M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1448 Press ~~Mis.~~

330-331

Dated 27-8-1860

Not to be folded or roughly handled

No. 330. Read the following Proceedings of the Board of Revenue, dated 3rd August 1860, No. 3,562 :—

Read letter from the Collector of Madras, dated 9th July 1860, No. 243.

(In Cons., 11th July 1860, No. 3,377.)

Read also letter from the same Officer, dated 28th July 1860, No. 286.

(In Cons., 31st July 1860, No. 3,744.)

In Cons., 12th July 1860, *No.* 3,406.

1. Resolved that the above letters be submitted to Government, with reference to their Order, dated 11th July 1860, Revenue Department, No. 1,149.

2. With the second of the above letters, Mr. Cunliffe submits the sale Advertisement and correspondence between his predecessor and the Tahsíldár regarding the sale of M. Víraswami Chetti's land, under Act XXXIX of 1858 for arrears of Revenue.

3. The Advertisement, it will be seen, is in the form prescribed in the Board's Circular Order, dated 30th April 1855, page 52, which form was approved by Government,* and is in force in every District.

* *No.* 282, *R. D.*, 6*th*, *in Cons.*, 12*th March* 1855, *No.* 630.
„ 1,367, „ 9*th*, „ 23*rd Oct.* 1858, *No.* 4,591.

4. The Tahsíldár's letters show that he warned the purchaser, P. Víraswami Chetti, at the time, that the sale might be set aside on account of the manifest combination among the Mírásdárs. The sale, as already explained by the Board, was annulled by the late Collector, under Clause 5 of the sale Advertisement.

5. The present Collector in the first letter above recorded, urges that sales for arrears should be absolute and unconditional, to the highest bidder.

6. Mr. Cunliffe's arguments in favor of this measure seem to the Board to be based on an erroneous idea of the object of sale, which is simply the recovery of arrears due to Government by the individual defaulter. The Government are bound in equity to have due regard to the defaulter's interests, and they cannot sacrifice them merely that their revenues generally may be promptly paid by others. The realization of their own dues is all that Government can legally claim and to make these sales subservient to any other object would clearly be unjust to the owner of the property sold. The want of this just consideration for the interests of defaulters was prominently noticed by Government in their Proceedings on the case of the Nedidavole Zamíndár, and the opinion then expressed by Government seems to the Board as applicable to a poor Raiyat as to a wealthy Zamíndár.

G. O. No. 109, *Revenue Department, paragraph* 13, *dated* 21*st in Cons.*, 23*rd January* 1860, *A. No.* 346.

7. The most conclusive argument against Mr. Cunliffe's proposal is, however, afforded by the present case, in which, under such a system as he advocates, the defaulter would have been the victim of a manifest combination.

8. In reply to paragraph 5 of Mr. Cunliffe's letter, the Board would remark that combination is not to be presumed solely from the fact of the full value of the property put up for sale not being realized. The onus of proof of combination rests with the complainant, and he must satisfy the Collector of the truth of his complaint.

9. As regards paragraph 6, the Board would remark that nothing would be gained by Government purchasing Raiyatwari lands for arrears. They may now sell the whole personal and real property of defaulters, and in case of fraud, &c., may resort to imprisonment. These remedies are manifestly ample, and the Board think it undesirable that Government should bid on their own account at petty Raiyatwari sales which they themselves cause. It is only as a last resource, when all reasonable efforts have been exerted unsuccessfully, that lands should be knocked down to Government.

(A true Extract.)

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

Proceedings of the Madras Government, Revenue Department, 27th August 1860.

No. 331. ORDER THEREON, 27th August 1860, No. 1,448.

1. On the 7th March 1860, one P. Víraswami Chetti submitted a Petition to Government complaining that he had purchased certain land put up to auction in the Nayer Táluq of the Madras (late Chingleput) District, but that it had not been made over to him.

Order 1st May 1860, *No.* 690.

2. In an Order dated 1st May, the Board of Revenue were called upon for a report of the case, which they accordingly submitted on the 4th July following. But as the information furnished was insufficient to enable the Government to form a judgment on the matter, the Board were requested, in Order dated 11th July, to submit certain further particulars. They now reply to this Order.

