Revenue Department

N° 322

Dated 14 — 2 — 1859

No. 61. Read the following Extract from the Proceedings of the Board of Revenue, dated 11th March 1859, No. 842.

Read the following letter from the Collector of North Arcot, dated 16th February 1859, No. 38.

(In Con. 18th February 1859, No. 657.)

With the above letter the Collector submits the Pleadings in a Suit in which he has been made a Defendant.

2. The Plaintiff sues in the first instance for the recovery of Rupees 12,062-9-5, alleged to have been expended by his father whilst Trustee of the Bilvanadaswara Swamy Pagoda, for the repair of the Institution and on account of gold and silver ornaments, or secondly to be placed in management of the Pagoda in order that he may reimburse himself.

3. On the death of Plaintiff's father, another party who had been elected by the village community, was, with the sanction of the Board, appointed as his successor. The Plaintiff's claim to the Trusteeship is therefore, in the Board's opinion, untenable.

4. As regards the claim for the recovery of money alleged to have been expended, it will rest with the Court to decide how far it is tenable. The Collector proposes, it will be seen, to resist the demand on the ground that the late Trustee was bound to administer the trust in such a manner as not to anticipate its revenues.

5. The Board submit a Revised Answer which, without repudiating the nomination of Plaintiff's father, sufficiently meets the case, while it leaves the present Trustee to plead fully against those claims which affect the institution itself.

6. The Board request that the Collector may be authorized to file it, and conduct the defence in the first instance at the public cost.

(A true Extract.)

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

REVISED ANSWER.

To this Suit, the Collector makes reply as follows:—

I. When the Pagodas of North Arcot were made over to Trustees in 1842, the selection of successor on the occurrence of vacancies was expressly reserved to the village communities interested.

II. One Veerasawmyer, and not Plaintiff's father, was appointed Trustee in 1842.

III. Plaintiff's father Soobramiah was nominated by the Collector on February 2d, 1854, and could not legally have exercised any of the powers of a Trustee prior to that date.

IV. In consequence of incapacity Plaintiff's father Soobramiah was removed, and one Veerasawmy Moodelly was appointed Trustee by the Board of Revenue acting under Regulation VII. of 1817, and in accordance with the votes of the majority of the village community as prescribed in 1842.

V. Consequently Plaintiff has no valid claim to the Trusteeship either in his own right or as son of Soobramiah, or in virtue of election by the village community.

VI. The Collector leaves the Court to determine on the answer of the third Defendant, the present Trustee, whether the expenses sued for were bona fide incurred by the Plaintiff's father while Trustee, and were necessary for the benefit of the Pagoda, and are such as Plaintiff is entitled to recover from the Institution.

VII. The Court will observe that certain items aggregating Rupees 11,001-6-9 are stated to have been incurred prior to Plaintiff's father's appointment as Trustee, when he had no legal right to act as such.

VIII. The Collector prays that the Suit as against him may be dismissed with costs.

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

Fort Saint George, Revenue Consultation of 15th March 1859.

No. 62. ORDER THEREON, No. 322; dated 14th March 1859.

The Right Honorable the Governor in Council grants authority for the defence in the first instance at the public expense of the suit instituted in the Civil Court of Chittoor against the Collector of North Arcot, but will determine when a copy of the decree is furnished whether the costs, if any be adjudged against the Collector, shall be borne by that officer or by the Government.

2. The Government observe a slight inaccuracy in para. 4 of the revised draft answer which they request the Board will correct. Soobramiah is there stated to have been removed from the Trusteeship of the Temple in consequence of incapacity; but it appears from the Collector's letter, (para. 9,) that he was not actually removed, having died in office, before the receipt of the order of the Board which apparently sanctioned his removal.

(Signed) J. D. BOURDILLON,
Secretary to Government.

IN CON. 18TH FEBRUARY 1859. No. 657.

From C. WHITTINGHAM, Esq., Collector of NORTH ARCOT,
dated Chittoor, 16th February 1859, No. 38.

1. I have the honor with reference to Clause II Section II Regulation I of 1823, and Circular Order Board of Revenue dated 19th April 1827, to submit for the consideration of the Board the draft of a proposed answer in a suit brought against me as Collector, which suit I request I may be permitted to defend at the public expense. The Plaintiff is the son of the late Trustee of the Bilvanadaswara Swamy Pagoda, in the Trivalum Talook of this District, and the suit is brought for the recovery of certain sums alleged to have been expended by the plaintiff in Jewels and Ornament for the Pagoda.

