passage is from Mr. Ellis's reply to Query III.*

by granting to Pyakaries such terms as will induce them to bestow on it the advantages of their stock and labour. If he does not do so, the State has then a right to employ Pyakaries either for the current year, or for a fixed, not an indefinite number of years; and *perhaps to resume his Meerassie Swatuntrums in proportion to the extent of land he has neglected to cultivate.*" If this opinion can be applied at all to waste, it is adverse rather than otherwise to any claim of the Merassidar to fees from a Pyakary Ryot put in by Government in consequence of the Meerassidars declining to undertake payment of the revenue.

17. Before issuing any orders to the Collector of Chingleput in regard to the cases to which his letters relate, the Board resolve to submit a copy of these Proceedings to Government in order to ascertain what steps His Lordship in Council is disposed to take, to secure the rights to Government, in immemorial waste. On receipt of instructions on this point, they propose to pass orders on the several cases adverted to in the letters recorded at the head of these Proceedings.

(A true Extract.)

(Signed) G. S. FORBES, *Secretary.*

No. 38. ORDER THEREON, No. 978; dated 16th July 1858.

1. The whole subject of Meerassy right is one of such complication and uncertainty, and depending so much upon local usage and precedent, that the Government do not think it expedient nor necessary on this occasion to do more than refer the Board to what is already on record as regards their views, and those of the Honorable Court of Directors.

2. There is actually no case before Government at present. The correspondence regarding offers for waste land in Chingleput referred by the Board of Revenue to Government, is of date from July 1856 to October 1857, and it is not shewn that there is a specific Durkhast now before the Collector on which a decision is required. If there is, the Board will be good enough to submit it with a translation, with the Collector's remarks and their own, pointing out exactly what the land is whether immemorial waste, or Shaikal, and if it has been offered to the Meerassidars first, and what are the precise terms on which the Collector wishes to make out the Puttah or Cowle. If fees to Meerassidars are demanded, their nature and amount should be distinctly stated; the term "usual fees" is not explicit enough, and Government do not know what may be demanded.

3. The Government observe that Mr. Shubrick in his letter of 30th July 1856 to the Board, states that Pyacarries and others holding land on Cowle have been invariably required to pay their usual Sotuntrum. It should have been stated who gave the Cowle, and who required the Sotuntrums to be paid, what that Sotuntrum is, and if that demand is in the Cowle document, copy of which should be forwarded.

4. As regards the sale of lands for arrears by their occupants, being Pyacarries, if the Pyacarries hold by the Collector's Puttah, the Government are of opinion that the lands may be sold in the same manner as land is generally sold; but the parties purchasing only obtain the same rights as the preceding occupants. If the Meerassidars wish for the lands they should have the option of taking them before sale, if they pay the arrears. They then of course are liable for the teerwa.

5. As to the payment recommended for immemorial waste by the Collector in his letter of 9th January 1858, the Board have not informed Government what the nature of the demand is, and what the Board have to do with the bill of sale. A petition is referred to, but its contents have not been explained.

6. The Government wish the Board to understand that they do not intend to enter into any discussion on the question of Meerassy, unless there is a complete case before them which will be disposed of on its individual merits. Their general views on the subject have already been enunciated in their order of 23rd January 1857, No. 93, on the Board's Proceedings of 14th May 1856, No. 1458; and these accord with the views of the Honorable Court of Directors as expressed in paras. 29 and 30 of their despatch of 17th December 1856, No. 17, R. D.

(Signed) T. PYCROFT,
Chief Secretary.

No. 1943.

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

...read again the following letters:—

...From the Collector of Chingleput, dated 30th July 1856, stating that ... application of the Petitioner in No. 1888 of 1856, for certain waste land had ...quence of his having declined to pay fees to the Meerassidars of the village.

...From do. dated the 24th June 1857, stating with reference to Petition No. 672 of 1857, that according to the rule of the District, land cultivated by Pyakaries cannot be sold for arrears due by them, since it is not their own but the property of the Meerassidars, and that the offer of the Meerassidars to pay up the arrears and take the land had therefore been accepted.

