M.R.O. 14—10,000—21-4-22

# MADRAS RECORD OFFICE.

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## Government of Madras.

Revenue DEPARTMENT.

G.O. No. 109 Press ~~Mis.~~

12-20

Dated 21—1—1860.

**Not to be folded or roughly handled**

Further papers.

Dm 3132 B/63 — 2 Rev

12-10-63

*Proceedings of the Madras Government, Revenue Department, for the month of January 1860.*

Read again Proceedings of the Board of Revenue, dated 9th August and recorded in Proceedings dated [illegible]th October 1859, No. 1388.

Read also the following papers.

No. 12. MINUTE BY THE HONORABLE W. ELLIOT, Esq.

The memorialist claims the restitution of two pergunnahs of the Nedadavole estate sold for arrears in 1851, on grounds of certain irregularities.

These are stated in paragraph 32 of his petition marked A. and in paragraphs 10 and 17 of that marked B.

The allegations in the first have already been sufficiently answered by the Collector and admitted by Government. It is only necessary to notice those advanced in memorial B.

They are, that only one of the two pergunnahs sold was attached before the sale, and that it was not necessary to sell more than should suffice to discharge the arrear.

The cause of non-attachment is chiefly due to my orders as Commissioner.

From the time I was deputed to carry out the Court's orders regarding these zamíndári districts, I found that the greatest abuses had been perpetrated by the temporary establishments to the great detriment of the proprietors and to the discredit of Government. I therefore always discouraged attachments until the necessity became inevitable, as will be seen from one of the papers put up in this packet, (To the Collector, 30th May 1850, No. 178) and I could cite many more.

It appears to have been owing to this circumstance that only one pergunnah was attached for the arrears of 1261 fasli, for I considered that the sale of Baharzalli only would be required. But the Collector thought otherwise, and requested that Nedadavole might be advertised also and it was included accordingly.

The attachment is issued to secure the interests of Government alone, by preventing the proprietor from making away with the available assets. I considered, therefore, and I am of the same opinion now, that it was discretionary with the local officers to attach or not before the sale as, they saw to be advisable.

The only form affecting the proprietor was the advertisement and that was quite formal and regular.

The objection, therefore, is a mere technical one. The advertisement provides that the sale should take place on the 31st July, but it did not come off till the 7th August, out of the consideration to the zamíndár. This too is a technical flaw and might be pleaded just as fairly.

I think it would have been better if Mr. Porter had sold the two pergunnahs separately. But he was not bound to do so, and he acted in the exercise of his own discretion in selling the whole. This point was fully discussed in my letter to the Chief Secretary in this packet, with reference to the Dévarakóta estate, 9th September 1850, paragraph 10, and on that occasion I was directed to advertize the whole estate for a small balance of 20,000 Rupees.

The memorialist complains of the strictness with which the sale was conducted, and both the Board and Collector state it was not usual at that time to enforce the terms of the sale. In this they are wrong.

When the Court of Directors desired that a member of the Board of Revenue should be sent on deputation to the Northern Circars in 1848, it was for the express purpose of putting a stop to the enormous losses of revenue, which had been sustained under the permanent settlement, by non-observance of the conditions.

My first step, therefore, was to give warning to all proprietors that such laxity would not be allowed in future, and every year the defaulters were specially warned that the law would be strictly enforced. But this was not done all at once. The string was drawn tighter every year—first no steps were taken till after the close of the year. At length the advertisements were published five weeks before the close of the fasli, to allow of the sale taking place on the last day of the year.

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This regularity is the most merciful course to defaulters as well as the most just to the State, and it was only not carried out more peremptorily from the lax habits of the revenue officers contracted during a long series of years. But it was always strictly enjoined, and generally observed whilst I was Commissioner.

I should add that the Board are also in error in supposing the Nedadavole pergunnah to be over assessed. The examintion of the sub-division accounts cost me much time and trouble. In taking the collections of ten years as the basis of my calculations, I considered they gave a fair view of the relative proportions of the peshkush on the three divisions, but by no means a fair view of their actual proceeds. On the contrary, it was clearly proved that the servants under the attachment collected from 50 to 75 per cent. more than the acknowledged collections.

20*th August* 1859. (Signed) W. ELLIOT.

No. 13. MINUTE BY THE HONORABLE W. A. MOREHEAD.

The question we have to deal with is a very simple one. The memorialist alleges that his estate has been illegally sold, purchased and taken possession of by the Government. He applies to Government to obtain redress—failing to succeed, doubtless he will sue Government by civil action.

The Collector, the Board of Revenue and Mr. Elliot, one and all, admit that the irregularity alleged by the memorialist did take place; but they contend that the omission to *attach* previous to sale, the lands sold can in no way affect the legality of the sale—as the interests of the proprietor had been fully protected by the regular issue of the advertisement required by Section XI Regulation XXVI of 1802.

In this view of the case I cannot concur. No sale for arrears of revenue can be carried out by a Collector save under the orders of the Revenue Board. In this instance the Commissioner was vested with the said powers—Section LVII. Regulation 1 of 1803 provides—that " the Board " of Revenue shall direct Collectors of districts, where a permanent settlement of the land revenue " may have been concluded, to *attach* the lands of proprietors who may have fallen into arrears; " and shall require Collectors to dispose of the whole, or a part of such lands, as the case may be, " for the recovery of such arrear, in the mode and manner prescribed in the regulations"—until, therefore, the lands have been *attached*, the Revenue Board cannot deal with them. Regulation III of 1830, Section IV Clause 1 vesting the Revenue Board with the power of ordering such sales before the end of the fusly also runs thus " the period at which the sale of any lands *attached* for arrears of revenue shall take place"—the same section further provides for the issue of the advertisement referred to by the Revenue Board and Mr. Elliot, thus as it appears to me plainly indicating that the observance of both proceedings are essential to a legal sale of land for arrears of revenue—Section V. Regulation XXVII of 1802 likewise points out that the first step to be taken by a Collector when demands preferred fail to obtain payment is " to *attach* the property of the defaulter"—to contend, therefore, that without previous attachment property can be sold, seems to me altogether wrong, and to be position that it will be hopeless to expect to make good, should we force the memorialist into a civil court for redress.

The papers I think should be referred to the Government Vakeel, with a request that his opinion may be submitted to us with as little delay as possible.

*25th September.* (Signed) W. A. MOREHEAD.

No. 14. MINUTE BY THE HONORABLE THE PRESIDENT.

The papers should, as suggested by Mr. Morehead, be referred to the Government Vakeel for his opinion on the legal question, after which I will record my view of the case.

*2d October* 1859. (Signed) C. E. TREVELYAN.

No. 15. From CLEMENT DALE, Esq., Government Pleader, Sadr Adálat; to THOMAS PYCROFT, Esq., Chief Secretary to Government, dated Madras, 26th October 1859, No. 132.

*Proceedings of Government 11th October* 1859, *No.* 1388, *Revenue Department.*

I have the honor to acknowledge the receipt of the Proceedings of Government under the date and number noted in the margin.

2. The question raised by the ex-zamíndár of Nadadavole and submitted to me, is contained in the 14th paragraph of his memorial to The Right Honorable the Secretary of State for India, in the following terms; " That the Nadadavole portion not having been subjected to the " process of attachment, the sale of that portion at all events becomes vitiated, by the want of " the above preliminary; and secondly, that Nedadavole having been sold conjointly with " Baharzalli, the sale of both portions becomes invalid, notwithstanding that the course of law " was followed in respect of the Baharzalli portion."

3. The regulation which governs the sale of property, of the description of that in question, is regulation 26 of 1802; and I am clearly of opinion, that agreeably to the proper construction of that regulation, lands ought to be attached for the arrears of revenue due upon it, previously to a sale of such land being effected. Moreover, such would appear to have been the intention of Government when passing that regulation, by reference to other regulations passed simultaneously with it; and to have been carried out in subsequent enactments; see Regulation 1 of 1803, Section 57, also Regulation 3 of 1830.

4. I am, therefore, of opinion that the sale of the Nadadavole portion of the estate *was illegal.*

5. I am also of opinion that the purchase of Baharzalli connot be upheld; because that property having been purchased with Nadadavole in one lot, and for one price, it is not possible for Government to apportion that price between the two portions.

6. I am not informed, of the nature of the release mentioned in the 14th paragraph of Mr. Knox's letter of the 29th March 1859, and an not, therefore, in a position to say, whether the ex-zamíndár has by that instrument estopped himself from now questioning the legality or propriety of the sale.

7. I return the papers which accompanied the proceedings noted above.

No. 16. MINUTE BY THE HONORABLE THE PRESIDENT.

I have repeatedly and anxiously considered the memorial to the Secretary of State for India, from the ex-proprietor of the Nedidavole Zamíndárí in the Masulipatám district, objecting to the sale of his property on the score of several informalities and irregularities in the proceedings.

2. This memorial is an appeal from the decision of this Government. If, therefore, on a review of the case, we are of opinion that our position is untenable, we are bound to re-instate the zamíndár in his rights without subjecting him to the delay and expense of an appeal to England.

3. It has been conclusively shewn in Mr. Morehead's Minute, confirmed by the answer made to the reference to the Government Pleader, that the sale was illegal, inasmuch as the estate had only been in part previously attached. This alone is a sufficient reason for reversing the former decision. If the zamíndár applied to a court of justice, we should be unable to defend the course which has been taken.

4. It has, however, been argued that the attachment is only intended to secure the interests of the Government by preventing the proprietor from making away with the available assets; and that the objection is, therefore, merely a technical one.

5. I do not take this view. The primary object of the attachment may have been to secure the interests of the Government; but when this process had once been incorporated by law among the conditions of sale, the stability of property required that it should have been duly acted upon. How little respect was actually paid to the legal conditions of sale, will be seen

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*29th March* 1859.

from the following extracts from the Collector's report. "The Bahurzhully Purganah being a part of the estate was, therefore, attached on the 27th June 1851 for an arrear of Rupees 60,544 inclusive of interest. On the same day an advertisement was drawn up, and forwarded for the approval of the Commissioner. *In this, in addition to the Bahurzhully Purganah then attached, the Purganah of Nedidavole was advertised for sale for the arrears"* * * * * * "It being supposed that the proceeds of the sale of the Bahurzhully Purganah would be insufficient to meet the arrears, the Nedidavole Purganah was also advertised for sale."