Order 11th July 1860, *No.* 1,149.

3. It appears that the land in question was put up to sale for arrears of Revenue due by the holder M. Víraswami Chetti, and that it was knocked down to P. Víraswami Chetti. This individual, however, in consequence of a combination among the Mírásdárs, was the sole bidder, and his bid was much below the proper value of the land. The defaulter was absent from the village at the time, but he subsequently appealed within one month and paid the arrears. The late Collector, Mr. Shubrick, therefore cancelled the sale under Clause 5 of the Sale Advertisement; which allowed an appeal being made within thirty days by parties deeming themselves aggrieved, and declared the sale to be conditional on the final order on such appeal.

4. The present Collector, Mr. Cunliffe, considers that sales for arrears of Revenue should be absolute and unconditional, to the highest bidder; but for reasons stated in their Proceedings above recorded, the Board dissent from this view and uphold Mr. Shubrick's decision.

5. The Government concur with the Board. Punctuality and exact adherence to the terms announced, in matters of this kind, are of first-rate importance. Such practice is necessary to the interests of the Government, of the defaulter, and of the purchaser.

6. But where a bidder collusively combines with others to let the property go cheap, he takes an unfair advantage of rules designed in part for his benefit. And under the maxim that a man must not be a gainer by his own wrong, such combination must be held to vitiate the sale, if pleaded within the allotted time, and proved.

7. Mr. Cunliffe is quite right in saying that the mere fact of property selling below its estimated value is no good ground for annulling a sale; but the fact of combination entirely alters the character of the transaction.

8. In the present instance the combination was deemed by Mr. Shubrick to be proved, and Mr. Cunliffe also allows this to have been the case. The Collector had a legal power to cancel the sale; and, in the opinion of Government, the grounds for its exercise in the present case were valid.

9. Ordered that the following Endorsement be made on the Petition from P. Víraswami Chetti and communicated to him.

"The Government have fully considered the case referred to by the Petitioner; but are unable to interfere in his behalf."

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

IN CON. 11TH JULY 1860, No. 3,377.

From B. CUNLIFFE, Esq., Collector of MADRAS,
dated Saidapet, 9th July 1860.

With reference to the Board's Proceedings of the 4th instant, No. 3,074, I beg to assure the Board that the stipulation entered in the sale advertisement was in my mind at the time of writing my letter. The Sheristadar, moreover, brought it to my notice, when I expressed my dissent from the previous proceedings.

2. I believe that there was a combination among the merassidars, as they allowed the lands to be knocked down, at so low a price; but that appeared to me a matter beyond the concern of the Revenue authorities, as the proprietor should have been present, or had his interests represented, so as to defeat such a combination.

3. I think that it is of the first importance that a sale by auction should be carried out, if there has been no informality or illegality in the proceeding, such as sale before the proper time, at a date other than specified, &c.

4. We presume in this instance, and I think fairly enough, that the bidders present agreed not to offer more than a certain sum, much below the real value; but if lands are to be sold only at their fair value, there will be such an opportunity given to postponement of sale, &c., that sales will become what they were before the stringent Orders of the Government on the subject, and that intending purchasers will be tired out by delay when the defaulter has influence enough to postpone it, and that no *bonâ fide* sale will take place.

5. I merely seek instructions for my own guidance in future. Am I to cancel a conditional sale of lands, if the price offered is below their "full and proper value," on the presumption of a combination among those present at the sale?

6. It seems to me so desirable that sales should be conducted outright, that I would ask, whether the Government could not put up the lands at a fair upset price, and purchase themselves, if no higher offer was made.

7. Perhaps the Board will do me the favor of submitting this letter to Government, in connection with the sale of the Yerumavettipolliem lands.

Exd. T. Dunn.

Ireland v Pen. 4th 1606

For ordin. Punctuality &
~~Ford~~ exactn. adherence to the
terms ascertained in
matters of this kind, are of
first and ingredience. Such
practice is necessary to the interest
& the first of the defendts,
of the purchasers.

