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M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1794

96-97

Press
~~Mis.~~

Dated 10 — 9 — 1861.

Not to be folded or roughly handled

No. 96. Read the following Proceedings of the Board of Revenue, dated 2nd September 1861, No. 4,758 :—

Read again letter from the Collector of Malabar, dated 3rd August 1861, No. 172.
(In Cons. 9th August 1861, No. 5,016.)

Read also the following letter from P. GRANT, Esq., Collector of Malabar, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Fort Saint George, dated Calicut, 24th August 1861, No. 156.

SIR,

1. I have received Proceedings Board of Revenue, dated 10th instant, No. 4,337, and beg to express my regret at the state in which the draft of my answer* to the plaint was permitted to go out of this Office.

* Revised copy enclosed.

The mistakes arose from the gross carelessness of my Office Writers. In the draft sent to the English Department to be copied, the acts and dates are correctly entered. Unfortunately my Head English Writer is ill, and the knowledge of English in this Province being limited, there is much difficulty experienced in procuring persons with an intelligent knowledge of the language. I ought to have scrutinized the work ere dispatching it, but having sent in the correct draft, and having much to do when the fair letter was brought for signature, I concluded that it was all right.

2. The circumstances under which the land was obtained are as follows :—

It was taken up in the year 1856, and the value of the Jenm (proprietory) right was paid on the 1st June 1858, to the Uralers or proprietors of the Temple.

Their petition claiming payment of the money was sent to the Zamorin Rájá on 21st April 1857, and his reply affirming his right to it on the grounds that he had the supervision of the Temples and lands was received on the 7th May.

Mr. Robinson disposed of the case in favor of the Uralers, and wrote to the Zamorin Rájá on 29th May of the same year, 1857, informing him of his decision.

To this letter no reply was made until the 24th September 1858, when I replied that as the case had been disposed of by a former Collector I could not interfere.

The money was paid to the Uralers on the 1st June 1858 (I assumed charge on 5th June 1858), and the Zamorin Rájá was informed of this fact on the 24th December of the same year in reply to a letter from him, dated 16th November 1858, requesting information on the subject.

3. The case you will observe was decided by Mr. Robinson on 29th May 1857, and the payment was made thirteen months afterwards on the 1st June 1858, but the Rájá preferred no claim to the money until three months subsequently on the 24th September 1858.

4. The cause of the delay in paying the money arose, I believe, from a wish on the part of Mr. Robinson, in compliance with a request of the Uralers, to give a piece of land from the Betutnad Escheat in exchange for the land taken up for Railway purposes, this he was unable to effect as the land sold was purchased by the in-tenants.

5. Act VI of 1857, was passed on the 1st May of that year, but the Gazette containing it was not received at Calicut until the 17th June or eighteen days after the disposal of the case by Mr. Robinson, so that to the present case it is inapplicable.

6. By Section 5, Act XX of 1852, the Collector is authorized to admit any claims which he considers valid. Mr. Robinson rejected the Zamorin's claim, and as nothing was again heard of the same for more than a year after the whole matter had been settled and the money had been paid for three months, there was every reason to believe that the case had been finally settled and that no further claim would be advanced.

7. In the period that elapsed from the date of original settlement by Mr. Robinson and the date of the present claim the Zamorin Rájá died, and it is by his successor that the present suit has been filed. He is not the Jenmee of the lands. Of this there is, I believe, little doubt. The

Uralers are the real Jenmees (proprietors), but the Zamorin has the supervision of the Temples and lands, and he is anxious to establish himself as having sole power over both lands and Temples, for if he once does this a wide door is opened for fraud, of which advantage may hereafter be taken to the ruin of the proprietors and tenants.

1. Ordered that the above papers be submitted to Government, with reference to their Proceedings dated 30th October 1860, No. 1,995, Revenue Department, and with the Board's recommendation that the defence of the suit be authorized at the public cost so far as the Collector is concerned.

2. The facts are simply these:—Certain Temple lands were taken up for the railway and the cost price was paid to Uralers of the Temple, over the affairs of which the Zamorin Rájá asserts a Melkoima right or right of supervision by hereditary succession, and also under the order of Government transferring the general management of the institution to him. He claims on these grounds to be entitled to receive the cost of the land; Mr. Robinson considered that the Uralers had the better right and paid the money to them, and the present suit is brought to recover the money. The Collector is included as having paid the money without sufficient warrant.

3. Mr. Grant proposes to plead that under Sections 5 and 18 Act XX of 1852, which was then in force, the Court had no jurisdiction, and that the Collector was acting judicially and is therefore not liable to be sued but is protected by Act XVIII of 1850.

