M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2074 — Press / Mis.

366. 367

Dated 30. 10. 1861.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 30th October 1861.

No. 366. Read the following letter from E. B. THOMAS, Esq., Collector of Coimbatore, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Coimbatore, 8th October 1861, No. 5:—

SIR,

1. I have the honor to enclose copy of Board's Proceedings, No. 4,410 of the 14th August 1861, with my reply thereto, for the information and orders of Government on a surcharge made by me on Mr. Rohde's Income Tax.

2. As I must doubt if the Board have rightly quashed and declared illegal, my acts, in the performance of an arduous duty, and without any previous appeal *to me* from Mr. Rohde, I am compelled by Mr. Rohde's strong language, and the Board's Proceedings to request the consideration and decision of Government in the matter.

3. The *facts* of the case are fully detailed, and I claim the protection of Government and their opinion, as to whether I have erred. If they deem I have, I shall be happy to assess Mr. Rohde at whatever rate the Government may deem right. I have no wish but to do my duty in the matter; but I must submit, 1st that Mr. Rohde's return of 80 for his house was incorrect; and 2ndly that I was fully justified in thinking he had offered it for 500, rent.

4. The *tenor* of Mr. Rohde's correspondence is, that he did not offer his house for 500, and so the Board appear to understand it. I may be mistaken, but I am bound as Assessment Officer to learn the real facts so far as I can; and I was at a loss to understand how a house set down by Mr. Rohde at 80 in the end of May, could be by any conditions rendered worth 500 in June or July.

P. S.—Colonel Denison's reply, I think establishes the offer at 500 at which it would have been at once let, had Mr. Rohde's "conditions" been acceded to.

(Signed) E. B. THOMAS, *Collector.*

No. 367. ORDER THEREON, 30th October 1861, No. 2,074.

The Government are of opinion that Mr. Thomas' proceedings in this case were erroneous; but they do not for a moment suppose that the error was other than one of judgment. They regret that he did not act on Rule 18 of Part VII, which was evidently designed for the satisfactory adjustment of disputes of this nature.

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

Revenue Department

F

No. 4410

Proceedings of the Board of Revenue

dated 14th August 1861.

Read again letter from Mr. Rohde dated

24th July 1861.

(In Cons 29th July 1861 No. 4676)

Read also the following letter from the Collector

of Coimbatore dated 29th July 1861 No. 14.

In Cons 5th August 1861 No. 4892.

The Board infer from the date and wording

of the Collector's letter No. 90 dated 9th July 1861

that the assessment on Mr. Rohde had been al-

ready made and settled for the year ending 31st

July 1861 and such being the case he was not

Competent to make the alterations he did unless

prepared to support it by a Charge of fraud

which he subsequently states was not intended

by him. His act was thus distinctly opposed

to the spirit of the instructions of the Supreme

Government Circulated by the Board under

date

under date 27th May 1861 No. 2649.

2 But apart from the above objection the Board Consider that Mr. Thomas, according to his own showing was not warranted under any Circumstances in making this Surcharge.

3 The fact of a house having been offered for a certain rent is no proof that it is worth that rent, unless it is occupied at that Amount, and even had Mr. Rohde made the supposed offer in June the fact would have been no sufficient reason under the Circumstances Connected with the house for Charging him for the previous 6 months at that rate. But Mr. Rohde distinctly disavows having offered his house at the rent named by Mr. Thomas, and it must be patent to every one on the Hills that in its present state it Could not be let for even the sum Charged by Mr. Thomas who moreover was not warranted in valuing the house at Rs 250 rent if as he says he Considers he would have been justified in naming Rs 500

4 The Board Consider the Proceedings of the Collector illegal and therefore cancel them and direct him to withdraw his notice of surcharge.

/A true Extract/

/Signed/ W. Hudleston

Secretary

To

E. B. Thomas Esq

Collector of Coimbatore

/A true Copy/

E. B. Thomas

Collector.

Cy C. S. M.
H. of Clerk Mr. Tax Dept.

Bishop's Down

Cotacammund Sept^r 2^nd 1861

From

Colonel Denison
Military Secretary
to His Excellency The Governor.

To

E. B. Thomas Esq^r
Collector and Magistrate
of Coimbatore.
Cotacammund.

Sir

I have the honor to acknowledge the receipt of your letter of the 31^st Ultimo with enclosures (herewith returned) and in reply beg to state as follows—

Before leaving Madras for the Godavery on the 25^th of June, I telegraphed to M^r Rohde, to know whether he wished to let his House— I did not say for whom I required it— The answer was "The House was not in a fit state for letting: none by Post"—

at

See para 2 of M^r Cahoes of 13^th July 1861—

1861

Department.

