Revenue Department

Minutes of Consultation

31st May 1859

Book No. 19-20-21

Order No 729 dated 30th May 1859

*Proceedings of the Madras Government, Revenue Department, from 28th to 31st May 1859*

No. 19. Read the following letter from C. F. CHAMIER, Esq., Register to the Court of Sudder Udalut; to T. PYCROFT, Esq., Chief Secretary to Government; dated Madras, 28th April 1859, No. 39.

1. I am requested by the Court of Sudder Udalut to submit for the consideration of the Honorable the Governor in Council, the accompanying Minute of one of the Judges, Mr. T. L. Strange, on the evils of small holdings, and their remedy; in order that, should the suggestions contained therein be deemed of importance, the feeling of the native public and the views of the Revenue and Judicial officers may be ascertained, in the usual course, as to the advisability of modifying the effect of the Hindu Law in the manner proposed.

2. I am instructed to add that for reasons shown in the papers connected with this matter Mr. H. D. Phillips does not recognize the necessity of the Sudder Udalut bringing the subject under consideration by the Government.

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*Minute by Mr. T. L. STRANGE.*

1. The evil of small holdings as creating a pauper Agricultural population, turning those who should be laborers for others, into petty proprietors, with means and limits of land too narrow to enable them properly to fill such a position, has I know frequently attracted the notice of the revenue authorities and the Government, and it has been justly attributed in great measure to the operation of the Hindoo Law of inheritance, which recognizes relations in certain grades to be in co-parcenery, with liberty to each to enforce the division to himself of his individual share.

2. In Sections 228 and 237 of my Manual of Hindoo Law these various co-parceneries, and their right of division, are described, as hereunder.

Section 228. "The heirs of parallel grade who are in natural co-parcenery are a father and his sons, sons' sons, and sons' grandsons; brothers, and their sons, sons' sons, and sons' grandsons; male cousins of male descent; widows of the same husband; daughters; daughters' sons; and daughters' daughters inheriting in the female line."

Section 237. "The condition of co-parcenery may be broken up by partition of the joint property, each co-heir taking his appointed share. The effect of such division is to vest the divided share absolutely in each separate member and in his line after him."

The extent to which division and sub-division of the soil may be carried is therefore endless.

3. This evil has also been often present to my mind, and I think that it admits of considerable remedy without doing absolute violence to the law of the Hindoos.

4. In the case of minors the machinery of the Courts to enforce a division cannot be put into requisition save on proof of malversation on the part of the managing member, to the risk of the minor's interests; and in Malabar division can only be effected by the co-parceners themselves, amicably, of their own mutual free will, so that the Courts can under no circumstances be called on to enforce such division.

5. These matters are laid down in Sections 257 and 376 of my Manual, as follows:

Section 257. "A minor cannot sue for division unless his interests are endangered by waste, when a suit for appropriation to him of his share may be brought on his behalf by his guardian (Mit. I. 206.)"

Section 376. "Division, if to be made, cannot be effected through process of law, or at the demand of a creditor. The members of a family may however by mutual consent come to a division among themselves, and the Courts would uphold such division. In the event of an individual being wronged on such division taking place the Courts would furthermore doubtless give a remedy."

6. Accordingly in Malabar there are large united family possessions, which are rare in those parts where the current Hindoo Law prevails.

7. This evil might be remedied by the enactment of a legislative provision, restricting the operation of the Courts in enforcing divisions, save where malversation might be established.

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The parties, if they pleased, might as in Malabar effect a division among themselves, without recourse to the judicial powers, and such division would be respected and upheld; but the Courts might very properly decline to afford their aid in making the division except on proof of equitable reason for seeking it. The law would remain as it was. The machinery for carrying it out, save in the excepted cases, would simply be withheld.

8. The effect of such a rule would be, that in a large majority of instances family possessions would remain undivided. The managing member would ordinarily not give up the property to be split into Sections and taken out of his hands, knowing that the other members were without power to enforce the division. He would at the same time have a strong interest in conducting the management equitably and fairly, otherwise he would place himself in the power of his co-parceners to exact division.

9. The managing member should not be required to divide the property upon allegation made that he had failed to allot maintenance, or sufficient maintenance, to the junior members, else the protection contemplated against frequent division of property would be greatly impaired. All such demands should be treated simply on their own merits, and the needful proportion of maintenance be assigned, as is done in the case of suits brought by widows for that end.

