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MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

69-70

G.O. No. 1388 Press Mis.

Dated 7 October 11, 1859.

Not to be folded or roughly handled

No. 69. Read the following Proceedings of the Board of Revenue, dated 9th August 1859, No. 3080.

Read letter from the Collector of Masulipatam dated 29th March 1859, No. 43, submitting a report on the memorial of Rajah Nariah Apparow regarding the sale of a part of the Nedadavole estate.

(In Consultation 4th April 1859, No. 1463.)

In the above memorial and its enclosures memorialist re-opens his case from the commencement; and a brief review of past occurrences, so far as they bear on his fortunes and implicate Government in his present condition, will materially facilitate the disposal of the appeal.

2. The family of Appa Row is of ancient origin and formerly possessed extensive estates in the Masulipatam District.

3. Memorialist's immediate predecessor was his uncle and adoptive father Vencata Nursimha Appoo Row whose habits of extravagance and neglect of his estate, involved him in heavy private liabilities. To aid him in clearing these off, a loan of Rupees 3,00,000 bearing 12 per cent. interest repayable by instalments of Rupees 50,000 per annum was made to him in 1825, with the sanction of Government, from the surplus funds of the minor Zemindar of Noozeed, whose father was his step-brother. The loan was secured by the mortgage of his permanent sunnud, and seems to have been very necessary to retrieve his position; in fact a further loan of similar amount was sought but refused.

4. Vencata Narasimha paid two instalments with the accruing interest and died in 1827, without male issue, the succession to his estate being disputed by four claimants. There was then an arrear of about Rupees 65,500 due to Government and the Collector assumed temporary charge of the property.

5. The Revenue Board and Government considered that the right of succession lay between the eldest surviving widow and the nephew (memorialist) said to have been adopted by the younger widow under her husband's will, and as it was deemed expedient that the property should be placed in proper custody, the nephew, a minor, was with this view recognized, so far, as the adopted son and heir of the late zemindar, the Court of Wards' administation however being really for the benefit of the party in whose favor the disputed succession might ultimately be determined.

From Government 30th October 1827.
In Consultation 15th November 1827.

6. The estate continued under the Court's management until Fusly 1244, A. D. 1834-5, memorialist's minority having expired in September 1833.

10th May 1834.

7. This series of years comprised several of unfavorable character and one (Fusly 1242) of absolute drought and famine. The estate in common with the rest of the district suffered severely, and the result of the whole period of management was that on its transfer, there was a current balance of Rupees 20,000 outstanding, which however was realized in the course of the year. Liabilities incurred by the late zemindar to the amount of Rupees 1,17,000 were also cleared off; meanwhile, however, the Noozeed debt had been reduced only by Rupees 30,000 and bearing heavy interest had largely increased.

8. The estate was made over to memorialist in May 1834, free of arrears due to Government.

9. In 1835, Sir Frederick Adam, then Governor, visited the Northern Circars and was the means of inducing an amicable adjustment, by the intervention of mutual friends, of the differences and litigation between the memorialist, the zemindar of Noozeed and other members of the family.

From Government 29th February 1835, No. 178.
In Consultation 5th March 1835.

10. The main result of this interposition was that memorialist was formally recognized by the family as zemindar of Nedadavole and that the debt due to the Noozeed zemindar was to be liquidated principal and interest by annual instalments of Rupees 50,000.

11. The recognition of memorialist's right to the estate was undoubtedly a very important matter and put an end to what must have proved a most expensive course of litigation.

12. The other arrangement was less advantageous; for principal and interest were blended into one capital sum which thereafter bore interest at 12 per cent. annually, and the Noozeed zemindar further acquired the power of bringing the estate to sale in case of default. It must however be remembered that this was but a part of a general arrangement whereby memorialist's title was fully admitted and that memorialist was of full age when this agreement was entered into.

Rupees 4,04,234.

13. The first three instalments of the Noozeed debt were punctually paid, but on failure of the 4th and 5th instalments that zemindar proceeded to exercise, through the Courts, his power of bringing part of the estate to sale. Meanwhile, the Government peshcush had also fallen largely into arrear, and in 1838 the property was again attached and so continued until 1843.