6. Two other circumstances connected with the sale, although not absolutely illegal, were clearly inconsistent with that equitable (an English judge would say *anxious* and *tender*) consideration for the rights of property which our fellow subjects should be taught to expect at our hands.

*Extract Minutes of Consultation, 3rd May* 1855, *No.* 530, *paragraphs* 13 *and* 14.

*Letter from the Collector of Masulipatám, 29th March* 1859.

7. The sale was closed with unusual precipitation. It was the practice then, though very properly forbidden since, to keep such sales open for several days; but this sale was closed on the first day, the bid of the Government being the highest. The other bidders may fairly have expected that they would have further opportunity of bidding the next day; and the proprietor that he would have further time for payment or compromise. The Collector's letter shews that the Agent of the proprietor was ready with a considerable sum in part liquidation of the Government demand, which, relying upon the usual latitude, he did not pay in on the first day. After that, in consequence of the unexpectedly early termination of the sale, the money was not received from him.

8. The other circumstance will best be described in the words of the Board of Revenue. "They" (the Board) "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. Bahurzhully, 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 involved neither difficulty nor inconvenience. Had Bahurzhully 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 legality of the procedure followed."

9. I am, therefore, of opinion that both law and equity require that the sale should be cancelled, the estates restored, and the mesne profits accounted for to the zamíndár.

I entirely agree with Mr. Elliot that "regularity is the most merciful course to defaulters as well as the most just to the State." Neither the public dues nor the private property concerned can be secure unless it be fully understood before hand that every legal provision will be strictly acted upon; and I should advocate the absolute sale of the estate upon the appointed day, in the event of any future default by the zamíndár, as strenuously as I now do the restoration of the estate in consequence of the non-fulfilment of other conditions on the part of the Government. The sale of permanently settled estates is a matter in which respect for the law is specially necessary for the interests of society.

10. The "release" alluded to by Mr. Dale in the penultimate paragraph of his letter was merely a formal receipt, and was certainly not intended to imply an abandonment of his claim.

*Madras, 10th November* 1859.

(Signed) C. E. TREVELYAN.

No. 17.

## MINUTE BY HIS EXCELLENCY SIR P. GRANT.

I agree with the President that the sale should be cancelled and the estate restored.

(Signed) PAT. GRANT.

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No. 18.

## MINUTE BR THE HONORABLE W. ELLIOT, Esq.

I have given my best attention to the Minute of the Honorable the President in this case, and have only to add that if the opinion of the Government Pleader is correct, the proper course is undoubtedly to restore the Nedidavól Purgunah to the proprietor. There appears to be no flaw in the legality of the sale of the Bahurzully Purgunah, which will, therefore, continue to be settled directly with the raiats.

I am unable, however, to concur in the opinion that the attachment of estates is intended for any other purpose than the preservation of the public interests. Mr. Morehead, I observe asks in a marginal note, "How can this be, seeing we are only dealing with the land?" To which I reply that the means possessed by a desperate proprietor, who feels that his hold on the estate is irrevocably gone, of anticipating the revenue by means of his influence over the raiats, are very great, and examples are not wanting of the success with which the plan has been tried even when attachments have issued.

In the case of the Nedidavól Purgunah, I had no such fear because I never expected the estate would have come to sale. I knew the zámíndár had means. I knew his object was only to gain time, and I did not believe he would even allow the Bahurzhully division to be brought to the hammer.

My only object at present, however, is to remove the impression which appears to be entertained that the zamíndár was treated with undue harshness and severity.

The President has remarked that two other circumstances connected with the sale are inconsistent with the equitable, not to say anxious and tender consideration for the rights of property, which our fellow subjects should be taught to expect at our hands.

These are the close of the sale in one day and the putting up ofboth portions of the estate together.

With regard to the first, I allow that the prolongation of the sale from day to day, had been the practice, but this irregularity was checked from the year 1849, in consequence of the instructions of the Home Government. In their despatch of the 3rd January of that year, on the condition of the Northern Circars, and directing the selection of an officer for their special administration, it was observed as follows: paragraph 34; "In your future arrangements connected with these districts we would impress on you the expediencyof a stricter application of the sale law for the recovery of arrears of revenue. The leniency which has hitherto been practised in this respect has subjected the Government to great losses without, as we believe, any real benefit to the zamíndárs, &c." One of my first measures, therefore, on being appointed Commissioner was to call the attention of the Collectors to this point, and instructions were first issued for the purpose in the month of September of that year. These were repeated and more stringently enforced in 1850 and each succeeding year, general orders having been statedly issued in the month of May before the close of each succeeding fasli year, reviewing the condition of the balances with reference to this very point, in addition to special instructions for each particular case, and this for the express purpose of checking the laxity which had theretofore prevailed and of gradually but steadily enforcing the strict observance of the provisions of the sale law.

It is, therefore, an error to suppose that the practice referred to as having previously existed and as now properly forbidden, had not been restricted in 1852, as the records of the Commissioner's office will abundantly show.

With regard to the other point I will only observe, that the leniency and kindness of the then Collector Mr. Porter, towards the whole class of the zamíndárs is well known, and that he was the last man to carry out any measure requiring a resort to legal process with severity or harshness. It was owing in a great degree to this leniency and kindness of disposition, that his district was allowed to fall into disorder.

In the case of the Nedadívole estate so far from proceeding with undue haste, he, contrary to the letter of his instructions, and in opposition to my known wishes for the strict observance of the conditions of the advertisement, actually deferred the auction for upwards of a month, in compliance with the representations of the proprietor for time to raise funds, and as he explained to me when I saw him shortly afterwards, only then proceeded, because he found the man was trifling with him, so desirous was he to give him every chance.

Again, as regards the putting up of both Purgunahs at once, this has been the general practice in the Sarkars whenever very extensive estates were brought to sale. It is well known that there are no capitalists in the country with sufficient command of funds to meet the price of that class of estates, comprehended under the description of first class zamíndáris. Collectors, from the time of my assuming charge of the northern districts, were instructed with the sanction of Government, to bid up to the full value of the property exposed, instead of limiting themselves, as had previously been the case, to the amount of the arrear due. There was no one, therefore, in a condition to compete for the possession of the estates and the sale was a mere form. The Collector's letter describing this particular sale, shows how completely this was the case in that instance, and that there was no real intention to purchase in any quarter.

Under these circumstances, it was the practice to close the sale as a mere matter of form, as soon as possible. I will cite a single example. The six estates of the Vásareddi zamíndári were put up at once and knocked down to the Collector for Rupees 100. The Baharzalli and Nedadavole estates are extremely valuable, and the Collector had been authorized, if necessary, to bid them up to their full value, which could not have fallen short of 2½ to three lakhs of Rupees, a sum altogether beyond the means of any person in that part of the country to produce.

In justice to the local officers, I must protest against the force of these arguments as grounds for reversing the sale. If they are allowed to be valid in this case, they may be urged with effect in others. Let the restoration of the Nedadavole purganah be allowed to stand on the simple technical ground of the omission of a necessary form, the only one which can be urged with strict regard to truth. And I trust the proprietor in whose good fortune I cordially rejoice, will learn from the past to manage his affairs more prudently for the future.

*30th November* 1859.

(Signed) W. ELLIOT.

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No. 19.

## MINUTE BY THE HONORABLE W. A. MORDHEAD.

The sale must be cancelled, the estates restored, and the mesne profits accounted for to the zemindar as suggested by the President.

(Signed) W. A. MOREHEAD.

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No. 20.

## ORDER THEREON, 21st January 1860, No. 109.

1. The papers above recorded relate to a memorial from Raja Naria Appa Ráo, ex-Zamindár of Nedadavole in the district of Masulipatám, which contains various enclosures, giving a detailed history of his misfortunes, and the manner in which he has been reduced from great wealth and a high position to comparative beggary.

2. The Government gather from these and from the Board's Proceedings of the 9th August 1859 No. 3080, that the family of Appa Ráo is of ancient origin, and formerly possessed extensive estates; that memorialist's immediate predecessor, Vencata Narsimha Appa Ráo, who was also his uncle and adoptive father, had, by a course of extravagance and neglect, involved himself to such an extent that in 1825, he had to contract a loan of Rupees 3,00,000, from the Nuzeed Zamindár: that on his death in 1827, only two instalments of this debt had been paid, and that memorialist, who was then a minor, having been recognized as heir, by Government, the estates remained under the charge of the Court of Wards, till 1834, when they were made over to memorialist on his coming of age, free of arrears due to Government. Some of these years had been of unfavorable character, and one (Fasli 1242) of absolute drought and famine. Nevertheless liabilities incurred by the late Zamindár to the amount of Rupees 1,17,000 had been cleared off: the large Nuzeed debt, however, of 3,00,000, had been reduced only by Rupees 30,000, and bearing heavy interest, had largely increased.

3. In 1835, through the interposition of Sir Frederic Adam then Governor of Madras, an arrangement was made between memorialist and other members of his family, by which certain differences were made up and probable litigation averted, but at the same time the estate of memorialist was put into a more precarious state, by the principal and interest of the Nuzeed debt being blended into one capital sum, which thereafter bore interest at 12 per cent. annually, and by the Nuzeed Zamindár acquiring the power of bringing the estate to sale in

case of default. The consequence was that though the first three instalments were paid, the Nuzeed Zamindár proceeded on failure of the 4th and 5th instalments, to exercise his new powers, and the Government peshcush having also fallen into arrear, the property was again attached in 1838, and remained so until 1843.

4. During this second period of management, things got worse, owing to bad years, low prices, &c. and at last the family was "confessedly in a state of insolvency," the arrears due to Government amounting to 2,45,000, and the debts to the Nuzeed Zamindár and other private liabilities, raising the total debts in round numbers to 8 lacs of Rupees. At last the Government interfered for the relief of the family, brought the estate to auction in 1843, for a gross outstanding of more than 10 lacs of Rupees, and bought it for Rupees 8,00,000. The Nuzeed Zamindár was then placed in possession of three of the estates in final liquidation of his claims, the entire arrear due to Government was remitted, other liabilities compromised, and memorialist finally placed in possession again of the remainder of the estate, with a fresh sunnud, and a peshcush "not greater than can be discharged from the proceeds without again "leading the Zamindár into embarrassments." The Zamindár finally took possession in 1845, with a provisional peshcush of 1,35,829 Rupees; the sub-division accounts were, however, not completed till 1849, when the peshcush was settled at Rupees 1,37,646, but in the mean time the Zamindár had fallen into repeated difficulties in regard to his kist.