4. The Board doubt the propriety of this line of defence, but as it is immaterial to Government to whom the money is paid so long as it is to the rightful party, they are of opinion that the Collector should simply plead non-liability to be sued for the acts of his predecessor, and request that his name be removed form the list of Defendants.

5. The time for putting in the defence expired on 31st August, but the Collector has been instructed to apply for an extension of time.

(True Copy and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

No. 97. ORDER THEREON, 10th September 1861, No. 1,794.

The Government sanction the defence of the suit, reported in these Proceedings to have been brought against the Collector and others by the Zamorin Rájá of Calicut, at the public expense, on the usual terms, so far as the Collector is concerned; and they approve of the line of defence proposed by the Board of Revenue.

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

No. 4,337.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 10th August 1861.

Read the following letter from the Collector of Malabar, dated 3rd August 1861, No. 172.

(In Cons. 9th August 1861, No. 5,016.)

1. The Board observe that the Collector proposes to plead that the Courts have no jurisdiction under Acts XX of 1852 and XVIII of 1860. This last Act is not in the most remote degree applicable to the case, providing as it does solely for the exercise of certain powers by the Governor General in his absence from his Council. With similar want of care, Act XX of 1857 has been quoted by the Collector as the authority under which Mr. Robinson acted, but this is evidently misquoted for Act XX of 1852. The Board are at a loss to understand to what enactment the Collector meant to refer in the former instance.

2. It is, however, to be observed that Act XX of 1852 was repealed by Act VI of 1857, which was passed on 1st May of that year, while the Plaint avers that the payment objected to was made to the Defendants 1 to 4 on 1st June 1858. It does not therefore appear how any plea based on the former enactment can stand.

3. Moreover all that Act XX of 1852 provided in the point of jurisdiction was that the Courts should not be competent to receive Suits against possession by Government under an award by arbitration or mutual assent made according to Sections 5 and 6 of the Act; but there is nothing in the Collector's letter or draft answer to show that resort was had to arbitration, or that no objection was raised rendering a resort to arbitration necessary.

4. Section 15 of Act XX of 1852, and Sections 29 and 30 of Act VI of 1857, empower the Collector to hold the amount in deposit pending the decision of the Court on any disputed right to receive it, and this seems to have been the course that ought to have been followed in this instance.

5. If, however, any award was made by mutual consent under Section 5, or by arbitration under Section 6, Act XX of 1852, and payment was made in accordance with such award, then the Collector should plead Sections 14, 17 and 18 of Act XX of 1852, and Section 28, Act VI of 1857, to justify his act and non-liability to be sued for it. His attention is also directed to Sections 6 and 7, Act VI of 1857.

6. The information before the Board is, however, too vague to allow of their recommending the defence of the Suit at the public cost, and they must therefore require the Collector to furnish a detailed statement of all that occurred. He will also apply for an extension of time for putting in the defence, and will reply to these Proceedings with the least possible delay.

(A true Extract.)

(Signed) W. HUDLESTON,
Secretary.

To P. Grant, Esq., Collector of Malabar.

Exd. J. Wright.

1861 Department.

No.

PROCEEDINGS of the BOARD of REVENUE,

Dated 10*th August* 1861.

No. 4,337.

Calling for a detailed statement and instructing the Collector to apply for an extension of time for putting in the proposed defence in the case in question.

Rev. Sec. No. 2 in the Proceedings of the Bd of Revn to the Govt of Fort St. D. dated 2 Sept. 1861 No. 4758.

Rev 2104/61

Proceedings of the Bd of Revn to the Collr of Malabar dated 10 Augt 1861 No. 4337 Regt Instr.

R 20 Nov 41 Nos 42-43
R 30 October 60 — 483-484

Rec 1861 Sept
Pro: of Govt for Sept
No 2104

Proceedings of the
Board of Revenue
Bd of Revenue 8th December
1860 Cost 4060.
Dated 2d September 1861.
Desp. 2d — do —
Rec. 3rd do

E. 3.
(Encl 5)

No 4758.

No 1794. 10. Sept

Submitting letter from Collector of Malabar respecting the claim advanced by the Zamorin Raja to the Tenth Lands taken up for Railway purposes, and recommending that the defence of the suit instituted in the matter may be authorized so far as the Collector is concerned.

By Order

No 96 & 97

7 Sept to R 10

No 1794

The Govt sanction the defence of the suit, & portion of the proceedings to have been brought against the Collector & others by the Zamorin Raja of Calicut, at the public expence, on the usual terms, so far as the Collector is concerned; and the approval of the line of defence proposed by the Bd of Revenue

Fort St George
10th Sept 1861

14 Copies
To the Bd of Revenue with the Encl
Dispd 10