M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1938A

Press
~~Mis.~~

83A-83B

Dated 10 — 18 61.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 5th October 1861.

No. 83. A. Read the following letter from JOHN MILLER, Esq., Acting Government Solicitor, Madras, to J. D. SIM, Esq., Acting Chief Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 26th August 1861, No. 656:—

SIR,

1. I have the honor to acknowledge the receipt of the Proceedings of Government noted in the margin, transmitting for my opinion and report the fair Draft of the proposed Lease to Mr. Rae of land at Sholoor on the Neilgherries for Tea planting, together with a Memorandum of objections taken by Mr. Rae to such Lease.

Dated 23rd July 1861, No. 1,470, Revenue Department.

2. This Deed was originally prepared by Mr. Boyson in accordance with the instructions conveyed in the Proceedings of Government and of the Board of Revenue noted in the margin, and it was forwarded for the perusal and approval of the Board of Revenue on the 6th of November last. On the 20th idem, the Board requested it to be modified in certain respects, and urged that it should be made as brief and simple as possible. Some alterations were then made by Mr. Boyson to meet the Board's views, and on the 12th of December last, the Deed as altered was submitted for the consideration of Government. In their Proceedings of the 4th of February last, No. 270, Revenue Department, Government suggested certain further alterations in the Deed, which were considered, and a revised Draft was submitted to the Board of Revenue on the 2nd of March last, which Draft was afterwards sent by the Board to Mr. Rae, through the Collector of Coimbatore, for perusal and approval.

Proceedings of Government, 23rd August 1860, No. 1,422, Revenue Department.
Do. 21st September 1860, No. 1,685, Revenue Department.
Proceedings of Revenue Board, 27th September 1860, No. 4,413.

3. The Proceedings of Government noted in the margin, and referred to in Mr. Rae's letter to Government of the 29th of May last, and in his Memorandum of objections, were not communicated to my Office, and I had, therefore, after the receipt of the Proceedings, dated 23rd ultimo, No. 1,470, to apply for and obtain copies of them.

Dated 19th October 1860, No. 1,911, Revenue Department.
Dated 12th April 1861, No. 819, Revenue Department.

4. Having gone carefully through the Deed, and the whole correspondence relating to this matter, I shall at once proceed to submit for the consideration of Government my views on the objections to the Lease taken by Mr. Rae, and to report upon the points raised by that gentleman.

5. And first I would remark that the Deed is prepared in strict accordance with the instructions received from Government and the Revenue Board, and that its provisions are not entirely or indeed in any way inconsistent with the liberal consideration made by Government to Mr. Rae, as shown in the Order of Government of the 12th April, No. 819. The Deed is, of course, drawn up in technical and legal phraseology, and if submitted by Mr. Rae to his legal adviser would, I feel sure, be found strictly in accordance with the practice and form of conveyancing.

6. Mr. Rae's objection to the exception in the Deed marked by him with the letter A, and under which Government are to have all timber felled prior to the date of the giving up of the land to Mr. Rae is untenable, it however rests with Government to make a new arrangement with that gentleman if they choose. The intention of Government on this point was duly communicated to Mr. Rae through the Collector of Coimbatore, and could not well have been conveyed in plainer terms than those expressed in the 3rd paragraph of the Proceedings of Government of the 4th of February last, No. 270, viz., "Regarding this last point, a point now in doubt has to be decided, viz., whether it is only the fallen timber which is reserved, or all the timber *as felled*. The former was evidently Dr. Cleghorn's intention, the latter is the Board's view. The Government approved Dr. Cleghorn's suggestion, that *fallen timber and underwood on the forest land should be removed by the Forester on account of Government before the land is made over to Mr. Rae*. This is the reservation then intended to be made, Mr. Rae will be allowed to fell all the timber or brushwood on his land which interferes with his cultivation except any trees which may be specially reserved to shade a spring, and to use on the premises all felled