2. When Government in their letter to the Board of Revenue dated 12th June 1841 No. 793, communicated the orders of the Honorable Court of Directors, and the Government of India for "the immediate withdrawal from all interference with Native Temples and places of religious resort," the Board in Extract from their Proceedings dated 24th January 1841 No. 70, directed the Collectors to report "the arrangement they would propose for each institution in their respective Districts," and to "suggest in what manner vacancies were to be supplied in the trustees, whether arising from death or resignation."

3. With his reply of the 29th Septemper 1841, Mr. Ogilvie the then Collector of North Arcot submitted a Statement A detailing among other particulars the parties selected for the management in each case, but, as the Board observe in para. 3 of their letter to the Acting Principal Collector dated 23rd May 1842, containing no provision for supplying lapses that might occur hereafter among the individuals therein recommended to be appointed. This deficiency the Board in the same para. of their letter supply. They direct that "the institution in each case may be made over to the parties specified in Statement A as the representatives of the village community, that body retaining the power of selecting proper parties to fill such vacancies as might occur hereafter."

4. The trustee proposed in Statement A for the management of the Bilvanadaswara Swamy Pagoda in Trivalum was Veerasawmyah described as a considerable landholder who was accordingly appointed.

A complaint having been brought against this Veerasawmyah by some of the Pagoda servants, to the effect, that he did not pay them their Wages, and had Embezzled the funds of the Pagoda, Mr. Bourdillon the Collector issued an order dated 2nd February 1854, dismissing Veerasawmyah from the trusteeship and appointing in his place Soobaramiah, the father of the plaintiff in the present suit. Soobaramiah was no relation of Veerasawmyah, but he is mentioned in Statement A as the surety of Veerasawmyah. Mr. Bourdillon's order is founded on the result of an enquiry instituted by him which showed that at the time when Trustees were appointed Soobaramiah was engaged in traffic, and that therefore his Gomastah Veerasawmyah was appointed trustee instead of him. Mr. Bourdillon's proceedings in this matter were not reported to the Board.

5. In 1855 a complaint having been preferred to me against Soobaramiah to the effect, that he had appropriated certain Jewels belonging to the Pagoda of which he was trustee, I referred it for enquiry to Mr. Sullivan, the Head Assistant Collector, who had charge of the Trivalum Talook.

I adverted to Circular Order Board of Revenue 14th August 1848 Page 465 Volume 1, and requested Mr. Sullivan to report to me the result of his enquiry, that I might be enabled to decide whether the interference of the Revenue authorities was called for. While this case was pending Mr. Pochin who had assumed charge of the Head Assistant's Office wrote to me a letter of which the following are extracts. "In the meanwhile I have, in communication with Mr. Sullivan, ascertained that the present Trustee (Soobaramiah) although a highly respectable man is from extreme old age and consequent mental and Physical debilty entirely incapacitated for the office with which he is entrusted, and that the present state of confusion at the Trivalum Pagoda is owing to this, and to the intrigues of his son (the plaintiff in the suit) who differs very much in character from his father, and to whom there is reason to believe a large portion of the Pagoda servants are under pecuniary obligations." "I would suggest that some proper person be appointed to take charge of the Pagoda property, and conduct the duties of Trustee as under any circumstances it would not appear that the present man's son is at all likely to give satisfaction." In reply I informed Mr. Pochin that Soobaramiah could not be dismissed from the Trusteeship without the permission of the Board, and that till their orders in the matter were received he must be permitted to retain his office.

6. Orders were therefore issued by me to ascertain the wishes of the village community regarding a successor to Soobramiah. The Tahsildar reported that the majority of the community voted in favour of Veerasawmy moodelly, who was accordingly in my letter of 14th November 1857 No. 288 recommended to the Board for the Trusteeship. In Extract of their proceedings dated 26th November 1857 No. 4211 the Board in reply expressed themselves indisposed to exercise their authority without real necessity, and remarked that it had not been stated that the Trustee had neglected or abused his trust. In my letter of the 21st January 1858 No. 14, I submitted the required information. In place however of saying in para. 3 of that letter that no charge had been "*brought*" against the Trustee, I should have said *proved*. In Extract of their Proceedings dated 9th March 1858 No. 845 the Board authorized the appointment of Veerasawmy Moodelly.

9. In the meantime on the 3rd March 1858 the Trustee Soobramiah died. He died in Office, as I had not (as above stated) acceded to Mr. Pochin's proposal to supersede him. On the 12th March of that year orders were sent to place the newly elected Trustee Veerasawmy Moodelly in charge of the Pagoda in question.