In Con. 26th May 1858 ...From do. dated the 5th October 1857, reporting that the Petitioner in No. 2211 of 1857, can obtain such portion of an extent of waste amounting to 115-8-8, as is not in the possession of the Meerassidars, as soon as he agrees to pay the usual fees.

In Con. 25th May 1858. ...From do. dated the 23rd October 1857, expressing his opinion with reference to Petitions Nos. 3540 of 1856 and 1917 of 1857, that Meerassidars have a right to fees on lands cultivated by Pyakaries, and to prevent the cultivation of immemorial waste by other parties, unless undertaken with their permission and as their tenants.

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In the communications recorded above the Collector of Chingleput maintains what amounts to an absolute right on the part of the Meerassidars of his District over the immemorial waste, for he asserts;

1. That they can sell it.
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3. That they can levy fees from Pyakary cultivators put in by Government.

2. The claims thus set forth by Mr. Shubrick on behalf of the Meerassidars go beyond any which, as far as the Board are aware, have ever hitherto been advanced; for even Mr. Ellis the warmest advocate of their rights, admitted that they could not break up immemorial waste without the consent of Government, and a fortiori could not sell it outright for their own benefit.

3. It is unnecessary now to advert particularly to the doctrines held by Mr. Ellis and others on this subject, for they have recently been fully considered by the Board in their Proceedings of the 14th May 1856, in reviewing which the Government made the following observations;—"It is

From Govt. 23rd Jany. in Con. 31st March 1857 No. 98, R. D. "doubtful whether this exclusive right (to the immemorial waste)
"in the sense intended by the Board, is upheld by any in the
"present day; and it may perhaps even be doubted whether the
"late Mr. F. W. Ellis himself intended it. The mention by him of productive trees in speaking of im-
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4. The conclusion thus come to by Government and which has been circulated to all Collectors, seems directly opposed to the views held by Mr. Shubrick. It denies the right of Meerassidars to fees for land held by others not through their agency, and if the claims of the Meerassidars are not good against Government, they cannot require Government to pay for waste taken for their own purposes.

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From Chingleput 10th Dec. 1839 in Con. 23rd Jan. 1840.
To Govt. 27th Jan. do. do.
From Govt. 11th in Con. 17th Feb. 1840, No. 183, R. D.
Collector 2nd in Con. 20th April 1840.
To Govt. 4th May do.
From Govt. 6th in Con. 22nd June 1840, No. 840—856 R.D.
Collector 19th Sept. in Con. 8th October 1840.
To Govt. 8th October 1840.
From Collector 26th November in Con. 7th Dec. 1840.
" Collector 15th Dec. 1841, in Con. 3rd Jan. 1842.
" Govt. 24th Dec. 1841, in Con. 24th Jan. 1842, No. 1594, R. D.
" Collector 26th Feb. in Con. 17th March 1842.
" Collector 16th in Con. 26th Nov. do.
" Collector 9th in Con. 16th Jan. 1843.
" Collector 8th in Con. 20th Feb. do.
To Govt. 2nd March do.
From Govt. 28th in Con. 30th March 1843, No. 523, R. D.
" Govt. 8th in Con. 24th Oct. 1844, No. 1956, R. D.

6. The Decrees alluded to were passed in O. S. No. 90 of 1836, before the Zillah Court of Chingleput and in A. S. No. 46 of 1850, before the Provincial Court Centre Division, and gave rise to the correspondence noted in the margin. The Decree of the Provincial Court related to the same case as that of the Zillah Court which latter it confirmed.

7. The Zillah Court's Decree asserts that "no "one ever attempted to dispute the inherent right "of Meerassidars to the waste land. It is evident "that without the consent of the proprietors of the "soil, the Collector has no authority to deliver any "part of these lands to other persons."