14. The result of this second period of management, owing to bad seasons, low prices and the effect of previous adverse years was still more disadvantageous to the zemindar than the previous administration had been, the peshcush never having been realised in full. The cause of this deterioration of the property was fully investigated in 1845, and the local and Bengal Government concurred in ascribing it to causes beyond the Collector's control.

To Govt. 30th January 1845, No. 346.
From do. 14th April 1846, No. 430.
In Cons 30th April 1846, " "

15. The settlement of the debt to the Noozeed proprietor was the most essential preliminary for the retrieval of menorialist, and efforts were accordingly made to bring about a compromise—with this object, in 1839, it was proposed to meet the claim (which then amounted to Rupees 4,28,471, viz., Rupees 2,54,235 principal and Rupees 1,74,236 interest by the transfer in perpetuity of the estates of Pentapad, Goondoogolanoo and Charendra Mootah (forming part of Nedadavole) with their share of the gross assessment on the entire estate. Difficulties arose chiefly from the claims of other creditors and relatives but arrangements of a similar character were proposed to meet these; among other plans, the Board suggested, for the Collector's consideration, the advance by Government of a sufficient sum to induce the Noozeed zemindar to cancel his claim but this plan was found unadvisable and they then submitted the case to Government. The family was "confessedly in a state of insolvency" the arrears due to Government amounted to Rupees 2,45,000 and the debt to the Noogeed zemindar and other private liabilities raised the total debts in round numbers to 8 lacs of Rupees. They recommended, as the only means of saving the family, the transfer above noted to the Noozeed zemindar in final liquidation of his claims and the remission of the entire arrear due to Government, the rest of the estate being made over to the zemindar, and arrangement effected with his other creditors through the Collector.

To Government 22nd October 1840, No. 397.

16. The Government considered that the only safe and legal method of effecting the relief of the family was to bring the estate to formal sale, as any other arrangement might at any time be disputed by the private creditors and set aside by the Courts. The matter was then referred to the Home Government by whom it was decided that the whole estate should be sold and purchased by Government after which the portion which the Noozeed zemindar was willing to receive in satisfaction of his demand was to be made over to him with its rateable proportion of assessment. The rest of the estate was to be again granted to memorialist by a fresh Sunned, the peshcush being fixed at a sum "*not greater than can be discharged from the proceeds without again leading the zemindar into embarrassments*," and satisfactory arrangements being made for the adjustment of the other liabilities.

Extract Minutes Consultation 6th December 1842, R. D., No. 1445.

17. The estate was accordingly put up to sale on the 5th April 1843 for a gross outstanding of Rupees 10,17,279, and on the 7th idem knocked down to Government for Rupees 8 lacs.

Government arrear Rs. 5,22,587.
Noozeed debt Rs. 4,94,691.

Extract Minutes Consultation 23rd May 1843, R. D., No. 544.

18. The Noozeed zemindar was then placed in possession of the 3 properties already mentioned, and pending the preparation of accounts for the determination of his share of the peshcush was allowed to pay a provisional peshcush of Rupees 68,000 per annum.

Extract Minutes Consultation 24th August 1843 R. D. No. 920.

19. The memorialist's other liabilities were found to amount to Rupees 1,34,512 and were compromised by transfers of villages, in two instances for 10 and 6 years respectively, in a third for life and in a fourth in perpetuity.

From Collector, 18th November 1843.
To Government, 4th January 1843.
Extract Mins. Cons., 16th February 1844, R. D., 1844.

20. These arrangements were effected in August 1844 but owing to the estate having suffered from violent floods, the zemindar voluntarily left it in the Collector's hands until July 1845. When he took possession paying a provisional peshcush of Rupees 1,35,829 exclusive of Rupees 6,170 on certain of the villages transferred.

From Collector, 7th August 1844.
In Consultation, 15th do "
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Proceedings of the Madras Government, Revenue Department, from 5th to 21st October 1859.

21. The sub-division accounts were not completed until 1849, and were prepared on different hypothetical calculations as well as on the actual collections. The accounts submitted by the then Collector are most voluminous and intricate, in fact almost unintelligible, the demand and even the "collections" being variously stated in different accounts. The Commissioner however adopted the actual collections of 10 years as the basis and on this distributed the original peshcush on Nedadavole Proper and the portions to be transferred to Noozeed, &c. The collections of Neddavole were thus taken as Rupees 1,50,403 and its peshcush fixed at Rupees 1,37,646, meanwhile however the zemindar had fallen into repeated difficulties in regard to his Kist.