and fallen timber ; but the seignorage fixed by the local rules will be payable on any which is removed for sale or other purposes ;" and the Order of the 12th of April last, No. 819, on which Mr. Rae relies in support of his objection (A) does not, as it appears to me, concede to him any right which the former Order did not give him, nor does the latter Order alter or in any way modify in this respect the terms of the former. The 3rd paragraph of the Order of 12th April is in the following words, viz., " as respects the wood on the land, the whole of it is to be at Mr. Rae's disposal so far as it may be wanted for use on the premises, and he has full liberty also to clear and destroy it, except that trees useful as shading a spring are not to be felled. If, however, wood should be sent to Ootacamund or elsewhere for sale, it will be charged one Rupee a cart load by the Conservancy Department as Government seignorage. This last Order of 12th of April does not appear to have been passed upon any communication received from, or appeal made by Mr. Rae against the terms already granted : but merely upon a letter from the Collector of Coimbatore soliciting instructions as to the disposal of a claim preferred by the Burghers to the land intended to be allotted to Mr. Rae. This Order, as I have before mentioned, was not sent to my office, and I therefore conclude it never was the intention of Government to concede to Mr. Rae anything more than they had already granted to him. The Order is, I submit, in substance the same as the Order of the 4th of February last, although not issued in the very words there used. In disposing of the question about timber in their Order of the 12th of April, Government especially referred to the former Order of the 4th of February, and in reading both the orders together, I cannot arrive at any other conclusion than that Government intended that they should have all timber felled prior to the making over of the land to Mr. Rae, and that all timber fallen or felled subsequent thereto should be at his disposal, subject to seignorage. Under these circumstances, I do not concur with Mr. Rae in his remark that that part of the Deed which is marked by him A is superseded by paragraph 3 of the Order of Government No. 819 of the 12th of April last, I can find no inconsistency in the terms of either of these orders, for Mr. Rae is under both of them at liberty to fell all such timber or brushwood as he may require for the use of or as may interfere with the cultivation, and to remove same or any part thereof, for sale or other purposes upon payment of the fixed seignorage. Mr. Rae now appears to object to the payment of any seignorage. It is for Government to determine whether they relinquish this claim.

7. Whilst upon the subject of this objection I may notice that there is in this Lease a covenant which, in the option of Government, may be modified or omitted. It is the covenant by Mr. Rae not to fell any timber, &c., other than that required for the use of his estate or that which interferes with its cultivation. I think that Government should insist on this covenant, especially in a Lease for so long a period (almost a perpetual one) as the one now under consideration is, for, should Mr. Rae after a few years abandon the land, Government may possibly find, unless protected by this covenant, that all the timber, &c., had been cut down and the land left perfectly bare.

8. It is to be borne in mind with reference to all the provisions in the Lease, that the Government have to deal not only with Mr. Rae, but with his Assignees and Representatives, and though Government may consider some of the provisions of this Deed unnecessary as to Mr. Rae himself, in whom they may repose the greatest confidence, yet without these provisions the Government would have no security against the acts of others who might claim under Mr. Rae.

9. Mr. Rae's objection or rather remark, marked B, to the effect that a cultivator must necessarily be left to what he considers the best kind of cultivation, is made because a covenant is inserted in the Lease binding him for the first seven years of it to use the land for Tea cultivation only, according to the best system and course of husbandry. Now looking at the circumstances of this case and seeing that Mr. Rae asked for this very valuable land for *Tea* cultivation, and that Government granted it for that purpose free of rent or at a merely nominal rent for seven years, I think that in consideration of the concessions made

Letter from Collector of Coimbatore, to the Secretary to Government, 8th October 1860, No. 55.

by them, Government should have some guarantee that the land is applied to the purpose for which it was intended, and that the cultivation is conducted according to the best system and course of husbandry. Mr. Rae of course says his system is the best, and the Government are entitled to a covenant to this effect. In writing the 4th and 5th paragraphs of his letter to Government of the 29th of May last, Mr. Rae seems to have been under some grave misapprehension. The Lease as it now stands only binds him to grow Tea during the first seven years of its term, and after that period he is at liberty to do what he pleases with the land so long as he pays the assessment of one Rupee per acre yearly, for the whole extent of land, except such parts as are uncultivable. I do not suppose that Government will have any objection to extend the period and bind Mr. Rae to cultivate Tea for a term of fourteen years as Mr. Rae now proposes to do, and accept his covenant that in case of default he will pay for arrears of quit-rent at one Rupee per acre from date of the Lease. But Mr. Rae makes this proposal in order, as he says, that the Deed under consideration may be reduced to the simplest form and at the same time follow the views enunciated by the Government. I cannot see how the proposition is calculated to effect this end. If it is acceded to, I still advise the retention of the provisions now objected to by Mr. Rae.