8. The Provincial Court in noticing this assertion pronounces it to be in entire accordance with the law of Meerassie laid down by Mr. Ellis; and adverting to the opinion of that gentleman that the consent of the Circar is necessary to any beneficial change in the appropriation of lands observes:—"This restriction "has no reference whatever to a limitation of right on property but to the power of its conversion except "for beneficial purposes, the Government having a voice in the case of such conversion being equally "interested as the Meerassidars in its effects."

9. The decree of the Provincial Court further contains the following strong passage:—

"Although many authorities concur on this point, I have not met with one which vests in the Circar power "over Meerassie lands further than is necessary for the protection of the Revenue in default of its being pro-"vided through the means of the Meerassidars; nor have I found any authority which distinguishes the "right over waste (as property) and cultivable land except in the purpose of their respective application. "Every village has a certain portion of waste land attached to it, which neither the Meerassidar nor the "Government can break up unless for mutual benefit."

10. In their despatch of the 3d July 1844, the Court of Directors com-
In from Govt. 8th in Con. 24th Oct. 1844, No. 1956, R. D. menting on the above Decree, consider it to be in accordance with their order that waste land in a village is not to be given to a stranger until it has been first offered to and refused by the resident Royts and Meerassidars, and supposed that it left the question still undecided whether Government possesses the right in the event of the "Meerassidars re-"fusing to cultivate or to give security for the Revenue to alienate waste land in Meerassy villages to "Parasooty cultivators either for a term or in perpetuity." The Board however fear that the Court at Chingleput like the Collector would be of a different opinion, and hold that the precedent goes to the length of recognizing the right of the Meerassidar to decline to cultivate himself or to allow any one else to cultivate.

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12. The alternative would appear to be, either to direct the Collector of Chingleput to act as if no Decree had been passed; and in the event of the Meerassidars declining to make themselves respon-[illegible] the tax on immemorial waste for which [illegible] had been made by other persons to deliver the same [illegible] for the Government tax only, and with the full privileges of ryots, defending the act in
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(A true Extract.)

(Signed) G. S. FORBES,
Secretary.

[illegible]V. H. BAYLEY, Esq., *Acting Secretary to Government, R. D.*
Copy to Collector of Chingleput, for information.

Revenue 1838 Depart.

No 1960

Extract from the Proc.
of the Bd of Revenue

Dated 1st
Recd 4 ?
} June 1838

No 1943

Requesting to as-
certain what measures
would be advisable
to adopt to secure the
rights of Govt on im-
memorial waste lands
with reference to the
several communications
from the Coll: of Chingleput
within noticed &

June 18. 1858

Memo.

In this Draft, the Govt are made to communicate their opinions on the subject of Mercury right to Waste, rather more strongly than they have hitherto done, & it is right that I should state that my views on the subject do not agree with those of Sir Benjn Hall.

I do not think however, that except where Sir T. Mowat's opinion as to the practice is opposed to Sir B. Hall's or to Mr. Moore's, anything is expressed contrary to what Govt have recorded as their view.

The Govt in their Report of 10th May 1856 (the Dy Com. 27th Jany 1857) took exception to what they considered the opinions of

Govt namely that the waste was the property of the Mocurrudars; & supported their views by those of their predecessors in 1820 and 1823. They maintained also that Govt erred in withdrawing from the Themselves to the opinion of Mr Ellis, & urged that the views of Sir T. Munro were the correct ones.

In the Govt Order on these Proceedings (dated Jany 23rd 1857 No 93 - especially para 2 - they seem to intimate that the B. have taken unnecessary alarm for in fact the views of Govt are not dissimilar as regards waste

There is however still some little uncertainty as to whether Govt did not limit their expressions to unmeasured waste.

I was not in India at the time, but had I been at my post, I should have concurred in the views of the Board, except as regards the Tanjore case, where

I think they were wrong, as the Court have lately decided in a late Bombay case. This was not however an error of principle but an error of fact. The Bd acquiesced in the Court's "unmeasured waste" & Perumbokam, though it was part of a Mocurrudary share.