In a letter from the Collector of Coimbatore dated 8^th Octobr 1861 No 5—

Proceedings of the Board of Revenue—

Read No 2423/61
Enclosure No 1

Cancelling the Collector's proceedings investing him to a discharge on account of Income taxes incurred in respect of Houses belonging to Mr Cahoes and directing the withdrawal of the Collector's notice of that Purchase—

Coimbatore Collector's Office

No. 23 8th October 1861

From

E. B. Thomas Esqr

Collector of Coimbatore

To

W. Hudleston Esqr

Secretary to the Board

of Revenue

Chepauk

Madras

Sir.

I beg to acknowledge the Proceedings of the Board of Revenue No. 4410 dated 11th August 1861.

I am at all times ready to bow to the Board of Revenue, as a Constituted authority, whether I Concur with them or not but on the present occasion, where I have endeavoured to discharge an arduous and invidious duty strictly

and

1861 Department-

In a letter from the Collr of Coimbatoredated 8th October 1861 No 2425/61 from C.C.D. Pension

To The Collr of Coimbatore Enclosure No 3.

Stating that Pr Carlee of Veerapoo Kaveri at 500 to went for Pension.-

and impartially, I am Constrained to demur to the Board annulling my acts, or pronouncing them illegal, and to refer to Government.

2 If Mr. Rohde's House, without question the best and finest in Colaba and long fully inhabited, is to be rated at only 80 Rupees, then all the other houses in the place of far lower value, but of higher rates, have been unjustly taxed.

3 The Board infer that the assessment to 31st July 1861 had been made and settled before surcharging Mr. Rohde. Such was not the case - the returns were still open, and some, (tho' Mr. Rohde's was one of the last) not yet come in. other surcharges were also made after that on Mr. Rohde. - I knew Mr. Rohde's house, but was unwilling to value it myself tho' I certainly thought 80, far too low, and on when

x and by late orders to be Continued so thro' the next official year.

when I heard as I did, Mr. Rohde's own valuation of its rent, I certainly thought that the fairest and best test I could adopt, of any property, and most in accordance with the spirit of the Act.

4 The Board and Mr. Rohde now Compel me to prove that my information was not incorrect. I have no other Course, after the strong language the Board and Mr. Rohde have been pleased to use, and I now again am obliged to repeat, that Mr. Rohde did offer his house, under certain Conditions, to rent at 500 Rupees per month. I cannot see any other bona fide interpretation to be put on the Telegram, and Col. Davison's letter.

5 Mr. Rohde's Case had no parallel amongst all other returns here. as I have before noticed Mr. Rohde delayed to return till end of May, and then he returned first 60 Rs, afterwards 80 - as the rent of his House. The Board's Circular No. 2649 to which I have been

been referred, alludes to mistakes made in Surcharges, being allowed to go on to the following year - but in Mr Rohde's case, I had made no surcharge which I after endeavoured to alter - but was led to adopt the one surcharge objected to, on the grounds named in my letters No 90, to Mr Rohde 9th July, and No 95 of the 19th July - I am not aware of any order which prohibits me from altering an assessment, if I conceived it wrongly arrived at - I acted strictly under Sections 53 - 54 of the Act.

6 Mr Rohde should properly have appealed to me against my surcharge, and not to the Board or Government till I had refused to hear or redress his Complaint.

7 Mr Rohde's 2nd para of his letter to me 13th July really Conveyed no definite or clear meaning, and was not a plain

answer

answer to mine - I had not said any thing about "the 1st May" but named a distinct fact and report, which I expected Mr Rohde distinctly to admit or deny - I simply stated that the value and rent of a house set down at 80 in May, Could never have risen in one short month to 500: Mr Rohde must be surely Considered the best judge of his own property, and I regret that I Cannot see that a rent at 500 fixed by the owner, Can be properly set down at 80, one month previous; one or the other must surely be incorrect - I gave Mr Rohde the benefit of the doubt and assessed at 250, but as the Board in para 3 of their Proceedings No 4410 Consider I was not warranted in so reducing it, then Mr Rohde should clearly be assessed at his own full valuation of 500, at least from that date; if my leniency was in the Board's view illegal. Though Considering the time Mr Rohde has himself already occupied the

House,

with occasional friends; the time it has been "unfinished"; the party now in it, and the rent of 500 which appears undoubtedly to have been asked; I must again submit, that I could not feel it Consistent with strict public duty, to rate it at only 80 Rs— Had Col. Denison accepted Mr Rohde's Conditions, the House would be at this moment "finished" and occupied, at 500 Rs per Month— I beg to enclose Copy of Col. Denison's letter.