5. By the arrangement mentioned in the preceding paragraph memorialist became possessed, according to his own account,[*] of "the Nedadavole Zamindári. It comprized three grand divisions," viz:

[*] *Memorial of 2d February* 1859 *paragraph* 6.

| | Rupees. |
|---|---|
| 1 Nedadavole | 80,887 |
| 2 Baharzalli | 40,000 |
| 3 Ambarpetta | 16,759 |
| | 1,37,646 |

In consequence of the arrears which accrued, the purganah of Baharzalli was attached in 1840 and again in 1848. In 1849 the *whole* estate was attached, but released again in July 1850 with the exception of Baharzalli, which was ordered to be sold in the event of the non-payment of a small sum of 12,000 Rupees; the Government agreeing with the Collector, that memorialist had "no particular claim on their forbearance." However, in 1851 the estates of Nedadavole and Baharzalli were formally advertized for sale for an arrear of Rupees 60,000 odd; the latter property only having been previously attached; and the sale having come off, both properties were purchased on behalf of Government for Rupees 10,000.

6. Memorialist petitioned at various times and on different grounds to have the sale set aside, but the Government refused to accede to his request. It was not until October[†] 1858, however, that he brought forward the plea which has given rise to the correspondence noted at the head of this paper, viz. the "illegality" of the sale. Memorialist contends[‡] that of the two purganahs of Baharzalli and Nedadavole, which were sold on the same day, the first only had been attached previous to the sale; the second was not under attachment when it was sold, and for this reason the sale of the latter portion becomes vitiated by the want of that preliminary; moreover, Nedadavole having been sold conjointly with Baharzalli, the sale of *both* portions becomes invalid, notwithstanding that the course of law was followed in respect of the latter portion. He refers to a ruling[§] of the Sadr Adálat as requiring that property should only be sold *after* attachment.

[†] *Enclosure B. in memorial of 2d February* 1859.

[‡] *Paragraph* 12 *of memorial of 2d February* 1859.

[§] *S. A. C. O. dated 20th July* 1829.

7. It is quite clear from the original order[||] issued by the Collector, Mr. Porter, in 1851, as well as from the report of the present Collector, that Nedadavole was not under attachment before the day of sale. The Board of Revenue contended[¶] that memorialist was not illegally treated, though they regretted that one purganah was not put up first, and then, in case sufficient was not realized to cover the arrear, the other. They consider too that the memorialist[**] had good ground for expecting a lighter assessment than was actually imposed on Nedadavole in 1841, and that the liberal intentions of the Honorable Court towards him were not fulfilled.

[||] *Enclosures in memorial of 2d February* 1859, *D. E. F.*

[¶] *Proceedings 9th August* 1859, *No.* 3080, *paragraphs* 32 *and* 33.

[**] *Paragraph* 34.

8. By the sale referred to at the close of paragraph 5, the memorialist was left with only one purganah, that of Ambarpetta, bearing a peshcush of Rupees 16,760. It is stated that the

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memorialist's vakeel had actually 30,000 Rupees with him at the time of the sale, but would not pay it in, hoping that the Collector would give more time.

9. The Governor in Council, considering that a legal opinion should be obtained on the question raised by the memorialist, desired* the Government Pleader to submit a report on the subject. Mr. Dale has accordingly reported,† that agreeably to the proper construction of Regulation 26 of 1802 (which governs the sale of property of the description of that in question) lands ought to be attached for the arrears of revenue due, *previously* to a sale of such land; that he considers this interpretation of the intentions of Government to be right, by "reference to other regulations passed simultaneously with" the one mentioned above: and that it has been carried out in subsequent enactments.‡ He is therefore of opinion, "that the sale of the Nedadavole portion of the estate *was illegal.*"

* *Government order 11th October 1859, No.* 1388.

† *No.* 132 *dated 26th October* 1859.

‡ *Regulation I of* 1803, *Section* 57. *Regulation III of* 1830.

10. He further gives it as his opinion "that the purchase of Baharzalli cannot be upheld: "because that property having been purchased with Nedadavole in one lot, and for one price, it "is not possible for Government to apportion that price between the two portions."

11. The Governor in Council has repeatedly and anxiously considered this memorial from the ex-proprietor of the Nedadavole zamindári. It is an appeal from the decision of this Government, which is bound, if its position is untenable, to reinstate the Zamindár in his rights without subjecting him to the delay and expense of an appeal to England.

12. It has been conclusively shown that the sale of the memorialist's estates, was illegal, inasmuch as the property had only been in part previously attached. This alone is a sufficient reason for reversing the former decision. It has indeed been argued, that the attachment is only intended to secure the interests of Government by preventing the proprietor from making away with the available assets; and that the objection is, therefore, merely a technical one;—but Government do not take this view. The primary object of the attachment may have been to secure the interests of the Government, but when this process had once been incorporated by law among the conditions of sale, the stability of property required that it should have been duly acted upon.

13. There is another circumstance connected with the sale, which though not absolutely illegal, was clearly inconsistent with that equitable (an English judge would say *anxious* and *tender*) consideration for the rights of property, which the subjects of the British Government should be taught to expect at its hands: and that is, the injustice of putting up the estates in one lot instead of separately, whereby property valued at two and a half lacs of Rupees was actually sold for ten thousand Rupees.

*Vide paragraph* 7 *supra.*

14. The Honorable the Governor in Council [therefore] determines that, as law and equity both require it, the sale shall be cancelled, the estates restored, and the mesne profits accounted for to the Zamindár. The estates will be immediately made over to the Zamindár and the Board of Revenue will submit, without any avoidable delay, a statement of the receipts and charges connected with them, since their purchase by Government, including, of course, the balance for which they were sold.

15. Raja Naria Appa Ráo will be informed that Government have come to the determination to annul the sale of his estate by reason of informalities and irregularities attending it: and he will be made clearly to understand that in the event of any future default, the law will take its course. The Government consider that regularity is the most merciful course to defaulters as well as the most just to the State, and in future every legal provision will be strictly acted upon. The sale of permanently settled estates is a matter in which respect for the law is specially necessary for the interests of society.

(Signed) T. PYCROFT,
*Chief Secretary.*

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# Memorandum

In this paper the Board of Revenue reply to the order of Government of March 7th 1859 No 280 calling on them for a report on certain allegations in a Petition from the ex proprietor of Nadadavole Zamindary in Masulipatam District objecting to the sale of the property on the score of several informalities and irregularities in the Proceedings.

2 The Board first review the past history of the Estate and family:—
29. From this it appears that Government have interfered repeatedly to save the Petitioner from ruin. His embarrassments originated in the extravagance and neglect of his Uncle and immediate predecessor. The debts contracted by him continued to press on the Petitioner; and at least the

the chief claim was satisfied by the surrender of three Pargannahs, bearing a proportionate share of the Peshkash; arrears due to Government being relinquished at the same time to the amount of Rupees 2,45,000. This was in 1843; but the subdivision accounts were not completed till 1849. The Zamindar appears to have been perpetually in difficulty about his payments to Government, from his first assuming the management of the property in 1845.

Para 15 to 18

Paras 19 to 21

Para 20.

3 In Para 24 the Board come to the transactions referred to in the Memorial. Petitioner had succeeded apparently in paying up the Peshkash of Fusly 1258; but in 1259 (1849/50) an arrear of Rupees 68,280 accrued, being just half the Peshkash. The whole Estate was then attached; but ultimately, the arrear being reduced to about 12,000 Rupees it was all released except Baharzully Pargannah, which was ordered to be sold unless this amount was paid off. In June 1851 the Pargannahs of Nadadavole and Baharzully were advertised for sale, for an arrear of 60,544, principal and interest; the sale took place accordingly on the 7th August, and the Property was put up in one lot, and was bought by Government for Rupees 10,000. This transaction it appears left to the Zamindar the Pargannah of Umberpettah, bearing a Peshkash of Rupees 16,760 - See Collector's letter, Para 7.

Note.- The Peshkash on the diminished Estate was Rs. 1,37,646 - Para 21.

Para 27.

4. On the day of sale the arrear amounted to Rupees 59,234; and the Tahsildar reported that 14,000 more might be collected by the end of the month, while the Zamindar promised to pay the remainder by the 18th of the month. Neither promise was credited, and the sale took its course. It is stated that the Petitioner's Vakeel actually had 30,000 Rupees with him at the time, but did not pay it in, hoping for more indulgence

Para 32

indulgence.+

+Collr. letter Para 9.

5. It may be remarked on the sale that it was closed with unusual precipitation. It was the practice then, though very properly forbidden since, to keep such sales open for several days; but this sale was closed on the first day, the bid of the Government being then the highest. The other bidders may fairly have expected that they would have further opportunity of bidding the next day; and the proprietor that he would have further time for payment or compromise.

A

C. M. C. 3rd May 1855 – No. 530 – P. 13 & 14

6. The Collector states that at that time Estates were expected to sell for not more than one years' peishkash; but this property sold for much less than that, less than one thirteenth part. It is obvious however that this is a most fallacious method of valuation. The amount of the Peishkash bears

no

no direct proportion to the value of a property; ~~that~~ in fact the higher the former, the smaller the latter.

7 Having given this review of the history of the property, the Board reply to the specific questions asked by Government.

Para 30.

1st. The three pargannahs Nadadavole, Baharzully, and Aunbarpettah, formed the estate of Nadadavole, after the separation of other Pargannahs referred to above. They were separately assessed; but were not on that account separate Estates, more than a village is a separate Estate for the same reason.

Para 31.

2nd. The Baharzully Pargannah was alone under attachment at the time of the sale. The Board argue, however, that the sale of Nadadavole was nevertheless legal; but I cannot say their reasoning appears to me very convincing. They do not however

approve

approve or defend the course followed, though they uphold its legality. Para 33.