Hereditary occupancy has always been nominally acknowledged: that is provided the rights of Govt were not interfered with, the ryots were left to work themselves & if the so called Mocurrudars could in time by accident to take up waste land as their tenants, no notice was taken, nor did it be taken now. But by accident they have become more independent, & are bolder, & begin to think their Mocurrudary claim is somewhat of a myth of antiquity, & they want to cultivate waste land on their own account, as direct tenants of Government, & in that case they escape fees & pecuniary exactions of the Mocurrudars. The Court

of Directors have fully acceded to the views, & shewn in the Despatch, but do in opposite to those recently held by Mr Bandell who even objected to the Collector receiving an offer for waste land excepted from a Sec tax sales. If what the Moonsiffs claim is yielded to, the Gov^t are entering on an endless assessment as much as they will, & an acre of extra land will be cultivated except the Moonsiffs please; & they often don't please because it contains their patrimony & forefathers & because they have a strong feeling against intrusion & change.

As to the "small fees", I don't know if any revenue & Judicial Officer knows what they are in Chingleput, & the Moonsiffs may claim anything for what evidence there is on the part of the Rev^e authorities. No doubt there is a margin, but what it is, could only be decided in a Court of Law after a considerable amount of perjury on both sides

W.H. Bayley June 8th

Concur generally in the draught, but think it one in two places we should not say down the law too strong & on points on which the Moonsiffs ought to be learned. Change. The question of a Moonsiffs right to small charges I conceive to be a question of this nature and think we should either get more evidence or wait until the point has been decided before pronouncing an opinion & take regarding it. The Moonsiffs appear to rest their general grounds that such a right exists, & think there are precedents for it, but that it may exist and I do therefore take to see the matter brought to the issue

J

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97c/11

Remarks of Hon'ble Mr Elliot

Concur generally in the draught, but think in one or two places we should not lay down the law too strongly on points which are still under dispute. The question of a Servitude right to Swamp & Rogum seems to be a question of this nature and think we should either get more evidence or wait until the point has been decided before pronouncing an opinion ex cathedra regarding it. Sir Thomas Munro appears to reason on general grounds that such a right cannot exist. think there are primâ facie grounds to show that it may

my spirit and I should therefore like to see the matter brought to the issue of evidence.

Signed W. P.

I do not agree in the views communicated in this draft nor do I consider that the decision of the Court cited justifies them. The waste land of a Meerasdee Village in being cultivated is burdened with the Meerasdee fees, and the Government assessment. When the Meerasdar finds a cultivator or cultivators himself of course the Government dues are paid on

and when the Government finds a Cultivator why should the Meerasdeedars fees not be permitted. I am inclined to think that there are decrees of Court to the above effect.

97 1/2

7

If this I am certain that if the Government were to act fairly in this matter more waste lands would be brought into cultivation. The Meerasdeedars would then equally with Government be interested and instead of as at present, doing all in their power to keep out Government Servants Servants they would gladly receive them.

I agree very much with Mr Bourdillon.

Signed W. M.

Extract of a letter from H. Forbes Esq
Collr of Tanjore, to the Bd of Revenue,
dated 30th June 1855.

GPB/13

4 As regards the meerasdar
right in waste land, opinions may
perhaps differ, but I think proof
to any assumption of the Country,
right was considered to be
with the Meerasdars. In the
register of enams are to be found
translations of duftar paccum
issued by the Rajahs when
granting waste land on Shrotrium
tenure, containing a requisition
to the Meerasdars of the Village
in which the waste was situated
to grant to the Shrotriemdars

a deed expressly stating to hold the land with freedom to sell or grant in mercy - of the Meerasdaree Right to the waste had not been acknowledged by the Rajahs, the entry of such a clause in the Kabuliat would never have been made. Moreover, when Enams were granted by the Rajahs, it was a very general practice for the Cranadaro to cede a proportion of their Enam to the Meerasdaree of the Village in which it was situated, in compensation, as the Board have remarked, "for the Meerasdaree of the Cultivated land in the alienated Cundo."