10. The cultivation of fodder, firewood, vegetables and such like, for the purposes of the estate and the use of parties living or employed thereon, will not of course be regarded as an infringement of the terms of the Lease, and no special provision in that respect is necessary.

11. By his remark C Mr. Rae objects to the clause which precludes him from subletting the land during the first seven years of the term without the previous sanction of Government, and obliges him on expiration or determination of the Lease, to give up the land with the buildings, &c., in good repair. Confiding in the ability and energy of Mr. Rae and in his good faith, Government at the recommendation of Dr. Cleghorn are willing to grant him this Lease, but they know not to whom he may sublet the land, and it is but fair that any sub-lease that he may make should have the previous sanction of Government. It is usual to provide in cases of this kind that on the determination of the Lease the premises with the buildings, &c., are to be handed over in good repair, otherwise the premises may be left in such a state as to be utterly worthless to Government.

12. I cannot advise Government to yield to Mr. Rae's objection as to supervision of the premises. The clause is a usual one and it is desirable that Government should have the right of supervision and control. My remarks in paragraph 8 are especially applicable here, for though the Government should not be disposed in any manner to control Mr. Rae, yet it might be necessary for the protection of their own interests to have the power of control if another party was holding under the Lease. An appeal to Government or the Board of Revenue in case of any improper interference on the part of the local Revenue authorities or other officers appointed for giving effect to this part of the Lease, would speedily set matters right.

13. Mr. Rae also objects to the proviso for re-entry by Government in the event of his making default in payment of the rent, or in the performance of any of the covenants. This proviso I strongly advise Government to retain. Mr. Rae it appears to me should be the last to complain of the terms of his Lease, for, when contrasted with the terms granted to other cultivators on the Hills, I think it will be found that Mr. Rae has very considerable advantages over them. Any rent that may become due and be unpaid may doubtless be recovered by distress ; but supposing there is no property available, or supposing Mr. Rae is guilty of a breach of any of the covenants, are the Government to have no remedy, and are they to be kept at arm's length for 999 years. If this provision is not put into the Deed then Government would be obliged, as occasion arose, to seek their remedy at Law, which would involve considerable trouble, expense and, perhaps, loss to Government. It is, therefore, very desirable that such an alternative be provided against.

14. This right of re-entry can work no injustice to Mr. Rae ; if there are circumstances which excuse his non-performance of his engagements Equity would (if Government would not) interpose and relieve him, because a compensation may be made, and there are numerous cases on record where this relief has been afforded against the consequences of a breach of a covenant or

a condition, as for instance where a Lessee neglected to pay his rent at the specified time and a right of re-entry to avoid the lease (such as has been inserted in this Lease) has accrued to the Lesser Courts of Law and Equity have interposed on the tenant's behalf upon his satisfying his landlord for his rent and any damage he may have sustained by the neglect or default.

15. Mr. Rae objects to a Lease, and wants to have a permanent title. This object can only be attained by his purchasing the fee simple, when, of course, all the provisions contained in this Deed will be annulled.

16. It is clear that Mr. Rae is not to have the fee simple just now, and if he is not to have that estate in the land, and he objects to a Lease, I am at a loss to conceive what kind of an estate he can have.

17. This Lease is for 999 years, and might, therefore, be considered almost a permanent title; the rent reserved for the first seven years is only a yearly rent of an Anna if the same shall be demanded, that is making the rent only nominal, it could not well be made less oppressive, and this reservation of rent is, in my opinion, necessary as an acknowledgment made by the tenant of his fealty of tenure.

18. It is to be supposed that Mr. Rae or those representing him will, before the term of 999 years has expired, determine whether the fee simple to the property is worth purchasing, and if so, there can be no necessity for inserting in this Lease any proviso for the tenant's renewal of the Lease for a further term of 999 years or for any other term.

19. I think it unnecessary to notice Mr. Rae's remarks in the last paragraph of his Memorandum of objections further than by saying that probably Mr. Rae would wish to hold the land without being bound to Government in any way at all beyond an understanding simply that he as a man of honor will do what may be correct and proper. This certainly is not the course usually adopted. When money is paid a receipt is taken for it, to serve and avail as proof on a future occasion if required, not because the party paying the money believes the party receiving same will ever dispute it, but because *he may* do so, and in matters of business one ought in dealing with another to secure himself against all possible contingencies.