From Collector, 30th May 1849.
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22. In Fusly 1254, A. D. 1844-5, the peshcush fell into arrear to the extent of Rupees 23,058 which sum in the course of the following year rose to Rupees 39,317. The Baharzully Purganah was accordingly attached in 1840 but again released shortly afterwards, on memorialist engaging to pay 10,000 Rupees immediately and the remainder with his Kists for Fusly 1257, A. D. 1847-8.

From Collector, 21st September 1846.
In Consultation, 29th October 1846.

23. At the close of the last year, Rupees 8,491 remained unpaid besides a *current* arrear of Rupees 20,664. For this Bahurzully was attached a second time (12th August 1848) but the latter sum was quickly paid and the attachment removed, the demand for the other item, which consisted entirely of interest, being suspended, and its eventual abandonment left contingent on memorialist's future regularity.

24. In Fusly 1259 a current arrear of Rupees 68,280 again accrued, the *entire* estate was attached and an establishment entertained for the management of Bahurzully and Amberpettah. Memorialist however again made arrangements, which induced an expectation that his debt would be materially reduced, without delay and his estate was once more released, with the exception of Bahurzully. In the following month (August 1850) the arrear was reduced from Rupees 76,882 to Rupees 19,594 which memorialist requested permission to pay in two annual instalments. The Collector supported this application on the ground that the estate had suffered much from inundations and the storm of 16th November 1849.

From Collector, 27th May 1850.
In Consultation, 30th May 1850.

From Collector 13th July 1850.

25. Memorialist was at this time entitled to compensation (Rupees 8,706) for moturpha collections withdrawn from him, and as this set off reduced his debt to about 12,000 the Commissioner was of opinion that he could have no difficulty in paying this small balance and ordered the sale of Bahurzully in the event of non-payment. In this view Government also concurred, considering that memorialist had "no particular claim on their forbearance."

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26. In June 1851 the estates of Nedadavole and Bahurzully were formally advertised for sale for an arrear of Rupees 60,514, principal and interest the *latter property only* having been previously attached. The sale actually came off on the 7th August when both properties were purchased on behalf of Government for Rupees 10,000.

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27. Memorialist immediately disputed the fairness of the sale, alleging that the higher bid of another person had been improperly rejected. The Commissioner enquired into this and satisfied himself of the regularity of the proceedings which, he reported, memorialist had himself acknowledged, while his vakeel admitted that he had 30,000 Rupees in hand on the day of sale. These matters came before Government, who confirmed the sale in December 1851.

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28. The actual arrear for which this sale occurred, was Rupees 59,234 but subsequent collections and the sale price reduced the deficit to Rupees 33,361 exclusive of an old arrear of interest of Fusly 1254 (Rupees 8,157) which was now written off the public accounts.

From Collector to Commissioner 29th October 1851.

29. The Board will now take up the points specially noticed in Extract Minutes Consultation 7th March last.

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From Collector to Commissioner 29th October 1851.

29. The Board will now take up the points specially noticed in Extract Minutes Consultation 7th March last.

"Whether the 3 Pergunnas of Nedadavole &c. were separately assessed with Peshcush."

30. The properties of Nedadavole, Umberpetta and Bahurzully all formed one joint estate, passing under the general name of Nedadavole, and assessed with one aggregate Pescush. In the sub-division accounts of 1849 as well as in the original settlement accounts of the circuit committee the value of each portion of the entire Zemindary was separately calculated and stated, but all were formed into one estate, bearing one Peshcush, and each was of course liable for the whole demand. The same method was followed with the villages which each comprised and consequently those Purgunnahs can no more be considered separate estates, from this circumstance than each village can be deemed separate.

"Whether the Nedadavole Pergunna was sold without being attached."