5. In the third paragraph of the Principal Collector's letter of the 30th of October 1841, the Board will see that the Meerasdaree of

Pro. B. of Revr. No 1540 31st May 1858 Last paragraph Enam No 25,856.

of Tanjore are in the habit of selling their right to the waste lands of their villages, and that whenever a village, or part of a village, is sold by decree of Court, or for arrears of revenue, the waste, or the proportion of it belonging to the cultivated land that is sold, is always distinctly specified - whether it that is to be sold if it be not - the Meerasdaree connected with the question the Board have no doubt referred to their proceedings of the 5th of January 1818, and to the answer to the question in page 40 in the printed replies of Mr Ellis in 1818 to certain questions relative to meerasby right - paragraph 69 of the proceedings referred to

distinctly

Revenue Department

No 93 8/15

Extract from the Minutes of Consultation
Under date the June 1858

Received Dft. Rev. 7.8.58.

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

Here enter 1st June 1858 No 163

In these Proceedings, the Bd
of Revt request the orders of Govt
with regard to ~~a~~ correspond
ence with the Collector of Chingle
put, on the subject of certain
~~claims~~ rights which he claims
for the Mecrasedars of his
District, and which he is
desirous of enforcing on parties
not being Mecrasedars who
have made tenders for the
cultivation of waste land.

From the 5 letters from
the Collector, submitted by
the Board, it appears that
the following are the doct
rines laid down by ~~the Coll~~ him.

I That Mecrasedars have
a right to sell 'commencial'
waste

II That they have a right
to prevent the cultivation of

Revenue Department

No

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Under date the June 1858

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I That Mecrasedars have
a right to sell 'commencial'
waste

II That they have a right
to prevent the cultivation of

"mine mineral rights to the other
parties except as their tenants.

III That parties not having
Marasadam cannot be
allowed permission to cultivate
waste land, unless they
agree to pay the 'annual fees'
(Kudimaiams) to the Marasa-
dars.

IV That the land occu-
pied by Pycarries cannot
be sold for arrears of revenue
because it is the property of
the Marasadars.

It is not necessary for
Govt to discuss all the inci-
dents of Marasadar in the
present instance; it is suf-
ficient for them to state
that they generally concur in the views
enunciated by the Board,
and the question now be-
fore them is limited to
the right to waste land

As regards "ainmemorial"
waste, Mr Ellis the stanch
advocate of Marasadary, admits
as the Board observed, that
the Marasadars cannot break
it up without the consent of
Govt: & therefore much less
can they sell it.

As regards
the second point, the
Court of Directors in their Des-

97r/16 para 32
patch of 17 October 1855 No 17,
have given their sentiments
upon a subject which
had been fully discussed be-
tween the Govt of Revenue &
Govt, namely the right of par-
ties to waste Marasadam lands to
waste land was follows
"When applications for waste
"lands are made by strangers
"they should be communicated
"to the resident cultivators
"of the Village, the Marasadars
"being to the Marasadars & not
"& the option should be given
"them of engaging for it,
"finding security for the
"payment of the assessment.
"Should they or any of them think
"fit to do so, they would of
"course be at liberty either
"to cultivate the land them-
"selves or to sublet it, but the
"payment should be strictly
"enforced, in order, on the one
"hand to prevent transactions
"in the nature of land job-
"bing, and, on the other, to
"deter the villagers from en-
"gaging for land merely
"for the purpose of excluding
"others who might be desirous
"of holding it direct from
"government, but who objected

"to take it as their tul-Varam
"In cases where the resident
"ryots should refuse to
"engage for the waste lands
"of their village, Government
"may exercise the right of
"granting them to the
"persons applying, who
"would then hold the
"same position and en-
"-joy the same rights
"in all respects as
"the other ryots
"of the village."