8. I am required to file an answer in this suit on or before the 31st March next.

9. A Translation and a copy of the Plaint are herewith submitted.

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Enclosure 1. Tamil copy of Plaint.

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Enclosure 2.

To the Civil Court of the Zillah of Chittoor.

The Plaint respectfully presented by Ramasashier, son of Soobramier, a merchant residing in Vellore against (1.) C. Whittingham Esq., Collector of North Arcot residing in Chittoor; (2.) Streenevasa Row, late Tahsildar of Tirvullum, residing in Tirvalum, or Palmanair; and (3.) Veerasawmy Moodelly of Aryoor in the Sholinghur Talook for the recovery of Rs. 12,062–9–5 due on Davustanum or Pagoda.

1. With reference to Minutes of Consultation of the 12th June 1841 passed on the orders of the Honorable the Court of Directors, the Government disconnected itself with the management of affairs relating to Native Pagodas and adverting to paras. 2 and 4 of the said orders, Plaintiff's father had the superintendence on his own responsibility of "Bilvanatha Swamy's Pagoda" in Tirvullum in this District, and subsequently upon the instructions of the late Collector bearing date the 4th of February 1854 he undertook the entire manag ment of the davustanum, and performed the duties connected with it regularly. He died on the 3rd March 1858.

2. Plaintiff having for some time previous to the demise of Soobramier superintended the affairs connected with the Pagoda under his directions, he (Plaintiff) was not only competent to hold the office of his father, but also, had claims to it under RegulationVII of 1817 Sections 11 and 12.

3. While Soobaramier had been alive, the 1st and 2nd Defendants contrary to the Orders and Regulation quoted in paras. 1 and 2 greatly assisted the 3rd in his illegal endeavours; and after Soobaramier's death, the 3rd Defendant took charge of the management of the Pagoda on the 24th March 1858. Strongly relying on the orders of the Court of Directors, Plaintiff's father laid out sums of money in the repair of the Pagoda, and on account of Gold and Silver Ornaments, neither the 3rd nor the 1st and 2nd Defendants have satisfied the demand for the balance of the above expenses which remains to be discharged after deducting the receipts on account of the Pagoda income. Hence is this suit instituted.

4. Plaintiff therefore prays the Court will pass a decision directing the payment by the defendants of the balance due to him which exclusive of the Interest accrued thereon amounts to Rupees 12,062–9–5, as per annexed List, or place the management of the Pagoda having an income of Rupees 2,284–1–7 in his hand that he may thereby recover the sum due on the Davustanum.

(Signed.) RAMASASHIER,

Filed in Court this 24th January 1859.

(Signed.) G. A. HARRIS,
Civil Judge.

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Account Particulars of expences incurred on account of Bilwanathaswamy's Pagoda in Tirvellum to 8th of Cartheca (21st November 1858) of the year of Calayouktee.

	Rupees.	As.	P.
For 1 Silver Rishabavaganum and 1 Adecara nundee Vagnum up to 20th Masee (1st March 1846) of Visvavasoo	3,434	8	0
„ Tharadimundapum up to 24th Chittree (6th July 1857) of the year Palavunga	1,231	8	0
„ Repairs to the Teroocolum	464	8	0
„ Calyanamuntapum up to 6th Masee (15th February 1850) Soumya	2,344	4	0
„ Caleyanum Palankeen	122	12	3
„ Car up to 14th Thyee (25th January 1853) Pareethavee	3,403	14	6
„ Gold Jadasarum to 20th Paratasee (4th October 1854) of Anunda	141	10	0
„ Silver Soorya Pribah to 12th Masee (22nd February 1856) Ratchasa	773	12	9
„ A Head gilded and set with stones in the above year 1856	80	0	0
„ Pilliaree Supparum and Palankeen	95	6	3
„ A breast ornament set with jewels up to 20th Thyee (31st January 1857) of the year Nalah	62	8	0
„ Umbrellas, fans, &c.	250	0	0
„ Arrears of Kists for the 3rd Quarter of Fusly 1267	940	12	4
Total Rupees	13,345	12	9
Deduct from the above.			
Pooja Mitchum receipts from fusly 1252 to 1261	1,004	15	4
From Moonesawmy Naidoo on account of the Sooreapribah	278	4	0
Total Receipts	1,283	3	4
Balance Rupees	12,062	9	5

19th January 1859.

(Signed) RAMASASHIER,

Filed in the Civil Court this 24th January 1859.

(Sined) G. A. HARRIS,
Civil Judge.

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Enc. 3.

Answer of the 1st Defendant.