I have the honor to be
Sir
Your most Obedient Servt
(Signed) E. B. Thomas
Collector

(A true Copy)

E. B. Kennedy
Collector

The papers recorded above relate to a case disputed of assessment and surcharge under the Income Tax Act, and the circumstances of which have already been before the Govt several times. Of Coimbatore

Mr. G.O.
1 August/61. No. 1536
17 Aug. ... 1659
17 " " 1660
27 Aug ... 1720
R.D.

The Collector, now appeals against the decision of the Board of Revenue, who by a letter of "illegality" directed him to cancel the surcharge which he had made—

Mr Rohde, it appears, is building a house at Cotacamund. On being served with Income Tax forms of Return he wrote to the Collector, in the first instance, to say that he was unable to determine the rack rent of his unfinished house, and afterwards, that till July 1860, No. 60 a month was a sufficient sum to fix as rack rent. Mr Rohde further explained that he did not fill up the forms as they did not suit his circumstances.

12 Feb/61

More than three months afterwards the Collector returned this letter to him with a request that he would fill up his Returns "as all others do, according to the directions." From a further letter of the Collector's, it would appear that Mr Rohde the same gentleman returned his Rs as rent of his house, and that the assessment was accordingly made out. accordingly—

20 May/61 No. 36

But Mr Thomas having learnt subsequently, that Mr Rohde had

9 July/61 No. 90.

measure, thought it his duty to alter the assessment, and to surcharge him at the rate of £50 a month for the last six months of the year viz. from February to July 1861. Lastly the return of No 80 Strand for the first half. viz to January 1861.

* 12 July 1861. 4 — Mr Rolfe, actually remonstrated against this course. Why in the last month of the first Income Tax year, he denied that he had offered his house "as it is, much less as it was or I may" at a monthly rent of £500. and he protested against the implication of having made a "false return"

From a letter addressed by Mr Rolfe on the date (13 July 61.) to the Chief Commissioner Income Tax. Surveyors, it would appear that he had returned the rateable value of his house at £600 a year because [illegible] also [illegible] he had to pay £20 a month for stable and other accommodation in a neighbouring cottage. With reference to the origin of the report that he had offered to let it for £500 per annum, he explained that towards the end of June having received a telegraphic communication from St Denis asking him to let the house, he had replied that the house was not in a state to let, but that under certain circumstances he would get it ready and that at 12 per cent per annum the rent would exceed £500 a month: this rate he made

no stipulation on that head, provided certain other terms were attended to.

* 19 July 1861. No. 95 — In reply to Mr Rolfe's remonstrance Mr Thomas pointed out that though the house might be considered unfurnished it could not be called unoccupied or untenantable, inasmuch as its owner had long lived in it, had guests staying with him, and given entertainments. He should be prepared, he said, to modify the charge, if it were not the fact that Mr Rolfe had offered to let for £500. Mr Rolfe having distinctly denied (Mr Rolfe having distinctly denied such to be the case). he added that he had not assessed it at £500, but at £250, and that only for the last six months of the Income Tax year.

* 24 July 1861. — Mr Rolfe responded by remarking on the absurdity of assessing him at a figure rate for the previous six months on the strength of a rumour that he had lately offered a house under the construction for £500; and Mr Thomas's statement that tho' justified in putting the assessment at £600 he [illegible] only taken half that sum would, he added, show either a dereliction of duty, or an assumption of power by Surveyors and Inspectors inconsistent with the real powers of Commissioners.

† 24 July 1861 / © 29 July 1861 No. 2. — Both Mr Rolfe and Mr Thomas brought the circumstances detailed above, to the notice of Govt. the former

did not appeal against the assessment but against the surcharge which contained the assessment made by Mr Thomas "and against his undignified and improper interference and spying. He latter [illegible] claimed the protection of Govt in "a difficult and unpleasant duty" and contended that he had acted [illegible] as he had, "in an honest endeavour to do his duty" strictly & impartially to all". He had disputed only "error in judgment" & Mr Rohde, not fraudulently: and this not only in regard to his estimate in the first place, but also in offering his house for Rs 500 subsequently. The latter was as much an overrate as the former was an underrate; and Mr Thomas therefore had exercised a "liberal discretion" in assessing it at 250 Rs or half of Mr Rohde's own valuation.

§.C. 1 Aug/61. No 1536 — 17 Aug/61. No. 1659 — 1660. The Govt declined [illegible] as to the merits of the question. The Collector was referred to the provisions of the Income Tax Act.

§.C. 27 Aug/61 No. 1720 — 10 A further letter from Mr Thomas [illegible] stating that he had duly acted in the matter prescribed by the Act was ordered to be recorded.

11 The foregoing record of the correspondence has become necessary in consequence of the Collector's appeal recorded above.