31. The Baharzully Purgannah was alone under attachment at the time of the sale. Nedadavole having been previously released. Section V Regulation XXVII of 1802 merely prescribes that in the event of an arrear not being liquidated on demand or of assurance not being given to the Collector's satisfaction for its due discharge "he shall proceed without delay to attach the property of the defaulter to such extent as may be sufficient to make good the arrear." The Regulation is silent as to the *sale* of estates, and the Board think can be held merely to legalise attachment which is manifestly necessary for the security of Government. Sales of estates are effected, *not* under this enactment, but under Regulation XXVI of 1802, its immediate precursor. Section V. of this law runs as follows, "where lands may be attached for arrears of Revenue × × × it shall be competent for the Collector under the authority of the Board of Revenue to cause *the entire lands or only a portion of the lands of the defaulting proprietor to be sold.*" Had the intention been to restrict the sale to the lands actually attached it would scarcely have been said that the "entire lands × × of the defaulting proprietor" might be sold. The natural and obvious mode of expressing such an intention would have been, the entire lands so *attached*, nor is it easy to understand why such a restriction should be imposed, the interests of the proprietor are guarded by the full month's notice which he must receive (Section XI. Regulation XXVI. of 1802) before a sale can take place and the whole object of Regulation XXVII. is to give Government prompt means of realising their dues.

32. The Board have very carefully searched their records but can find no precedent bearing on the point at issue. Considering that memorialist had been repeatedly warned by the Commissioner and Collector that his estate would be sold if the arrear were not paid up, that the sale did not take place until 7 days after the date originally fixed, that memorialist's Vakeel admitted to the Commissioner that he had 30,000 Rupees in hand at the time of sale, and that the whole property formed one estate, the Board do not see that memorialist was illegally treated in this matter.

33. But they consider, independent of the question of legality, that the Collector should not have sold both estates together, the arrear, after all, was less than half a year's peshcush, and though memorialist's previous irregularity may have weakened his claim for consideration, the Collector was bound, in justice, to sell the property in the manner likely to be most advantageous to him. Bahurzully, a comparatively small estate, would have been within the means of a larger range of purchasers than the two estates jointly were, and as its value and share of the gross peshcush were already known, such a course nvolved neither difficulty nor inconvenience. Had Buharzully failed to realize sufficient to cover the arrear, the other estate might, in its turn, have been sold. The Government had no further interest in the matter than the realization of their dues, and this would not have been endangered by the separate sale of the estates. Considering the very small sum, the entire property realized, less than a tithe of its peshcush, it is to be regretted that this course was not followed, but as the arrear was really due, this does not affect the *legallity* of the procedure followed.

34. The Board think the memorialist had good ground to expect a lighter assessment of peshcush than was actually imposed on Nedadavole in 1841 and may with greater reason complain that the liberal intentions of the Honorable Court towards him were not fulfilled.

From Collector 30th March, in Cons. 19th July 1849.

35. The average collections of Nedadavole, during the 8 years, 1776 to 1783, were indeed Rupees 2,23,300, but during the 12 years, Fusly 1240 to Fusly 1251, for 8 of which it was under the Collector's management the actual collections averaged only Rupees 1,50,000.

36. The peshcush fixed was Rupees 1,37,615 which left memorialist only Rupees 12,355 for maintenance, management, &c., &c. His resources moreover were temporarily reduced by the transfer to his adoptive mother and creditors of villages liable to a peshcushof Rupees 6,170, which he also had to pay. These transfers were indeed in consideration of private claims and liabilities, with which Government had no concern, but they, protanto, reduced his means of avoiding further embarrassment. The great depreciation in the value of the property was owing to a variety of causes, among others the alienations, &c., of the former zemindar: from the deterioration there is every reason to believe it would have recovered more or less rapidly, so that the

peshcush imposed would ultimately have been reasonable enough. Considering however that it suffered severely from adverse seasons and low prices while under the Collector's management and that when the estate was restored, memorialist had in fact to commence afresh, the Board are of opinion that a temporary reduction of the peshcush was necessary to enable him to retrieve his position. The original peshcush of the circuit Committee was about ⅔rds of the assets; the same proportion would have reduced the Nedadavole share to about 1,00,000 Rupees and some such concession for a few years would probably have placed the zemindar in a secure position and enabled him ultimately to pay the full amount.

Memorialist's payments in Fusly 1260. A. D. 1849-50.