When the Government disconnected itself with the management of Native Temples, the Plaintiff's father Soobramiah was *not* vested with the superintendence of the Bilvanadaswara Swamy Pagodah in Tirvalum in this District, but the management of the affairs of that Pagodah was in 1842 made over to one Veerasawmiah, with the sanction of the Board of Revenue, in whom the superintendence of endowments for the support of Hindoo temples was vested by Section II Regulation VII of 1817. Veerasawmiah retained his Office as trustee from 1842 to 1854. In that year Veerasawmiah was dismissed by the then Collector, and the father of the Plaintiff was appointed in his stead. This appointment was however illegal, and therefore invalid. It was illegal first, because the Collector did not report the dismissal of Veerasawmiah, and the nomination of the Plaintiff's father Soobramiah, to the Board of Revenue, which as local agent he was required to do by Section XI Regulation VII of 1817; and secondly because the wishes of the village community had not been consulted in filling up the vacancy in the Trusteeship caused by the dismissal of Veerasawmiah; and the Board of Revenue had on 23rd May 1842, directed that "the village community should retain the power of selecting proper parties to fill such vacancies as might occur after that date."

2. If the Plaintiff did, as he states, for some time previous to the demise of Soobramiah, superintend the affairs of the Pagodah in question, a circumstance of which the Collector the local agent had no cognizance, he did so without sufficient authority, and the Plaintiff's acts were therefore not those of a trustee, but of a private individual who acted on his own responsibility.

3. Soobramiah died as the Plaintiff states on the 3rd March 1858, and on the 12th March
same year, one Veerasawmy Moodelly was appointed as trustee of the said Pagodah. Veerasawmy
delly had been elected by the villiage community, which was the authorized method of filling up the
cy, and his nomination to the Trusteeship had been submitted for approval to the Board of Rever
the 1st defendant as required by law.

4. The 1st defendant therefore submits that he should not have been made a party to the s
acted in the matter as merely as the local Agent of the Board of Revenue, and was in the matter in qu
guided by the Regulations and their orders, to which he entirely conformed.

5. The Father of the Plaintiff was for the reasons above given never the authorized Trustee
Pagodah in question, and if he had been, he was bound to administer the trust in such a manner as
anticipate, by profuse expenditure, the revenues of the institution.

6. The appointment of the Plaintiff's father by the Collector, illegal as it was, did not take
before the 2nd February 1854, whereas in the account filed by the Plaintiff, it is alleged that a consid
portion of the expenditure was incurred from the year Visvavesoo to the year Paredavee, correspondi
from A. D. 1846 to A. D. 1853, a period during which Veerasawmiah was the legally appointed t
of the Pagodah.

7. The 1st defendant therefore requests that the Plaintiff may be nonsuited with costs.

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15 Chundra
Oct 22

Oct 4/59

Rev Dept

No 322

Extract from the Minutes of Consultation
Under date the 11th March 1859

Read the following
Ext from the Proceedings
of the Board of Revenue.

Here enter 11 March /59 No 843

The Right Hon-
-orable the Governor in
Council grants authe-
-rity for the defence in
the first instance at the
public expense of the suit
instituted in the Civil
Court of Chittoor against
the Collector of North Arcot,
but will determine when
a copy of the decree is
furnished whether the
costs, if any be adjudged
against the Collector,
shall be borne by that
officer or by the Govt.

The Govt observe
a slight inaccuracy in para 4
of

of the revised draft
answer which they
request the Board will
correct. Dobramiala is
there stated to have been
removed from the
Trusteeship of the Temple
in consequence of inca-
pacity; ~~which the Collector~~
~~states that he was suc-~~
~~ceeded by one~~ Veerasawmy
~~who probably was his~~
~~deputy~~ but it appears
from the Collector's letter,
(Encl 9) that he was not
actually removed, having
died in office, before the
receipt of the order of
the Board which apparently
sanctioned his removal.

R. S. Govt & Bd of Rev
with 2 Encls Desp. 111
Jan 2 — to do — Desp. 16.

Revenue 1859 Sept^r.
D^o to Cons 15^th March.

No. 322.

Extract Mins of Cons:
D^d 14^th March 59.

Pro. of the B^d of Rev. Dated 7^th
July 1859 & No. 1279 in Cons.

Authorizing the Coll^r
of North Arcot to conduct
the defence in the first instance
at the public cost of the Suit
instituted against him in
the Civil Court of Chittoor.
and stating that after a Copy
of the decree is furnished
it will be determined
whether the Costs shall be
borne by that Officer or by
the Government.

No 61 & 62

Spend credit in Cons^n
12^th Aug^t 1814