8. The Board express the opinion that considering the circumstances a temporary reduction of the Peshkush might have been proper, when Petitioner was put in possession of his property in 1845. But the depreciation of the property is also stated to have been due in great part to alienations by his predecessor, which did not bind Petitioner; and still more by the said predecessor's extravagance. It has been seen above that Government gave up at one time two and a half lacks of claims, besides various other indulgences; to what further extent were Govt. to go to intercept the action of the natural law that the family of an indolent and self indulgent spendthrift suffer from the effects of his folly and vice. Justice should be done Petitioner by all means; but

Para 36, &c

Ibid

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but further indulgence is a different question.

Aug 17.

I shall be glad to have the opinion of my Colleagues before I give my opinion on this case

C E Trevelyan

18 August 1859.

The Memorialist claims the restitution of two pergunnahs of the Nidadavole Estate sold for arrears in 1851 on grounds of certain irregularities.

These are stated in para 32 of his petition marked A & in para 10 & 17 of that marked B.

The allegations in the first have already been sufficiently answd by the Colr & admitted by Govt. It is only necessary to notice those advd in Meml B.

They are that only one of the two Pergunnahs sold was attached before the sale & that it was not necessary to sell more than so to suffice to discharge the arrear.

The cause of non-attachment is chiefly due to my orders as follows.

From the time I was deputed to carry out the Ct orders regarding these Zemy Districts I found that the greatest abuses had been perpetrated by the Circar Establishments to the great detriment of the proprietors & to the discredit of Govt.

of Govt. I therefore always discou-
:raged attachments until the necessity became inevitable as will be
seen fr. ~~[illegible]~~ one of the papers put
up in this packet (Cotton Colr.
20 May 1850 No 178) - & I could cite many more.

It appears to have been owing
to this circe. that only one Perg.
was attached for the arrears of
1261 F. ~~[illegible]~~ for I considered
that the sale of Bhakajale only
wd be reqd. But the Colr. ~~[illegible]~~
thought otherwise & requested that
Nedadavole might be ~~[illegible]~~ advertised
also & it was included accor-
dingly.

The attachment is given
to ~~secure~~ the interests of Govt.
alone ~~[illegible]~~ by preventing the propr.
fr. making away with the available
assets. I considered therefore &
I am of the same opinion now
that it was discretionary with
the local officers to attach or not
before the sale as they saw to
be advisable

The only form affects the
prop. was the advertisemt &
that was quite formal &
regular.

The objection therefore is a
mere technical one. The adver-
tisemt. provides that the sale
shd take place on the 31st July
but it did not come off till the
7th Augt. out of consideration to the Zemr
This too is a technical flaw &
might be pleaded just as fairly.

I think it wd have been
better if Mr Porter had sold the
two Pergs. separately. But he was
not bound to do so and he acted
in the exercise of his own discre-
tion in selling the whole. This point was fully

c 17 Augt

~~The [illegible]~~

Memo

Not desired the Zemindar

oo however this be - we are
dealing with land -

xxx
see Mr E. letter to Chief Secretary
no 504 last para - where he
states the necessity of an attach-
ment as a prelude to a
sale -

Wm

Note. There is a large
bundle of papers collected
It seems unfortunate
to circulate the current
papers, and then nothing
to the transactions of
1850 & 1851 -

was fully discussed in my
letter to the Ch. Secy. in
this packet with referce. to
the Devara collat. estate
of Sep. 1850 p. 10 & on that
occasion I was directed to
advertise the whole estate
for a small balce. of 2000 Rs.

The Memt. complains
of the strictness with wh.
the sale was conducted
& both the Bd. & Collr. state it
was not usual at that
time to enforce the terms
of the sale. In this they are wrong.

When the Ct. of Drs. desired
that a member of the Bd of Rev
shd be sent on depn. to the
N.C. in 1848 it was for the
express purpose of ~~[illegible]~~
putting a stop to the enor-
:mous losses of revenue
wh. had been sustained under
the permt. settlemt. by non
observance of the conditions

My first step therefore
was to give warning to all propr.
that such laxity wd not be allowed
in future and every year the defaul-
ters were specially warned that the
law wd be strictly enforced

Enforced. But this was not done all at once. The string was drawn tighter every year. first the steps were taken till after the close of the year At length the the advertisements were published five weeks before the close of the Fasli to allow of the sale taking place on the last day of the yr.

This regularity is the most merciful course to defaulters as well as the most just to the State and it was only not carried out more peremptorily fr. the lax habits of the Revenue Offrs contracted during a long series of years. But it was always strictly enjoined & generally observed whilst I was Collr.

WJ

I shd add that the Bd are also in error in supposing the Nelakavale Pergh. to be overassessed. The examn of the subdivn accts cost me much time & trouble. In taking the aver. of ten years as the basis of my calculations, I considered they gave a fair view of the relative proportions of the resp. collns on the 3 divns but by no means a fair view of their actual proceeds. On the contrary it was clearly proved that the servants under the attachment collected fr. 50 to 75 per cent

more than the acknowledged collections.

The question we have to deal with is a very simple one. The memorialist alleges that his estate has been illegally sold, purchased and taken possession of by the Govt. He applies to Govt to obtain redress — failing to succeed, doubtless he will sue Govt. by civil action —

The Collector, the Board of Revenue & the Elliot, one & all — admit that the irregularity alleged by the memorialist did take place — but contend that the omission to attach previous to sale the lands sold can in no way affect the legality of the sale — as the interests of the proprietor were fully protected by the regular issue of the advertisement required by sect XI Reg XXVII of 1802 — the Regulation which provides for the sale of estates for arrears of revenue &c

sect V Reg XXVII of 1802

In this view of the case I cannot concur —

No sale for arrears of revenue can be carried out by a Collector save under the orders of the Revenue Board: in this instance the Commissioner was vested with the said power. Sect. LVII Regt 1803 is the enactment under which they act, & this provides that "the Boards shall direct Collectors of districts where a permanent settlement of the land revenue may have been concluded, to attach the lands of proprietors who may have fallen into arrears; & shall require Collectors to dispose of the whole, or a part of such lands, as the case may be, for the recovery of such arrear, in the mode & manner prescribed in the Regulations" — until therefore the lands have been attached — the Revenue Board cannot deal with them — Regt III of 20 sect IV cl 1st vesting the Rev B with the power of ordering such sales before the end of the quarter; fixes "the period at which the sale of any lands attached for arrears of revenue shall take place" — the same sect further provides for the issue of the advertisements referred to by the Rev Board & Mr E — thus plainly indicating that the observance of both proceedings are essential to a legal sale of land for arrears of revenue — sect V Regt XXVII of 1802

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points out that the first step to be taken by a Collector when demands for revenue fail to obtain payment is "to attach the property of the defaulter" — to contend therefore that without distraint property can be sold seems to me altogether wrong, & a position that it will be hopeless to expect to make good, should we force the Zemindar into a Civil Court for redress —

The papers & Receipts should be referred to the Govt Vakeel with a request that his opinion may be submitted with as little delay as possible —

W Morehead

[illegible] 25

The Papers should, as suggested by Mr Morehead, be referred to the Government Vakeel for his opinion on the legal question, after which I will record my view of the case. [illegible]
2 Oct 1859.

[illegible]

[illegible]

No. 2488.

Minute by the Hon. the President

Dd 2d October 1859.

Concurs in Mr. Morehead's suggestion that the papers respecting the sale of the Nadadavól Zamindári in Masulipatam be referred to the Govt. Pleader for opinion.

Copy in a letter to E
d/ 10th February 1860 No. 8.

No. 12 at 14.

17 Aug No. 26

Revenue 1860 Department.
Pro: of Govt. 31st January

No. 2486

Minute by the Hon: W. Elliot, Esqre.

Dd 20th Aug. 1859

30

Records his views on the claim of the Ex-Zamindár for the restitution of two Parganas of the Nadadavól Estate sold for arrears.

No. 2480

Minute by the Hon. W. A. Morehead Esqre.

Dd 25th September 1859

Records his views respecting the sale of Nadadavól estate in Masulipatam and suggests that the papers be referred to the Govt. Pleader for opinion.

before [illegible]
the Govt. Minute
of reviewing the Govt
[illegible]
[illegible] with —
Oct 2/59

No. 109 - 21st Jany.

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No. 15

No. 132

From Clement Dale Esquire Government Pleader Sudr Adalut
To Thomas Pycroft Esquire Chief Secretary to Government

Madras 26th October 18

Sir

Para 1. I have the honor to acknowledge the receipt of the Proceedings of Government under the date and number noted in the margin.

Proceedings of Government 11th October 1859 No. 1388 Revenue Department

2. The question raised by the Ex-Zemindar of Nadadavole and submitted to me, is contained in the 14th Para of his Memorial to The Right Honorable The Secretary of State for India, in the following terms; "That the Nadadavole "portion not having been subjected to the process of attachment, "the sale of that portion at all events becomes vitiated, by the "want of the above preliminary, and secondly, that Nadadavole "having been sold conjointly with Baharzully, the sale of both "portions becomes invalid, notwithstanding that the course of Law "was followed in respect of the Baharzully portion."

Para 14 of his [illegible]

3. The Regulation which governs the sale of ex property, of the description of that in question, is Regulation 26 of 1802; and I am clearly of opinion, that agreeably to the proper construction of that Regulation, Lands ought to be attached for the arrears of revenue due upon it, previously to a sale of such Land being affected. Moreover such would appear to have been the intention of Government when passing that Regulation by reference to other Regulations passed simultaneously with it; and to have been carried out in subsequent Enactments. See Regulation 1 of 1803 Section 57. also Regulation 3 of 1830.

I

4 I am therefore of opinion that the Sale of the Nadadavole portion of the Estate was illegal.-

5 I am also of opinion that the purchase of Baherzully cannot be upheld; because that property having been purchased with Nadadavole in One lot, and for one price, it is not possible for Government to apportion that price between the 2 portions.

6 I am not informed, of the nature of the release mentioned in the 14th para of Mr Knox's Letter of the 29th March 1859, and am not therefore in a position to say, whether the Ex Zemindar has by that Instrument Estopped himself from now questioning the legality or propriety of the Sale.-

7 I return the papers which accompanied the Proceedings noted above.

I have the honor to be
Sir
Your Most Obedient Servant
Wm. Dale
Government Pleader S.U.