Upon these principles
the Revenue authorities are
now bound to act. No man
is obliged to become a tenant
of a Meerasidar; but many
claim a pattah from Govt
direct; for waste land which
they 'improve' or work
when the Meerasidar then
(whereupon) declines to cultivate.
(therewith) Of course in the
the Pattahdar
case he pays no "usual fees"
to the Meerasidar, for he
holds direct from Govt
Govt; & if he be ousted
he
from the land he
has reclaimed or cultivated is as liable
to be sold as the land of
a defaulting Meerasidar.

See what they
were before Govt
took up the
Meerasidary
but nothing can
be more
contrary to
these principles

This arbitrary Ousting
has always appeared to me
to be one of the worst
evils resulting from the
Meerasidary system

97[illegible]/17

I am not to take the next
Steps to protect
my interests by suit to sue
for redress with regard to
[illegible]
so long as it does not run
[illegible]
counter to the principle
of the permanent Tenure,
that they cannot fix what
the Sist is to be in future
the revenue they would
exercise it by the collection
from up land to which it rose
because [illegible] by them
either to cultivate it themselves
or to let it to others, or
it would become waste
lands, & they [illegible] for
them the exercise of [illegible]
fear" besides the Govt out,
& after all [illegible]
of possession beyond the mere
will of the Meerasidar

The system of the Govt
having been thus explained, it
remains to consider how it
is to be carried out, since
the Decree me of the Pattah
Court in 1839 & its appeal in
Provincial Court in 1841, are
both opposed to the principles
just
[illegible] enunciated.

The Govt observe that the
Decree of the Provincial Court
cannot be considered as

finally disposing of the question, inasmuch as the matter has never yet been before the Court of Sudder Adawlut, & the means to be used what would be the decision of that Court. For nearly twenty years the point has not been mooted, because the Govt & claimants and Courts if the cases now brought to them relate, must be practically acted upon, it will be the duty of the Collect or to enforce their views of Govt If the parties suppos ing themselves aggrieved think proper, the question can be tried in the Courts of Law. The Govt must then be prepared to argue the whole question of Meerasy, which it is not at all necessary to do now.

Whatever may the opinions as to the incidents of Meerasy being, it is not at all clear that it has been fully recognized in Chingleput. It may have existed there in ancient times, but the introduction of a ryot war Syst. Law of Revenue

D^o promulgation settlement, with the introduction of Regulations in supersession of mere "usage", a will of the ruling power, must greatly have modified the nature of both of the privileges of the ancient Meerasdars, & also of their correspondg liabilities.

The Collector of Chingle put in his letter of 23d Oct^r 1857 in urging the claims of the Meerasdars, observes that the right claimed "like many "other rights, may be one of "yearly growth, & have become "to be recognised in the dealings "of the people with each other, "who live under its influence "in this way, what may have "been crude & uncertain in the "time of Sir T. Munro [1824] and "his predecessors, may have "grown & rooted itself firmly "in established usage in the "present day, making it as "recognised a part of the law "of the people, as if it had been "decreed to them by Acts & Re "gulations"

If this is the state of Meerasy in Chingleput, it certainly cannot be upheld, for its interpretation depends

Three

entirely in accordance with the proof of its continuity from the time previous to the British acquisition of the country. Any Decrees decisions daily since the time of Sir T. Munro & his predecessors must be of spurious growth, & such Slavery Government will not be recognised.

The Board have before discussed the subject of Slavery with Govt. & the arguments of Sir T. Munro & Mr Ellis have been freely quoted.* The Civil Courts in Chingleput in their Decrees & orders referred to seem to have taken & looked upon Mr Ellis as the only authority upon the question, & have entirely overlooked the contrary views put forth 8 years subsequently by Sir T. Munro. The Govt attach much importance to the views of Mr Ellis as defining what Slavery was in theory (but) Sir T. Munro is an (better) authority as to what it actually is, or rather what it was in practice when the country came

* Sec C 11th Feby 1856 No 194
* Proc. of Bd of Rev 14th May 1846
* Sec C 23d Jany 1857

under British dominion.