2. That where a bill
containing matters with
others to wch the partys
are clear, he takes an unfair
advantage of such omissions

in point for his benefit - and under
the maxim that a man must not
be a gainer by his own wrong, I
think that such conduct
must be held to entitle a
party, if pleased with the
allowed sum, a formal -

3. Of course the mere fact
that the bidder went check
mated out of time to allowed
is no ground of annulling
the sale -

Yours truly,

4

I would set aside the Marshal's
sale - The publication was
defective & there should be
a short day to show cause -
The Court should appoint
power to conduct the sale - &
its discretion & direct in this
case the proceeds of the sale
Opinion today -

14

Rev. Dept.

No 1448.

Proceedings of the Madras Government
Under date the 27th Augt 1860.

Read the following
Proceedings of the Bd of Rev.

Submitting with the Bd's
remarks letters from the Collr of
Madras furnishing the informa
tion required by Government
regarding the sale of M. Veeraswami
Chetty's land under Act XXXIX
of 1858 for arrears of revenue

Memo

Recd on the 3d Augt 1860
No 3662

Order 1st Feby 1860 No 690

On the 7th March
1860, one P. Viraswami Chetti
submitted a Petition to Govt
complaining that he had
purchased certain land
put up to auction in the
Mayer taluq of the Madras
(late Chingleput) district,
but that it had not been
made over to him.

2. An Order dated 1st
Feby the Board of Revenue
were called upon for a
Report of the case, which
they accordingly submitted

on

on the 4th July following. But as the information furnished was insufficient to enable the Govt to form a judgment on the matter, the Board were requested in Order dated 11th July to submit certain further particulars. They now reply to this order.

Order 11th July 1850 No 1149

3. It appears that the land in question was put up to sale for arrears of revenue due by the holder M. Viraswami Chetti, and that it was knocked down to P. Viraswami Chetti. This individual however, from a combination among the Mirásdárs, was the sole bidder and his bid was much below the proper value of the land. The defaulter was absent from the village at the time, but he subsequently appealed within one month and paid the arrears. The late Collector Mr Shubrick therefore cancelled the sale under Clause 5 of the Sale Advertisement which Clause allowed of an appeal being made within thirty days by parties deeming themselves aggrieved, and declared the sale conditional on the final order on such appeal.

4. The present Collector Mr Cunliffe considers that sales for arrears of revenue should be absolute and unconditional, to the highest bidder; but for reasons stated in their Proceedings above recorded, the Board dissent from this view and uphold Mr Shubricks decision.

5 The Government concur with the Board. Punctuality and exact adherence to the terms announced, in matters of this Kind, are

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by his own wrong, ~~the Govt.~~
~~think that such~~ such combination
must be held to vitiate ~~a~~ the
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allotted time, and proved.-
7 Mr Cunliffe is quite right in
~~7 Of course the~~
saying that ~~the~~ mere fact of
~~mere fact that the property~~
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the combination was deemed

by

to be
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allows this to have been
the case. The Collector
had a legal power to
cancel the sale; and ~~for~~
~~its exercise by him, the~~
~~ground was~~ in the opinion
of Govt ~~the appeals for its~~ ~~valid.~~ they [illegible]
~~exercise in the present case~~
~~therefore to uphold Mr~~
~~was valid.~~
~~Shubrick's order.-~~

9. Ordered that the
following Endorsement
be made on the Petition
from P. Viraswami Chetty
and communicated to him

The Govt have
fully considered the
case referred to by the
Petitioner, but are unable
to interfere in his behalf

17 Copies
Board of Revenue Dispt 28 with 14 Encls
1 — Mr Cooper with Dispt & 4 Encls &c.-

47-48

6 · 3 · 5 · 5 ·

7-8

11 · 9 · 5 · 5 ·

28 · 29

12 · X · 58

12 · 20

21 - 1 - 60

6 · 7

10 · 5 · 60

130 · 131

July 60

268

26 · 7 · 60

Sale of certain land in Madras district for arrears of Income

Revenue 1860. Departt.

Pro: of Govt for August.

No 1148.

Pro: of the Madras Govt.

Dt 27th August 1860.

Form 15 of 24 Decr 1859 C No 3083

Lapsing order on Pt Viraswami Chetty's Petition for possession of certain land purchased at Auction in the Nayer Taluq of the Madras District. Under Rent

Let issue

No 330 & 331.