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R. Pro- 21st Octr /59 No 69-70.

Copy in a letter to C
d/10 Febry 1860 No 8.-

1860.
Rev: ~~1859~~ Depart.
Procd Govt 31st Jany 1860
No 1985
From Govt Pleader S U
To Chief Secretary to Govt
Dated 26 October 1859
Recd: 28 Do ,,

No 132
2

(With 5 Enclosures)

Acknowledging Receipt of Proceeds. of Govt 11th October 1859 No 1388.

Of opinion that agreeably to the proper Construction of Reg n 26 of 1802 lands ought to be attached for the arrears of Revenue due upon it previously to a Sale of such land being Effected &c

The sale of Nadadavole portion of the Estate was illegal

The purchase of Baherzully Cannot be upheld because the property purchased with Nadadavole in one lot & for one price &c

Returning the Papers accompanied the Proceedings noted above -

No 15

6th Jany/60 R 11th

No 109 - 21st Jany

IN CON. 4TH APRIL 1859, No. 1463.

From W. KNOX, Esq., Collector of MASULIPATAM,

dated Masulipatam, 29th March 1859, No. 43.

1. I have the honor to acknowledge the receipt of the Board's orders under date the 11th instant, No. 851, communicating Extract Minutes of Consultation of the 7th, No. 280, giving cover to a Memorial* addressed to Lord Stanley, by Rajah Nariah Apparow, and calling for report on certain allegations it contains affecting the legality of the sale of a part of the Nedadavole Estate.

2. As requested by the Board, I forward a complete list of correspondence between this office and the Board, regarding the sale of a portion of the memorialist's estate in 1851. As I think it is foreign to the present subject matter of the memorial for me to enter into details of the earlier transactions connected with this estate, I shall confine myself to matters of fact relating to the sale in 1851.

3. By the sub-division of memorialist's ancestral estate, which was confirmed by the Commissioner on 31st December 1849.

| | | |
|---|---|---|
| I. The Nedadavole Estate consisting of the minor divisions or Purganahs of Nedadavole, Bahurzhully and Umberpett was assessed with a Peishcush of…… | Rs. | 1,37,646 |
| II. The Tungullamoody Estate was assessed with do. of…… | „ | 5,591 |
| III. The Pentapaud Estate, consisting of the minor divisions of Pentapaud and Goondoogole, was assessed with a Peishcush of…… | „ | 61,545 |
| IV. The Chavandra Estate with a Peishcush of…… | „ | 5,218 |
| | | 2,10,000 |

4. The 2d, 3d and 4th Estates having been otherwise disposed of, the 1st remained the sole property of the memorialist; the Estate at this time, though composed of three parts, paid only one Peishcush, and he received but one acknowledgment from the Treasury for payments made.

Enoyetnamahs.
5th December 1850.
17th February 1851.
11th March „
28th March „
28th April „
20th May „
5th June „
16th June „
17th June „
27th June, order to attach.

5. The memorialist in June 1851, was found in arrears of several kists, and notwithstanding the usual demands were preferred and warnings given, made no arrangements to meet the public dues. The Bahurzhully Purganah being a part of this Estate was therefore attached on the 27th June 1851 for an arrear of Rupees 60,544 inclusive of interest.

6. On the same day an advertisement was drawn up, and forwarded for the approval of the Commissioner. In this, in addition to the Bahurzhully Purganah then attached, the Purganah of Nedadavole was also advertised for sale for the arrears. The proportions of Peishcush payable on these portions of the Estate having to be specified in the advertisement, they were calculated from the last sub-division account which had already met with the approval of the Commissioner. By that account, the Peishcush on the Bahurzhully Purganah was made out to be Rs. 38,224, that on Nedadavole Rs. 82,662, and that on Umberpett Rs. 16,760.

7. It being supposed that the proceeds of the sale of the Bahurzhully Purganah would be insufficient to meet the arrears, the Nedadavole Purganah was also advertised for sale; and here it may be observed that at that time few estates were considered worth more than their Peishcush value. The Peishcush on the Bahurzhully Purganah was by calculation, as shown above, only Rs. 38,224, while the arrears on the whole estate amounted to Rs. 60,544. To have added Umberpett, the Peishcush on which was only Rs. 16,760, would have still left a probable deficiency. The Collector therefore under the circumstances had no alternative, but to include in the sale the Nedadavole Purganah which was done accordingly; but I am bound to add, in answer to the 2d query, that no part or portion of this latter Purganah was attached before the sale or until the 18th August 1851.

| | Rs. | A. | P. |
|---|---|---|---|
| The balance on the day of sale was of principal. | 57,282 | 12 | 3 |
| And of interest…… | 1,951 | 13 | 0 |
| Total… | 59,234 | 9 | 3 |

8. Though the sale was first advertised for the 30th July 1851, the term was prolonged to the 7th August to allow of a clear interval of a month. On the 7th August as advertised, the Bahurzhully and Nedadavole Purganahs were put up to sale in one lot, and knocked

* Herewith returned.

down to the Collector's bid of Rupees 10,000. The bids on the occasion, and the names of the parties who made them, are given in the margin.* The sale was conducted in open Cutcherry, and every body had access to it. It was closed on the same day, which though now the rule was not then customary and was reported immediately to the Commissioner for the Northern Circars then at Masulipatam.

|  | Rs. |  | Rs. |
|---|---|---|---|
| * Bid of Government. | 2,000 | Bid of Government...... | 7,000 |
| Do. Vakeel on behalf of Rajah B. Naganah Naidoo.............. | 4,000 | Do. Vakeel on behalf of Rajah B. Naganah Naidoo............ ... | 8,000 |
| Do. Government....... | 5,000 | Do. Government......... | 10,000 |
| Do. Vakeel on behalf of Nawaub Hussum Ally Khaun............. | 6,000 |  |  |

9. On the following day the 8th August the memorialist presented a petition to the Collector, representing that he had not been idle since the receipt of the Collector's intimation of the advertisement of his estate for sale, and that he had been endeavouring to raise the money he would have to make good after deducting the value of produce on hand in the attached Purganah amounting, as reported by the Tahsildar, to Rupees 25,153, of which Rupees 10,535, had been actually collected on the 4th August, and the rest reported to be realizable by the end of that month. He added, that he had succeeded in raising a loan of Rupees 10,000, and had still jewellery on hand for a further loan, that as he was about to call upon the Commissioner and the Collector to speak about his affairs, he heard the sale was proceeding, and despatched his Vakeel at once. That before his arrival in the Collector's Office, the sale was closed, and reported to the Commissioner. He offered to pay on the spot, 8th August, Rupees 10,000, on the 10th Rupees 15,000, and what may remain on the 18th idem, and prayed that the sale may not be confirmed, and that a recommendation of his prayer may be made to the Commissioner. It would appear too, that the memorialist actually had money by him, but held back hoping that some indulgence would be shown him as hopes had been held out to the Noozeed Zemindar by the Commissioner, that his arrears would be brought to a favorable settlement.

10. The memorialist having presented a Petition of a similar tenor on the same date to the Commissioner, it was referred to the Collector for his observations. The Collector reported upon it the following day the 9th August, and with reference to an allegation in the petition, that a higher bid than the Collector's had been irregularly rejected, explained that the party making that bid had no authority to bid. As to the reported assets in the attached Purganah, the Collector added, that the Kykaloor Tahsildar did report, that up to the 4th August Rs. 10,528 had been collected, but with the exception of Rupees 3,887-3-6 was unremitted, and that an additional sum of Rupees 14,000 would probably be collected by the end of the month. The Collector however did not place much reliance either in the expectations of the Tahsildar, or on the promises made by the Zemindar to pay up by the 18th August; but the receipt of the Rupees 10,528 into the Talook Treasury was the case as stated above.

11. On the 12th August 1851, the Commissioner reviewed the explanations of the Collector, and being of opinion, that the proceedings at the sale were legal, confirmed the sale. The petition presented by the memorialist, was endorsed to the same effect, and returned to him. His further proceedings need not be recorded here.

12. There is one other point on which explanation is necessary, that is, what became of the Rupees 10,528 reported by the Kykaloor Tahsildar to have been collected up to the 4th August, and whether his anticipations in regard to the collection of the remainder of the estimated assets were realized. The Tahsildar reported at the time that Rupees 9,500 would be collected before the 20th August and a further sum of Rupees 2,000 by the end of the month. As to the remaining Rupees 3,000, he was not sure that it could be collected without difficulty. The actual collections from the Bahurzhully Purganah were as follows:

|  |  | Rs. |
|---|---|---|
| Collections remitted between the date of attachment, and the 25th July 1851, the usual date of remittances to the Hoozoor Treasury. |  | 3,887 |
| Do. | 26th July to 25th August 1851. | 11,635 |
| Do. | 26th August to 25th Sept. do. | 529 |
| Do. | 26th Sept. to 25th Oct. do. | 209 |
| Do. | 26th November to 11th July 1852. | 190 |
| Do. | in subsequent years up to 30th June 1858... | 1,073 |
|  |  | 17,523 |

The results justified the Collector's opinion as the anticipated receipts fell short by Rupees 7,477.

The money so realized was disposed of thus,

|  |  | Rs. |
|---|---|---|
| Credited to arrears of Peishcush still outstanding on the 29th August 1851... |  | 2,000 |
| Do. | on 31st January 1852 | 13,563 |
| Do. | on 11th July 1854 | 1,188 |
|  | Total... | 16,751 |

The difference being expenses of management, &c. The balance of Peishcush, &c., outstanding, after deducting the above, was struck off the accounts under the orders of Government dated 3rd March* 1855, No. 276. The sum so written off to profit and loss, was Rupees 40,531-14-11, on account of principal of Peishcush interest thereon Rupees 1,951-13-0. On this occasion a further sum of Rupees 8,157-11-11, on account of interest due to Government for former fuslies, was also written off the accounts.

Vide para 30 of his first Memorial to the H. C. D.

13. With reference to the allegations made by the memorialist as to his payments in fusly 1260, the Board will perceive from the accompanying Memo. drawn up from the treasury accounts, that the aggregate of the sums placed to the credit of the memorialist's estate in fusly 1260 amounted to Rupees 1,35,123, the portion actually paid by the memorialist was Rupees 91,655. The rest were collections from the estate while under attachment, adjustment of mohturfa remission, &c.