37. There still remain some minor points for elucidation. The arrear for which the estate was advertised for sale was Rupees 60,511, including interest. By the 4th August (or 3 days prior to the sale) a sum of Rupees 10,528 had been collected by the Tahsildar and Rupees 3,887 thereof remitted to the Collector, but on the day of sale the arrear (principal and interest) was still Rupees 59,231. The Tahsildar reported that a further sum of Rupees 14,000 might be collected by the end of the month and the zemindar promised to make good by the 18th of the month, the balance remaining due. The Collector placed as little reliance on the expectations of the Tahsildar as on the promises of the zemindar, and the sale, as already stated, was ultimately confirmed by the Commissioner and Government.

Collector to Commissioner 9th in Consultation 14th August 1851 No. 592.

38. The sums credited to the estate in Fusly 1260 amounted to Rupees 1,35,122, of which Rupees 91,655 were actual payments by the zemindar, the balance Rupees 43,467 were adjustments on account of Moturpha remissions, &c.

39. Simmadry Appa Row and Venkatadry Row referred to in paragraphs 4-5-21 of memorialist's enclosure A, are his full brothers and only nephews of the Noozeed Zemindar, though like the latter, grand children of Nariah Appa Row by the same mother, memorialist by Hindoo law passed out of this branch of the family by virtue of his adoption but there was nothing unjust in his contributing towards their maintenance, as Government did for several years from the general revenue.

40. The Board are not aware that there are any other material points needing explanation. The mass of correspondence and accounts which they have had to examine have prevented them from reporting at an earlier date.

Paragraph 8 of Mr. Knox's report.

41. The 10,000 Rupees for which the Nedadavole and Bahurzully Purganahs were sold was carried to the credit of Government in reduction of the outstanding arrear on the estates.

(A true Extract.)

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

No 70. ORDER THEREON, 11th October 1859, No. 1388.

The Governor in Council would wish to have the opinion of the Government Pleader on the legal question raised by the Ex-Zemindar of Nadadavole, in respect to the sale of his Estate for arrears of revenue; for which purpose, the above Proceedings of the Board of Revenue, the Collector's letter enclosed therein, and Raja Nária Appa Raó's Memorial dated 2nd February 1859, will be referred to Mr. Dale, who will be requested to submit his report on an early day.

(Signed) T. PYCROFT,
Chief Secretary.

But as the arrear was really due, this does not affect the *legality* of the procedure followed.

34. The Board think the Memorialist had good ground to expect a lighter assessment of peshcush than was actually imposed on Nedadavole in 1841, and may with greater reason complain that the liberal intentions of the Honorable Court towards him were not fulfilled.

35. The average collections of Nedadavole during the eight years, 1776 to 1783, were indeed Rupees 2,23,300. But during the twelve years, Fusly 1240 to Fusly 1251, for eight of which it was under the Collector's management, the actual collections averaged only Rupees 1,50,000.

From Collr. 30th March 1849, in Con. 19th July 1849.

36. The peshcush fixed was Rupees 1,37,615, which left Memorialist only Rupees 12,355 for maintenance, management, &c. &c. His resources, moreover, were temporarily reduced by the transfer to his adoptive mother and creditors, of villages liable to a peshcush of Rupees 6,170, which he also had to pay. These transfers were indeed in consideration of private claims and liabilities with which Government had no concern, but they, *pro tanto*, reduced his means of avoiding further embarrassment. The great depreciation in the value of the property was owing to a variety of causes, among others the alienations, &c. of the former Zemindar; from this deterioration there is every reason to believe it would have recovered more or less rapidly, so that the peshcush imposed would ultimately have been reasonable enough. Considering, however, that it suffered severely from adverse seasons and low prices while under the Collector's management, and that when the estate was restored, Memorialist had, in fact, to commence afresh, the Board are of opinion that a temporary reduction of the peshcush was necessary to enable him to retrieve his position. The original peshcush of the Circuit Committee was about two-thirds of the assets; the same proportion would have reduced the Nedadavole share to about 1,00,000 Rupees and some such concession for a few years would probably have placed the Zemindar in a secure position and enabled him ultimately to pay the full amount.

37. There still remain some minor points for elucidation. The arrear for which the estate was advertised for sale was Rupees 60,544 including interest, Memorialist's payments in Fusly 1260, A. D. 1849-50. By the 4th August, (or three days prior to the sale,) a sum of Rupees [illegible]528 had been collected by the Tahsildar and Rupees 3,887 thereof remitted to the Collector, but on the day of sale the arrears, (principal and interest,) was still Rupees 59,234. The Tahsildar reported that a further sum of Rupees 14,000 might be collected by the end of the month, and the Zemindar promised to make good, by the 18th of the month, the balance remaining due. The Collector placed as little reliance on the expectations of the Tahsildar as on the promises of the Zemindar, and the sale, as already stated, was ultimately confirmed by the Commissioner and Government.