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No. 20. *Minute by the Honorable the President.*

There can be no doubt that the minute sub-division of holdings indicates a low state of agricultural improvement; but this state of things is the result of general causes, and the remedy is to be looked for in the gradual removal of those causes, as society advances, rather than in any exceptive legislation specially directed to this particular object.

The remedial process may, however, be favored and hastened by measures calculated to promote the general improvement of agriculture and the punctual payment of the Land Revenue, such as—

1st. The reduction, equalization (due regard being had to the different qualities of the soil) and fixation of the Land Revenue; and

2d. The strict enforcement of the payment of the land tax when it has been so reduced, equalized and fixed.

The result of these and other similar measures should be, that there would be a great increase in the extent of cultivation: existing holders would enlarge their holdings, and would be encouraged to make permanent improvements and to introduce improved methods of cultivation; and wages would rise with the increased demand for labour, whereby the inducement to small holders to abandon their minute sub-divisions of land, and to become labourers working for hire under larger holders, would be constantly augmented.

All this has actually taken place in Ireland and the North West Coast and Islands of Scotland. At the time of the famine the Government was strongly pressed to remedy the evils of small holdings by direct legislation; but it stoutly refused to take that line, and the result has been that the strict enforcement of the payment of poor rates, the rise of wages, and the general improvement of agriculture, have done the work far better than any special legislation could have done; and the annual agricultural returns collected by the Irish Constabulary have shown an annually diminishing number of holdings under fifty acres, and especially of the five and ten acre classes, and a corresponding increase in those above fifty acres.

I suggest that a copy of Mr. Chamier's letter and its enclosure and of this minute be sent to the Board of Revenue for their information.

MADRAS, 17*th May* 1859. (Signed) C. E. TREVELYAN.

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No. 21. ORDER THEREON, 30th May 1859, No. 729.

Para. 1. The Government have no doubt that the minute sub-division of holdings indicates a low state of agricultural improvement; but they are of opinion that this state of things is the result of general causes, and that the remedy is to be looked for in the gradual removal

*Proceedings of the Madras Government, Revenue Department, from 28th to 31st May 1859.*

of those causes as society advances rather than in any exceptive legislation specially directed to this particular object.

2. The remedial process may, however, they think, be favored and hastened by measures calculated to promote the general improvement of agriculture and the punctual payment of the Land Revenue, such as—

1st. The reduction, equalization (due regard being had to the different qualities of the soil) and fixation of the Land Revenue; and

2d. The strict enforcement of the payment of the land tax when it has been so reduced, equalized and fixed.

3. The result of these and other similar measures would be a great increase in the extent of cultivation: existing holders would enlarge their holdings, and would be encouraged to make permanent improvements and to introduce improved methods of cultivation; wages would rise with the increased demand for labour, whereby the inducement to small holders to abandon their minute sub-divisions of land and to become labourers working for hire under larger holders would be constantly augmented.

4. All this has actually taken place in Ireland and the North West Coast and Islands of Scotland. At the time of the Famine the Home Government was strongly pressed to remedy the evils of small holdings by direct legislation; but it steadily refused to take that line, and the result has been that the strict enforcement of the payment of Poor Rates, the rise of wages, and the general improvement of agriculture, have done the work far better than any special legislation could have done. And the annual agricultural Returns collected by the Irish Constabulary have shewn an annually diminishing number of holdings under fifty acres, and especially of the five and ten acre classes, and a corresponding increase in those above fifty acres.

Ordered that a copy of these Proceedings be transmitted to the Sudr Udalut in reply to their letter of 28th April 1859; and that a copy be furnished to the Board of Revenue for their information, together with copy of that letter and its enclosure.

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

Rev. Dept.

N° 729.

Proceedings of the Madras Government
Under date the 31st May 1859.
Read the following
Papers

From the Register of the
Sudr Udalut

(Were entered 28th April 59 N° 39)

Minute by the Honble
the President

(Were entered 17th May ")

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1st. The reduction, equalization (due regard being had to the different qualities of the soil) and fixation of the Land Revenue and

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-nished to the Board of
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of that letter and its
enclosure.

3 Returns to Mr. Bd. of Revs. Dated 31st
4 " " Under Secretary's

Revenue 1859 Depart.
Cons. 31st May.

6-8-59

No 29.

Pro. of the Madras Govt.
Dft 30th May 59.

(Passing) observations
on the Minute by Mr. S. L.
Strange on the evils of small
holdings and their remedy.

No 19 at 21.

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