14. In conclusion, I have also to mention a circumstance brought to my notice while drawing up this report. It is that the purchase money of these Purganahs, viz., Rupees 10,000, has never been paid to the memorialist, by oversight it was never adjusted in the public accounts of the collectorate as is usual, and as should have been done. Nor do I find in the correspondence with the Commissioner and Government, any authority conveyed to the Collector to write off the sum in question in the accounts as a public charge; though in the release taken from the memorialist at a subsequent date 8th November 1853, the sum is alluded to as having been carried to the account of the balances of his Peishcush.

### Enc. 1.

**Abstract.**—List of correspondence with the Commissioner for the Northern Circars regarding the sale of a portion of the Nedadavole Estate in 1851.

### Enc. 2.

**Abstract.**—Statement shewing the sums credited to the Estate of Nedadavole in Fusly 1260.

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* Conveyed with Commissioner's Proceedings 12th March, No. 188.

Copy in a letter to C
of 10th February 1860 No

No. 1463.
From The Collector of
Masulipatam
To The Secretary to the
Board of Reven
Fort St Georg
Dated 29th March } 1859
Recd 4th April } 1859
In Cons. 4 " "
No. 43. 198
Encl 3. R ~~1152~~
Cons. 31st Aug /60 L [illegible]
Submitting a Repo
with reference to the
Board's orders under
date the 11th Instant
No 851 regarding the
sale of a portion
of the Nedadavole
Estate. — 1

In Bd. No. 3080 of 1859.

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List of correspondence with the Commissioner for the Northern Circars regarding the sale of a portion of the Nedadavole Estate in 1851.

To Commissioner 27th June 1851 No. 38 - Forwarding Advertisement

From Commissioner 5th July 1851 No. 293 - Fixing 7th Augt. 51 for sale.

To Commissioner 7th August 1851 - No. 50 - Reporting sale of Baharazully and Nedadavole Parganahs.

From Commissioner 8th August 1851 - No. 388 - Referring a Petition of Rajah Nariya Apparow for report.

To Commissioner - 9th August 1851 No. 53 - Reporting thereon.

From Commissioner 12th August 1851 No. 397 - Confirming the sale and endorsing the said petition -

From Commissioner 24th December 1851 - No. 603 - Communicating Extract Minutes of Consultation 20th December 1851 Confirming the sale & endorsing an appeal Petition of R Narraya appa Rao -

From Commissioner 17th June 1856 - No. 347 - Communicating Honorable Courts orders on the Memorial of R Narraya appa Rao -

Masulipatam
Collectors Cutcherry } 
29th March 1859.

Collector

Recd
M S Dasela Charar
Ag Hd Clk

## Minute by the Honorable the President

I have repeatedly and anxiously considered the Memorial to the Secretary of State for India, from the Ex-Proprietor of the Neidavole Zamindari in the Masulipatam District, objecting to the Sale of his Property on the score of several informalities and irregularities in the Proceedings.–

2 This Memorial is an appeal from the decision of this Government. If, therefore, on a review of the case, we are of opinion that our position is untenable, we are bound to reinstate the Zamindar in his rights without subjecting him to the delay and expense of an appeal to England.–

3 It has been conclusively shown in Mr. Morehead's Minute, confirmed by the answer made to the reference to the Government Pleader, that the sale was illegal, inasmuch as the Estate had only been in part previously attached. This alone is a sufficient reason for reversing the former decision. If the Zamindar

applies

applied to a Court of Justice, we should be unable to defend the course which has been taken.—

4 It has, however, been argued that the attachment is only intended to secure ~~the~~ the interests of the Government by preventing the Proprietor from making away with the available assets; and that the objection is, therefore, merely a technical one.

5 I do not take this view. The primary object of the attachment may have been to secure the interests of the Government; but when this process had once been incorporated by Law among the conditions of sale, the stability of property required that it should have been duly acted upon. How little respect was actually paid to the legal conditions of Sale, will be seen from the following Extracts from the Collector's Report. "The Bahurzhully "Purganah being a part of the Estate was, therefore, "attached on the 27th June 1851 for an arrear of "Rupees 60,544 inclusive of interest. On the same day an advertisement was drawn up, and forwarded for

29th March 1859.

"for the approval of the Commissioner. In this, "in addition to the Bahurzhully Purganah then "attached, the Purganah of Neidavole was "advertised for sale for the Arrears" × × × × × "It "being supposed that the proceeds of the sale of "the Bahurzhully Purganah would be insufficient "to meet the arrears, the Neidavole Purganah "was also advertised for sale."

Two other circumstances connected with the sale, although not absolutely illegal, were clearly inconsistent with that equitable (an English Judge would say anxious and tender) consideration for the rights of property which our fellow subjects should be taught to expect at our hands.

Extract Minutes of Consultation 3d May 1855 No. 530 Paragraphs 13. and 14.—
Letter from the Collector of Masulipatam 29th March 1859

The sale was closed with unusual precipitation. It was the practice then, though very properly forbidden since, to keep such sales open for several days; but this sale was closed on the first day, the bid of the Government being the highest. The other bidders may fairly have expected that they

they would have further opportunity of biddi the next day; and the proprietor that he would have further time for payment or Compromise. The Collector's Letter shows that the Agent of the Proprietor was ready with a considerable sum in part liquidation of the Government demand, which, relying upon the usual latitude, he did not pay in the first day. After that, in consequence of the unexpectedly early termination of the sale, the money was not received from him.

8 The other circumstance wil best be described in the words of the Board of Revenue. "They" (the Board) "cons "independent of the question of legality, "that the Collector should not have sold bo "Estates together. The arrear, after all, wa "less than half a year's peshcush, and thou "Memorialist's previous irregularity may "have weakened his claim for consideratio "the Collector was bound, in justice, to sell "property in the manner likely to be most "advantageous to him. Bahurzhully, a Compar

tively

"tively 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 involved neither "difficulty nor inconvenience. Had Bahurzhully "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 legality of the procedure followed."

I am, therefore, of opinion that both Law and Equity require that the sale should be cancelled, the estates restored, and the mesne Profits accounted for to the Zamindár.

I entirely agree with Mr. Ellio

that

that "regularity is the most merciful course "to Defaulters as well as the most just to "the State": Neither the public dues nor the private property concerned can be secure unless it be fully understood before hand that every legal provision will be strictly acted upon; and I should advocate the absolute sale of the estate upon the appointed day, in the event of any future default by the Zamindar, as strenuously as I now do the restoration of the estate in consequence of the non-fulfilment of other conditions on the part of the Government. The sale of permanently settled estates is a matter in which respect for the Law is specially necessary for the interests of society.

10 The "Release" alluded to by Mr. Dale in the penultimate Paragraph of his Letter was merely a formal Receipt and was certainly not intended to imply an abandonment of his claim.--

C. E. Trevelyan

Madras 10th November 1859.

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I agree with the President that the sale should be cancelled and the estate restored -

Grant

Copy in a letter to Ct
d/ 10th February 1860 No. 8

Revenue 1860 Departt.
Pro: of Govt. 31st January

No. 2489

## Minute by the Honble the President.

D/ 10th November 1859

Records his opinion that the sale of the Nadadavól zamindári in Masulipatam should be cancelled, the Estates restored and the Mesne Profits accounted for to the Zamindar.

No. 2490

## Minute by His Excellency the Commander in Chief

Agrees with the President that the sale of the Nadadavól Zamindari in Masulipatam should be cancelled and the Estates restored

No. 16+17.

No. 109 – 21st Janu

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No. 109

...s of the Madras Government
Under date the 21st Jany 1860.

I have given my best attention to the minute of the Honble the Prest. in this case and have only to add that if the opinion of the Govt. Pleader is correct, the proper course is undoubtedly to restore the Nadadavól Pargunnah to the proprietor. There appears to be no flaw in the legality of the sale of the Bhimarjali Pargunnah, which will therefore continue to be settled directly with the ryots.

I am unable however to concur in the opinion that the attachment of estates is intended for any other purpose than the preservation of the public interests. Mr Morehead I observe talks in

a marginal

Minute

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

Revenue 1860
Pro: of Govt 31st

a marginal note "How can this be, seeing we are only dealing with the land"? I would reply that the means possessed by a desperate proprietor, who feels that his hold on the estate is irrevocably gone, of interrupting the revenue by means of his influence over the ryots, are very great, and examples are not wanting of the success with which the plan has been tried even when attachments have passed.

In the case of the Nidadavól Parganah I had no such fear because I never expected the estate would have come to sale. I knew the Zamindár had means. I knew his object was only to gain time & I did not believe he would even allow the Bahajati division

Rev Depart 29
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No 109

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Under date the 21st Jany 1860.

45 23

division to be [illegible] to the [illegible].

My only object at present however is to ~~[illegible]~~ remove the impression which appears to be entertained that the Zamindar was treated with undue harshness & severity. The Board has remarked that two other circumstances connected with the sale were inconsistent with the equitable, not to say anxious & tender consideration for the rights of property which our fellow subjects should be taught to expect at our hands.

These are the date of the sale in one day & the putting up of both portions of the estate together.

With regard to the first, I allow that the prolongation of the sale from day to day

to be

Minute

~~42~~

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

Revenue
Pro: of Govt. 3

46

day to day, had been the practice
but this irregularity was checked from the
year 1849 in consequence of the instruc-
-tions of the Home Govt. In their despatch
of the 3rd Jany of that year on the condn
of the N Circars, & directing the ~~selection~~ of the officers for the special administration, it was observed as follows: p. 34;
"In pr future arrangemts connected with these
districts we wd impress on you the expediency
of a stricter application of the Sale law for
the recovery of arrears of revenue. The lax
-ity wh. has hitherto been ~~[illegible]~~ practised in
this respect has subjected the Govt. to B Genl
loss without, as we believe, any real bene-
fit to the Zamindars &c"! One of my first mea-
sures therefore on being appointed Commr was
to call the attention of the Colrs to this point
and instructions were first issued for the
purpose in the month of Sepr. of that year
these were repeated & more stringently enfor-
ced in 1850 & each succeeding year, ~~[illegible]~~ generally orders
having been latterly issued in the month of May ~~of~~
before
dur

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ngs of the Madras Government
Under date the 21st Jany 1860.