Collr. to Comr. 9th In Dy. Con. 14th August 1851, No.592.

38. The sums credited to the estate in Fusly 1260 amounted to Rupees 1,35,122, of which Rupees 91,655 were actual payments by the Zemindar, the balance, Rupees 43,467, were adjustments on account of Moturpha remissions, &c.

39. Simmadry Appa Row and Venkatadry Row, referred to in paras. 4, 5, 21 of Memorialist's enclosure A, were his full brothers and only nephews of the Noozeed Zemindar, though, like the latter, grandchildren of Narriah Appa Row by the same mother. Memorialist by Hindoo law passed out of this branch of the family by virtue of his adoption, but there was nothing unjust in his contributing towards their maintenance, as Government did, for several years, from the general revenue.

40. The Board are not aware that there are any other material points needing explanation. The mass of correspondence and accounts which they have had to examine have prevented them from reporting at an earlier date.

41. The 10,000 Rupees for which the Nedadavole and Bahurgully pergunnahs were sold, was carried to the credit of Government in reduction of the outstanding arrear on the estates.

Para. 8 of Mr. Knox's Report.

(A true Extract.)

(Signed) J. D. SIM,
Secretary.

To

J. D. BOURDILLON, Esq., Secretary to Government, R. D.

Fles Def

No 1388.

Proceedings of the Madras Government
Under date the 11 October 1859.
Read the following
Pro: of the Board of Rev

Submitting, with
remarks, a letter from the Coll
of Masulipatam reporting on
the memorial from Raja Vária
Appa Rao of Nadadavole.

(Here enter 9 Augt 59 No 300

The Govt in Council
would wish to have the opinion
of the Govt Pleader on the legal
question raised by the ex-Zamin-
dar of Nadadavole, in respect
to the sale of his estate for ar-
rears of revenue; for which
purpose, the above proceedings
of the Board of Revenue, the
Coll's letter enclosed therein, &
Raja Vária Appa Rao's memo-
rial dated 2d Feb/59, will be

Letter from Coll of Masulipatam dated 30 Oct 1858 No 10-11
" 20 Feby 1835 — 1-2
" 17 Sept 1846 — 27-28
" 15 June 1841 — 13@13
" 25 Feby 1845 — 25-26
" 6 Dec 142 — 81-82
" 23 May 143 — 50@1
" 29 May 143 — 365
" 25 Feby 144 — 5-6
" 24 April — — 63-64
" 24 Jany 151 — — 13-14
" 22 Oct 150 — — 41-42
" 28 Sept 151 — — 13-14
" 23 Dec — — 33&36
" 8 March 1859 — 37-38

Copy of Letter to Coll
dated 10 February 1859

Petition 1859 to Govt
No 1 of Govt Sept Rev
No 1402

Proceedings of the Board
Revenue

Extract from
Proceedings &c
dated 20 Sept 1859
No 2053

Extract from the Proceedings of the Board of Revenue
Copy of Letter from the Collector of Masulipatam
Copy of Petition from Raja Vária Appa Rao of Nadadavole

No 1388 of 11 Oct

1 Chy 12 Sh

ferred to Mr. Dale, who
is be requested to submit
his report on an early day.

JP

To Thos Govr Flanders with the papers refd to [illegible]
6 Copies Boards of Revenue &c

Rev. Cons. 8th March /59 - 37
38

Revenue 1859 Dep.t

Rec.d of Govt 21st Octr /59.

Go at.o 1388.

Rec.d of the Madras Govt

D/11th Octr /59.

From Govt Pleader Dated 26th October 1859. Ca. 985 in Cut.
21st Janry '60 12 20.

1388
11 | 10 | 1859.

Government Pleader to State his opinion on the question raised by the Exc.r Zemindar of Nedadavole regarding the sale of his estate.

Copy in a letter to C. d/10th Febuary 1860. No 8

15/Feb 16-4-15-V
24-1-19

No 69 & 70.