20. I re-transmit the Draft Lease and Mr. Rae's Memorandum of objections for the reconsideration of Government.

No. 83. B. ORDER THEREON, 5th October 1861, No. 1,933A.

1. In 1860 Mr. H. D. Rae applied for land on the Neilgherries for experimental Tea culture. The Government on the recommendation of the Board of Revenue expressed their willingness to grant him 200 acres of grass and 25 acres of forest land on favorable terms. The land instead of being sold by auction under the established rules, subject to an assessment of one Rupee per acre, was to be granted without purchase, free of assessment for seven years. Mr. Rae was to devote it to Tea cultivation for fifteen years; he was to have the privilege of redeeming the assessment at any time on payment of the regulated price, viz., twenty times its annual amount, and he was promised an extension of his holding on the same terms if his experiment proved successful. The fallen timber and underwood on the forest land was to be removed by Government before possession of the land was given. Mr. Rae was informed that if he consented to these terms a Deed would be drawn up by the Government Solicitor, a specific remedy stipulated for breach of the terms, with power of entry to see that the terms are being fulfilled. The penalty was to be subsequently determined. Mr. Rae, in reply, requested that 40 acres of forest might be granted, that he might be allowed "freedom of action in the 40 acres of forest," and that he might be limited to Tea culture only during his seven years free occupancy.

2. The Government assented to these proposals, and a Deed was drawn up by their Solicitor. The terms of this document seemed to Government to admit of improvement, and recounting the conditions of the grant, they desired that the Deed might be revised. This was accordingly done and the revised draft forwarded to Mr. Rae, who took exception to it in various particulars.

G. O. 4th February 1861, No. 270.

3. Mr. Rae's objections have been submitted to the Government Solicitor, who, after careful consideration of them, informs the Government that the Deed, though necessarily drawn in technical phraseology, is in strict conformity with the conditions of the grant.

4. Mr. Miller's letter will be forwarded to Mr. Rae, who will be called upon to place himself in communication with that gentleman and execute the Deed without further delay. If Mr. Rae's legal advisers can point out to Mr. Miller any particular in which the Deed is at variance with the terms of the grant, the Government will authorize the necessary alterations being at once made, but they deem it useless to continue discussing the form and phraseology of the Deed with Mr. Rae.

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

For Orders.

My Mem: on No 1309 while, I hope, sufficiently explain the case. I still think a re-entry which is confiscation is too severe a fine for the first seven years to which, in fact, the contract only extends. The least could, it seems to me, will be, to desire Mr Rae & settle the terms of the deed with the Pst Land Officers.

J. D. L

- Grant might be withheld to obtain the payment of some fine less severe than

Revenue Dept.

No 1933 A

Proceedings of the Madras Government

Under date the 5th October 1861

Read the following

letter from the Acting

Government Solicitor Madras.

Dated 26th August 1861

Rec'd 28th August

No 656 49/61

+1 Enclosure with no Memo. attached.

No

× sent to Govt Solicitor

Submits with reference to Proceedings of Government 23d July 1861 No 1470 Revenue Department his views on the objections to the Lease taken by Mr Rae and Reports upon the points raised by him.

(Recorded 26th August 1861 No 656)

Recorded 5th October 1861, No 1933 A

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1 Rev 1861. Dept
Pro: of Gov for October
No 2064

From
The Actg Govt Solicitor
Madras.

To
The Actg Chief Secretary
to Government
Madras.

23 August 60 No 284-285.
21st September 60 — 404-405
19th October 60 — 326-327
4th February 61 — 28-29
12 April 61 — 195-196
4th May 61 — 32-33.
23 July 61 — 332-333

Copy on a Letter to England
dy 6th February No 12 of 63

No 83 A.

c 31 "Clive" R 3d Sept
c 9 October 61

No 1933 A. 5 October

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I. D.S

I have communicated a copy of this with of Mr Wilkins letter to Mr Rae.

JP

5/10/61

Memorandum

3 Copies. Government Solicitor
14 " Board of Revenue with copy of lease
4 " Conservator of Forests.
1 " H. D. Rae Esq.

Rec'd 17