Revenue Department

N°196

Date 12—2—1859

No. 47. Read the following Extract from the Proceedings of the Board of Revenue, dated 5th February 1859, No. 437.

Read letter from the Acting Collector of Salem, dated 20th December 1858, No. 206.

(In Con. 28th December 1858, No. 5816.)

With the above letter the Acting Collector submits the pleadings in O. S. No. 15 of 1858, on the file of the Subordinate Court of Salem, and requests authority to defend the Suit at the public expense.

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6. As Government have expressed the opinion that Regulation XXVI. of 1802, is applicable to Ryotwary as well as to Zemindary lands, and the Revenue Board have held the same view, it will doubtlessly be considered objectionable to dispute the law on this point. It would also be unadvisable to do so, for if an adverse decision should be given on this particular point, difficulties might be expected to arise regarding other sales which would also be contested. The Board therefore suggest that the Collector be instructed to make amicable arrangements with the Plaintiff and the party now in possession for the restoration of the land to the former, or an equivalent in money, without litigation.

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(A true Extract.)

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Secretary to Government.

Revenue Bd. Office,
Fort St. George,
30th April, 1856.

No. 1292.

From
G. L. Forbes Esq.
Secretary to the Board of Revenue

To
The Collector of
Salem.

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Secretary.

(A true Copy)
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~~Copy to Acting Collector of Salem.~~

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5 Suppl 40-47

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4. If the Sub Court still rejects the answer you should appeal to the higher Court and acquaint the Board with the result.

Revenue Bd. Office,
Fort St. George,
30th April, 1850.

I have &c
(Signed) G. L. Yates
Secretary.

(A true Copy)
I. A. Line
Secretary

Copied

Enclosure in an Extract
from the Proceedings
of the Board of Revenue
to the Secretary to Govt.
R. D. dated 5th February 1859
No. 437.

Copy
To The Collector of
Salem
dated 20th April 1858

No. 437.

Extract from the Proceedings of the Board of Revenue, dated 5th February 1859.

Read letter from the Acting Collector of Salem, dated 20th December 1858, No. 206.

(In Con. 28th December 1858, No. 5816.)

With the above letter the Acting Collector submits the pleadings in O. S. No. 15 of 1858, on the file of the Subordinate Court of Salem, and requests authority to defend the Suit at the public expense.

1003, Pro. to Govt. 26th April 1855.
1159, E. M. C. 2d in Con. 3d May 1855, R. D. No. 529.
1231, Pro. to Govt. 21st May 1855.
1452, E. M. C. 2d in Con. 7th June 1855, R. D. No. 664.
1359, From Collr. Salem, 22d in Con. 30th April 1856.
1292, To do. 30th April 1856.

2. This case has already been fully discussed in the correspondence noted in the margin, but may be briefly recapitulated as follows.

3. The Plaintiff cultivated a certain piece of land in the village of Cholypoliamputty and became a defaulter. For the arrears thus due by him the Collector attached and sold another spot of land in the same village which the defaulter inherited from his father, its registered Proprietor and Puttadar. The land was however mortgaged at the time of its sale and the mortgagee instituted a Suit for its recovery, but subsequently withdrew it. The Plaintiff therefore now comes forward on his own behalf and sues for the recovery of the land sold.

4. The question which is involved in the case is, therefore, firstly, whether a Collector is empowered to sell for arrears of Revenue, land belonging to the same party other than that on which the Government demand accrued, and secondly, whether the sale was conducted in a legal manner.

5. The Draft Answer formerly prepared by the Board and amended by Government, contained the necessary arguments in support of the defence on the first point. But on the 2d point the Board regret to find that a serious flaw has now been brought forward. The present Plaint alleges that the sale was illegal, because a month had not elapsed from its Notification being published in the District under Section 11, Regulation 26 of 1802. To this objection the Acting Collector can only plead in answer, that according to the custom of the District, it was sufficient that a month should have elapsed from the advertisement of the sale being published in the Board's Office.

Vide E. M. C. 2d in Con. 7th June 1855, R. D., No. 664.

6. As Government have expressed the opinion that Regulation XXVI of 1802, is applicable to Ryotwary as well as to Zemindary lands, and the Revenue Board have held the same view, it will doubtlessly be considered objectionable to dispute the law on this point. It would also be unadvisable to do so, for if an adverse decision should be given on this particular point, difficulties might be expected to arise regarding other sales which would also be contested. The Board therefore suggest that the Collector be instructed to make amicable arrangements with the Plaintiff and the party now in possession for the restoration of the land to the former, or an equivalent in money, without litigation.

See para. 6 of Draft Answer enclosed in E. M. C. 2d in Con. 5th June 1855, No. 664, R. D.

7. The Board are led to consider that the responsibility of making terms with the Plaintiff should not be thrown on the Collector, because except in this particular point, his proceedings in selling the land for the arrear of revenue have been approved—and the mode in which it has been usual to sell land in the Salem District, was founded on an opinion, sanctioned by the Sudder Udalut, that Regulation XXVI of 1802 did not apply to Ryotwary lands. In the opinion of Government and the Board that decision was superseded by Regulation III of 1830 Sec. 4—but still there is some room for a doubt whether that Regulation, judging by its preamble, was not also intended to apply only to Zemindary lands.

C. O. 16th August 1827.
Letter of Mr. Brett, 6th in Con. 11th May 1854, p. 7.

8. In conclusion the Board will only observe that the new Act for the sale of Ryotwary lands for arrears of revenue establishes beyond future dispute the main principle for which it was thought of importance to defend this Suit—viz. the responsibility of any part of a defaulter's estate for an arrear due to Government. It also enacts that the provisions of Regulation XXVI of 1802 are to be followed in the sale of Ryotwary lands as respects the length of Notification and time of sale.

(A true Extract.)

Secretary.

To

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

~~Copy to Acting Collector of Salem.~~

Dft Com. & Essay 55 Nos 1-2
5 Suppl 40-47

Revenue 859 of 1857
Dft to Coms 15 of 1857.

Extract from the Proceedings of the Board of Revenue

dated 5th February 1859.
Rec'd 7th February 1859.
9 Enclo.

No 437

Submitting with the Boards observations, a letter from the acting Collector of Salem forwarding the pleadings in O.S. No 15 of 1858 on the file of the Subordinate Court at that Station, and suggesting for reasons stated that he be instructed to settle the matter by an amicable arrangement with the Plaintiff.

No 196. 12th February 1859
We approve

No 47 & 48.

10th Feby 1859

196

No 196.

It

We concur in the view taken by the Board of Revenue of this case, and they authorize the issue of instructions to the Collector of Salem to make amicable arrangements with the Plff and the mortgagee who is now in possession, whereby the former shall be placed in the same position with regard to the land, as he occupied previously to the sale which now seems not to have been illegal.

Fort St. George
12 February 1859.

3 Copies to the Bd of Revenue Dated 14th with 8 Enclos