28

before the close of ~~the~~ each succeeding Fasli year, reviewing
the condition of the balances with reference
to this very point in addition to ~~besides~~ special instruc-
-tions for each particular case, and this for the
express purpose ~~of~~ of checking the laxity ~~[illegible]~~
wh. had theretofore prevailed and of
gradually but steadily enforcing the
strict observance of the provisions of
the Sale Law.

It is therefore an error to sup-
pose that the practice referred to as
having previously existed and as ~~[illegible]~~ now
had not been restric-
properly forbidden
-ted in 1852 as the records of the Commrs offi-
will abundantly show.

With regard to the other point I
will only observe that ~~[illegible]~~ the leniency & kind-
ness of the then Collr. Mr Porter towards
the whole class of the Zamindars is well
known, and that he was the last man

~~properly ascertained~~ [illegible]
to the

Minute

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

Revenue D
Pro: of Govt. 31

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...ngs of the Madras Government
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man to carry out any measure requiring
a most illegal process without severity or
~~harshness~~ - It was owing in a great degree to
the lenience & kindliness of the Collector
that his district was allowed to fall
into disorder.

In the case of the Neladavol estate, so far fr. proceeding with
~~undue haste~~, he, contrary to the letter
of his instructions & in opposition to my
known wishes for the strict observance
of the conditions of the advertisement, actually deferred the auction for upwards
of a month ~~again~~ in compliance with
the representations of the proprietor for
time to raise funds, and as he explained
to me when I saw

him shortly afterwards,
only then proceeded because he found the
man was trifling with him; so desirous
was he to give him every chance.

Again as regards the putting
up of both pergunnahs at once, this
has been the ~~[illegible]~~ general practice
in the Sarkars whenever very extensive estates were brought to sale. It is well known that
there are no capitalists ~~[illegible]~~
in the country with sufficient command
of funds to meet the price of that
class of estates comprehended under the description of first class Zemindaries. The Collrs., from the
time of my assuming charge of the Northern
districts were instructed with the sanction
of Govt., to accept the full value of the
property exposed, instead of limiting
themselves, as had previously been the
case, to the amount of the arrear due. There
was

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~~Saw~~ no one therefore in a condition to compete for the possession of the estates and the sale was a mere form. The Collrs letter describing this particular sale shows how completely this was the case, which includes & that there was no real intention to purchase in any quarter. ~~[illegible]~~

Under these circs. it was ~~[illegible]~~ the practice to close the sale as a merely matter of form as soon as possible. [illegible] single example. The six estates of the Vatavaddi Zemindari were put up at once & knocked down to the public for Rs 100. The Beharpali & Nedadavyal estates are extremely valuable and the Collr had been authorized if necessary to bid them up to their full value wh. wd not have fallen short of 2 1/2 to three lakhs of Rs. a sum altogether beyond the means of any person in that part of the country to produce.

In justice to the local officers I must protest agst the force ~~[illegible]~~ of these arguments as grounds for revoking the sale. If they are allowed to be valid in this case, they may be

avai

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ngs of the Madras Government
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53 27
51 26

urged with effect in others. Let the restoration of the Nedadavole ~~zemindari~~ be allowed ~~to stand~~ on the simple technical ground of the omission of a necessary form, ~~this~~ the only one wh. can be urged with strict ~~[illegible]~~ regard to truth, and I trust the proprietor whose good fortune I cordially rejoice, will learn from the past to manage his affairs ~~more~~ prudently for the future

Walter Elliot

30 Nov. 1859

~~The sale must be cancelled~~ – The
~~[illegible]~~
~~[illegible]~~ to be

Minute

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Copy in a letter to E
d/ 10th February 1860 No 8

Revenue
Pro: of Govt. 31

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52

Zemindar as supported by the
President —

Besides the reasons assigned
by Mr Dale for the restoration
~~of any share of~~
the property — there is
another — & that is, Regn. XXVIII
of 1802 Sect. 44 (declaratory part
of the sect.) "Where persons without the
"the power of distraint may sell or dis-
"pose of property attached for arrears of rent
"or revenue in any other mode than that
"prescribed by the regulations, such persons
"shall forfeit the amount for which the
"distress may be levied to the defaulter

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53 27

"and shall make good to him
"the value of the property sold or
"disposed of over and above" —
The collector was the distrainer
in this instance, and the Govt
the purchaser — as there is
to be no limit — we see that penal-
ty — but we must restore, as
we can do so, the property unless
freely sold & forfeit the amount
for which the distress was le-
vied —

W. Morehead

Minute

~~472~~

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

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ver 10 Nov /59)

Minute

42/

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

Revenue
Pro: of Govt. 31

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56/

## No. 2492.

Minute by the Hon: W. A.
Morehead Esqr.
D/ 30th November /59.

Observes that the sale of the Nadadavól Zamindári must be cancelled, the Estates restored, and the mesne profits accounted for to the Zamindár.

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

No. 18 & 19.

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Revenue 1860 Departt
Pro: of Govt. 31st January.

## No. 2491.

Minute by the Hon: W. Elliot, Esqr.
D/ 30th November 1859.

Observes that the Nadadavól Pargana may be restored to the Proprietor, but that there appears to be no flaw in the legality of the sale of the Báharjali Pargana.

No. 109. 21st Jany.    Minute

[illegible]

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## No. 109

## Proceedings of the Madras Government
Under date the 21st Jany 1860.

Read again Proceedings of the Board of Revenue dated 9 August and recorded in Proceedings dated 11 Octr. 1859 No. 1388.

Read also the following papers.

Minute by the Honble
W. Elliot Esqr
(Here enter 20 Augt. 1859)

Minute by the Honble
W. Morehead Esqr.
(Here enter 25th Septr. ” )

Minute by the Honble
the President.
(Here enter 27 Octr. ” )

From C Dale Esqr. Govt.
Pleader. replying to Govt.
order of 11 Octr. 1859 No. 1388.
regarding the Nedadavole
Estate.
(Here enter 26 Octr./59 No. 132)

Minute by the Honorable
the President.
(Here enter 10 Novr./59)

Minute

Minute by His Excellency the Commander in Chief
(Here enter 30 Nov /59

Minute by the Hon'ble W Elliot Esqre
(Here enter 30 Nov /59

Minute by the Honorable W Morehead Esqre
(Here enter 30.

The

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## No. Proceedings of the Madras Government
## Under date the

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Read the following papers.

| | |
|---|---|
| Letter from C. Dale Esqre Government Pleader, replying to Government order of 11 Oct. 1859 No 1388 regarding the Nedadavole Estate – | Here enter No. 132 dated 26 October 1859 |
| Minute by the Honorable the President | Here enter 10 Nov. 1859. |
| Minute by His Excellency the C. in C. | No date |
| Minute by the Honorable Walter Elliot Esqre | Here enter 30 Nov. 1859 |
| Minute by the Honorable W. A. Morehead Esqre | No date – 30 Nov 59 |

000

The minutes previous to Mr Dales letter should be recorded – viz – Mr Elliots dated 2 day of Sept on the Petition of a [illegible] dated 25 Sept Morehead Esqr – Here The Presidents of 2d October 59 – Here Mr Dale letter

The

[illegible] attached [illegible]

JP

1 The papers above ~~memorial~~ recorded relate ~~at the~~
to a memorial
~~head of this page~~, from
Raja Narria Appa Rao, ex-
zemindar of Nedadavole
in the District of Masuli-
patam, which contain various
enclosures ~~which~~ giving a
detailed history of his
misfortunes, and the man-
ner in which he has been
reduced from great wealth
and a high position to
comparative beggary -

2. The Government gather from
these and from the Board's
Proceedings of the 9 August
1852 No 3080 - that the
family of Appa Rao is of
ancient origin, and for-
merly possessed extensive
estates: that Memorialist's
immediate predecessor
~~who was~~ ~~his~~ Vencata Nar-
-simha Appa Rao who was
also his uncle and adop-
-tive father, had by a course
of extravagance and neglect
involved himself to such
an extent that in 1825
he had to contract a loan
of Rupees 3,00,000, from
the Nuzeed
~~a neighbouring~~ Zemindar:
that on his death in 1827
only two instalments of
this debt had been paid,
and that Memorialist, who
was then a minor, having

The [illegible] of their [illegible] before [illegible]
Collector [illegible] it is unnecessary for me to [illegible]
this [illegible] Any [illegible] I
should propose the [illegible] of P8 and Para 1 in
P13, since Mr [illegible] has shown that there was no
unusual precipitancy in closing the sale - I would
concur in the other grounds for cancelling the sale &
was absent on leave when the Board passed their proceedings
[illegible]

See on last page of [illegible]
[illegible]
[illegible]
[illegible]

W. [illegible]

been recognized as heir, by ~~the~~ Government, the estates remained under the Charge of the Court of Wards, till 1834, when they were made over to Memorialist on his coming of age, free of arrears due to Government. Some of these years had been however of unfavorable character, and one (Fusly 1242) of absolute drought & famine. Nevertheless liabilities incurred by the late Zemindar to the amount of Rs. 1,17,000 had been cleared off; ~~but~~ the large Noozeed debt however of 3,00,000 had been reduced only by Rs. 30,000 and bearing heavy interest had largely increased.

3. In 1835 through the interposition of Sir Frederic Adam then Governor of Madras, an arrangement was made between Memorialist and other members of his family, by which certain differences were made up & probable litigation averted, but at the same time the estate of Memorialist was put into ~~a~~ more precarious state, by the principal & interest of the

Noozeed debt being blende into one Capital sum w thereafter bore interest at 12 per cent annually and by the Noozeed Zemindar acquiring the power of bringing the estate to sale in case of default. The consequence was that though the first three instalments were paid, the Noozeed Zemindar procede on failure of the 4th and 5th instalments, to exercise, his new powers, and the Government peshcush having also fallen into arrear, the property was again attached in 1838 and remained so until 1843.