As long as Slavery in its present imperfect and indefinite form remains in some of the Southern Districts, there is no advantage in disturbing it, especially where it is not the source of contention & strife; but when so called Slaves ask to purchase their freedom & claim protection against their masters, the Govt must look to its own officers to prevent such supposed rights being exercised.

I do not see how the Govt can be entirely excluded from any way of appeal for the ultimate rights of the State between master & slave & the case does not seem to call for any interference on the part of Govt

WHB
18th

Proc

92r
20

c 18th June 1826 to c 6th July 1812

R. D

978 7/21

Extract from the Minutes of Consultation
Under date the 16th July 1858

Read the following
Extract from the Pro-
-ceedings of the Board
of Revenue.

Received 1st June/58 No 1942

The whole subject of
Meerassy right is one
of such complication and
uncertainty, and depending
so much upon local usage
and precedent, that the
Government do not think
it expedient nor necessary
on this occasion to do
more than refer the Board
to what is already on re-
cord as regards their
views, and those of the
Honorable Court of Directors

Trans

There is actually no Case before Government at present. The correspondence regarding offers for waste land in Shinglepoint referred by the Board of Revenue to Government, is of date prior to July 18th to October 1857 and it is not shewn that there is a specific Petition now before the Collector on which a decision is required. If there is, the Board will be good enough to submit it with a translation, with the Collector's remarks and their own, pointing out exactly what the land is whether immemorial waste,

97/27 17

waste, or Shikkal, and if it has been offered to the Meerasdars first, ~~that is tendered for~~, and what are the precise terms on which the Collector wishes to make out the Puttah a Cowle. If fees to Meerasdars are demanded, their nature and amount should be distinctly stated.

The Government observe that Mr Sinbrick in his letter of 30th July 1856 to the Board, states that Poyatharries and others holding land on Cowle have been invariably required to pay their usual Salutrum. It should have

^ the term "usual fees" is not explained enough, & Govt do not know what may be demanded.

right of sale
Hadley —

before date, if they pay the
arrears. They then of course
liable for the tax.

As to the payment
recommended for immo-
rial grants by the
Collector in his letter of
9th January 1858, the
Board have not inform
Do Government what the nature
of the demand is or what
the Board have to do with the
Issue the paperwork
Bill of Sale.
A Petition is referred to,
but its contents have
not been explained.

The Govt wish the
Board to ~~have~~ under-
stand that they do not
intend to enter into
any discussion on the
question of Meerasty,
unless there is a com-
plete case before them

have been stated wrongly
the Board, and other required
ther Extraordinary to be paid,
what that Extraordinary is,
nd if that Demand is in
Document,
the Board, Copy of which
should be forwarded.

As regards the sale
f lands for arrears by
their Companies being Pya
carries, if the Pya carries
sold by the Collectors in
mistake, the Government
re of opinion that the
in the same manner as land is generally sold
lands may be sold, but
e parties purchasing
ully obtain the same
ights as the preceding
Companies. If the Mera-
ictars wish for the lands
they should have the
ption of taking them
before

which will be disposed of on its individual merits. Their general views on the subject have already been enunciated in their order of 23d Jany 1857 No 93, in the B. of R. of 14th May 1856 No 1458; & these accord with the views of the Hble Court of Directors as expressed in para 29 & 30 of their Despatch of 17th Dec. 1856 No 17 Rev. Dept.

WAB

July 2

3 Copies to the Bd of Revenue Decd 17th

Very faculty are they

Rec. Cons. 27th Jany /57 - 3
29-30-3

Revenue 1858 Departt.
Dispt. to Cons. 2d. July.

No. 978.

Extract Mins. of Cons.
of 16th July /58.

Ext. pmitd Pro Advs 13th Nov.
12th October 1858 No 1608 to Cons:
7th December
No. 5916.

Referring to Correspondence submitted by the Board regarding offers for waste land in Chingleput, observe that it is not shown that there is a specific Question now before the Collector requiring the decision of Govt. Do not wish to enter into any discussion on the question of Meerasy unless there is a complete case before them.

No. 37 & 38.

Mr Lely 12th