4. During this second period of management, things got worse, owing to bad years low prices &c: and at last the family was "confessedly in a state of insolvency" the arrears due to Government amounting to 2,45,000 and the debts to the Noozeed Zemindar and other private liabilities, raising the total debts in round numbers to 8 lacs of rupees. At last the Government interfered for the relief of the family, brought

the estate to auction ~~on~~ in 1843, for a gross outstanding of more than 10 lacs of Rupees, and bought it for Rs. 8,00,000. The Rozzeed Zemindar was then placed in possession of three of the estates in final liquidation of his claims, the entire arrear due to Government was remitted, ~~and~~ other liabilities compromised. and Memorialist finally placed in possession again of the remainder of the estate, with a fresh Sunnud, and a peshcush "not greater than can be "discharged from the "proceeds without again "leading the Zemindar "into embarrassments." The Zemindar finally took possession in 1845, with a provisional peshcush of 1,35,829 Rs: the subdivision accounts were however not completed till 1849 when the peshcush was settled at Rs. 1.37,646. but in the mean time the Zemindar had fallen into repeated difficulties in regard to his kist.

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* Memorial of 27th Octr 1859. Para 6

5. By the arrangement mentioned in the preceding para Memorialist became possessed, according to his own account* of the Nedadavole Zemindary. "It comprized three grand "divisions" viz.

1. Nedadavole … 80,887 Rs.
2. Baharzully … 40,000 "
3. Cumbarpellu .. 16.759 "

1.37,646.

In consequence of the arrears which accrued, the Purgunnah of Baharzully was attached in 1840 and again in 1848. In 1849 the whole estate was attached, but released again in July 1850 with the exception of Baharzully which was ordered to be sold in the event of the non-payment of a small sum of 12000 Rs. the Government agreeing with the Collector, that Memorialist had "no particular claim on their forbearance," However in 1851 the estates of Nedadavole & Baharzalli were formally advertized for sale for an arrear of Rs. 60,000 odd; the latter property only having been previously attached

And the sale having come off ~~on the day fixed~~ both properties were purchased on behalf of Government for Rs. 10,000.

6. Memorialist petitioned at various times and on different grounds to have the sale set aside, but the Government refused to accede to his request. It was not until October+ 1858 however that he brought forward the plea which has given rise to the correspondence noted at the head of this paper, viz. the "illegality" of the sale. Memorialist contends+ that of the two purgunnahs of Baharzalli and Nedadavole, which were sold on the same day, the first ~~had~~ only had been attached previous to the sale; and the second was not under attachment when it was sold, and for this reason the sale of the latter portion become vitiated by the want of that preliminary: moreover Nedadavole having been sold conjointly with

This is not correct
the sale did not
come off until
some time after
the day fixed &
hence the except
this fact therefore
W.E.

+ Enclosure B in Memorial of 27 Feby 1859

+ Para 12 of Memorial of 27 Feby 1859

Baharzalli, the sale of both portions becomes invalid, notwithstanding that the course of law was followed in respect of the latter portion. He refers to a +ruling of the Sudr Adalat ~~that~~ as requiring that property shd only be sold after attachment.

7. It is quite clear from the original ~~[illegible]~~ order+ issued by the Collector, Mr Porter, in 1857, as well as from the report of the present Collector, that Nedadavole was not under attachment before the day of sale. The Board+ of Revenue contended that Memorialist was not illegally treated, though they regretted that one Pergunnah was not put up first, and then, in case sufficient was not realized to cover the arrear, the other. They consider, too that the +Memorialist had good ground for expecting a lighter assessment than was actually imposed on Nedadavole in 1841, and that the

+ S.A.C.O. dated 20 July 1829.

+ Enclosures in ~~Pet~~ Memorial of 27 Feby 1859. D.E.F.

+ Pro. 9 August 1859. No. 3080. Paras 32 & 33

+ Para 34

liberal intentions of the Hon^ble^ Court towards him were not fulfilled.

8. By the sale referred to at the close of para. 5 the Memorialist was left with only one Pergunnah, that of Ambarpetta, bearing ~~with~~ a Peshcush of Rs. 16,760. It is stated that the Memorialist's vakeel had actually 30,000 Rs with him at the time of the sale, but would not pay it in, hoping that the Collector would give more time; It may also be remarked that the sale was closed with unusual precipitation. It was the custom then, tho' very properly forbidden since, to keep such sales open for several days: but this sale was closed on the first day, the bid of the Government being then the highest, and both the other bidders and the proprietor may fairly have expected that they would have further opportunity

Note
Mr. Elliot's Memo of 30 Nov shows that the custom here alluded to had been stopped before the year in which the sale occurred

E. M. C. 3^rd^ May 1855
No. 530. P. 13 & 14.

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the former of making fresh bids and the latter of obtaining more time for payment [illegible] promise.

9. The Governor in Council, considering ~~being of opinion~~ that a legal opinion should be obtained on the question raised by the ~~[illegible]~~ Memorialist,× desired the Government Pleader to submit a report on the subject. Mr Dale has accordingly reported× that agreeably to the proper construction of Regulation 26 of 1802 (which governs the sale of property of the description of that in question) lands ought to be attached for the arrears of revenue due, ~~before~~ previously to a sale of such land; that he considers this interpretation of the intentions of Government to be right, "by reference to other Regulations passed simultaneously with" the one mentioned above: and that it has been carried out in subsequent enactments.× He is therefore of opinion that the sale of the Neda-

× Gov. order. 11 Oct. 1857.
No. 1388.

× No. 132. dated 26 Oct. 1857.

× Reg. I of 1803. Sec. 57.
Reg. 3 of 1830.

"-davole portion of the "Estate was illegal"

10. He further gives it as his opinion "that the
"purchase of Baharzalli
"cannot be upheld: because
"that property having
"been purchased with
"Nedadavole in one lot,
"and for one price, it is
"not possible for Govern-
"ment to apportion that
"price between the two
"portions"

11. The Governor in Council has repeatedly and anxiously considered this Memorial from the Ex-Proprietor of the Nedadavole Zemindari. It is an appeal from the decision of this Government, which is bound, if its position is untenable, to reinstate the Zemindar in his rights without subjecting him to the delay & expense of an appeal to England.

12. It has been conclusively shown that the sale of the Memorialists estates was illegal, inasmuch as the ~~Estate~~ property had only been in part previously attached. This alone

is a sufficient reason for reversing the former decision. It has ~~however~~ indeed been argued that the attachment is only intended to secure the interest of Government by preventing the Proprietor from making away with the available assets; and that the objection is therefore merely a technical one. but Government do not take this view. The primary object of the attachment may have been to secure the interest of the Government, but when this process had once been incorporated by Law among the conditions of sale, the stability of property required that it should have been duly acted upon.

13. There ~~are two~~ is one other circumstance~~s~~ connected with the sale, which though not absolutely illegal, ~~were~~ was clearly inconsistent with that equitable (an English Judge would say anxious and tender) consideration for the rights of property, which the subjects of the British Government should be

taught to expect at the hands: ~~and these are~~ ~~and that is,~~
~~(1) the unusual precipitation with which the sale was closed and~~
~~(2)~~ The injustice of putting up the estates in one lot instead of separately; ~~it would have been the most advantageous manner for the defaulter.~~
~~The points have been noticed in previous paras.~~

~~vide Para 8.~~ Supra

vide Para 7. Do.
whereby property valued at two and a half lacs of Rupees was actually sold for ten thousand Rupees-

14. The Honorable the Governor in Council therefore determines that, as Law & Equity both require it, the sale shall be cancelled, the Estates restored, and the mesne Profits accounted for to the Zemindar. The Estates will be immediately made over to the Zemindar and the Board of Revenue will submit, without avoidable delay, a Statement of the receipts and charges connected with them ~~Estates in question~~, since their purchase by Government, including of course the balance for which they were sold.

6. Raja Naria Appa Rao will ~~understand~~ be informed that Government have come to the ~~in~~ determination to annul ~~the~~ the sale of his Estate by reason of ~~[illegible]~~ informalities and irregularities attending it: ~~[illegible]~~ and he will be made clearly to understand that in ~~[illegible]~~ the event of any future default ~~of the Zemindar~~, the Law will take its course. The Government consider that regularity is the most merciful course to defaulters as well as the most just to the state, and in future every legal provision will be strictly acted upon. The sale of permanently settled estates is a matter in which respect for the Law is specially necessary for the interests of society.

2 Copies to the Bd of Rev
Dispd

Endorsement to Rajah Narrai Appa Row.

Copy in a letter to England
Df 10th February 1860 No 8

Revenue 1860 Departt
Pro: of Govt 31st January.

No 109.

Pro: of the Madras Govt
Df 21st January /60.

Pro of the Board of Rev. 21 Nov
/60 No 3386

4 No 8

16 - 4 - 65
20 - 1 - 19

Ordering that the sale
idadavole Zamindari i
asulipatam be cancelle
the estates restored to the
mindar, and calling on
Board for a statement
ipts and charges conne
with the estates since their
purchase by Government

Copy to R. R. Appa Ro
11 Feb /60
R: 219

No 12 at 20

1 Jany /30 Pt II

M.R.O. 14—10,000—21-4-22

28.7.25 II ✓
7.11.25 II ✓
20.7.26 II ✓
19-11-26 ✓
16-2-39 II ✓
22.9.43. II

1403/R H/860

M.R.O. 14—10,000—21-4-22

# MADRAS RECORD OFFICE.

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## Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 109 ~~Press~~/Mis.

Dated 10—4— 1860.

***Not to be folded or roughly handled***

No. 17

North Canara Collr. Office
Honore 26th March 1860

From

A. M. Webster Esqr.
Ag: Head Assistant Collector of
North Canara

To

The Secretary to Government
In the Revenue Department
Fort St. George

Sir,

I have the honor to report for the information of Government, that I have this day received charge of the District from Mr. Levinge, Collector of North Canara

I have the honor to be
Sir,
Your most obedient Servt.

AMWebster
Ag. Head Assist. Collr.

Revenue 1860 Depart^t.
Pro: of Gov^t 10^th April ~~1860~~
N^o. 703.

From
The Ag. Head Assistant
Collector of
North Canara
To
The Secretary to Govt.
in the Revenue Dept.
Fort St George.

Dated 26^th March } 1860
Rec^d 4^th April }
No. 17
Enclosures none

Reports having received
charge of the District
from Mr Levinge.