§ 8 Oct/61 No 5. — The Board of Revenue [illegible] Mr Rohde appealed, cancelled the Proceedings of the Collector as being illegal and directed him to withdraw his notice of surcharge (1) because the assessment having been already made out on Mr Rohde's "return," the Collector was incompetent to make any alteration unless prepared to support it by a charge of fraud, which, he subsequently stated, it was not: his dispute: and (2) because the offer of a house at a certain rent is no proof that it is worth so much; and even had Mr Rohde made the offer (which however he denied having done) no sufficient reason had been shewn for charging him for the 6 previous months; neither was Mr Thomas warranted in valuing the house at Rs 250 if he thought that he would have been justified in naming Rs 500 for it.

12 Mr Thomas replied to these Proceedings in his letter of 8 Oct last. No. 23. and this further letter of his has been reviewed in the Board's Proceedings annually noted, and which are also recorded above.

17 Oct/61. No. 5710.

13 Mr Thomas first denies, and then in fact admits, the inference on which the Board had based their first reason for cancelling his surcharge. From para 3 of his letter, it would seem that the Collector had mistaken the Board's meaning. He also

years to have thought that the assessments up to 31st July 86 which the Board ~~fixed~~ stated to have been "made and settled" referred to the District generally and not to Mr Rohde's own particular return; this from that return, as the B. ~~truly to~~ clearly ~~see~~ in para 1 of their present proceedings, had been once fixed.

14 The other point taken up by Mr Thomas is the Board's remark that "Mr Rohde distinctly disavows having "offered his house at the rent named "by Mr Thomas": and he forwards by No. 14 Aug. a letter from Mr Denison to prove that such an offer was made.

15 The Govt entirely concur with the Board on both points. As to the first it is clear that the Collector's surcharge was illegal: ~~the surcharge~~ it ~~therefore~~ could not stand, and the Board were right in cancelling it. Neither is it open to the Collector "to assess Mr Rohde at whatever rate the Govt may deem right" the assessment ~~in first~~, has been once already fixed, and is, according to sec. LIII of Act XXXII of 1860, final. The difference of opinion about Mr Rohde's "offer" of his house has nothing whatever to do with the question; the Board's decision did not rest upon the fact, one way or the other; as their Proceedings of the 14 August distinctly show: and the Govt quite agree in part 5 of the Board's

see Collector's letter recorded above

Proceedings now under review that Mr Rohde cannot be held liable to pay for the past year on a rent which he had named as what he would ask for the next year if the house was furnished & furnished.

17 The Govt must remark that Mr Thomas, ~~present~~ reference to them ~~exhibits~~ shows a great want of comprehension of the Income Tax Act, as well of the points upon which the Board's decision turned, which they hardly expected to find in such an experienced Officer. They fully appreciate the difficulties in the way of every Officer who endeavours to carry out the provisions of the Act as considerately as they believe Mr Thomas has done; but they must observe that the difficulties in the present case have been entirely of ~~his own~~ ~~making~~ his own making - Act XXXII of 1860 lays down clear rules for surcharging - he has not followed those rules. Even if they had permitted him to make the surcharge in the first instance, there was no necessity for him to enter in to correspondence with Mr Rohde - If a surcharge is dissatisfied, he can appeal & state his reasons in the manner detailed in sections LV and LVI. Mr Thomas claims to have treated Mr Rohde "the same as every subject of the "Income Tax whether European or Native". He will hardly affirm that he entered into correspondence

(2 July 86 No. 1.

with every Nature in the Bazaar—

No. 2074.

No 2074
Proceedings of the Madras Govt
Under date the 20 October 1861
Read the following letter

From the Collr. of Coimbatore
Forwarding copy of correspondence with the Board of Revenue on a surcharge made on Mr. Rohde's Income tax together with copy of a letter from Collr. Dennison to the effect that Mr. Rohde offered to let his house at 500 Rs. & then sent cyphers claiming the protection of Govt. Officers & requiring us to say whether he has erred in the matter.—

(Here enter 8th Oct. 1861 No 5)

Mr. Thomas' note of 28th Oct. is in reply to this

The above mem.ls fully sets forth the case. Perhaps however, as the Bd's order is not appealable to Govt. the letter I am to write to them briefly

"The Govt. are of opinion that Mr. Thomas' proceedings in this case were erroneous. But they do not for a moment suppose that the error was other than one of judgment. They regret that he did not act on Rule 18 of Part VII — which was evidently designed for the satisfactory adjustment of disputes of this nature."

First Asst. Sec. to Govt.
30th Oct. 1861

14 Copies v. Board of Revenue
1 " Collector of Coimbatore

17-18
1.8.61
260.263
17-8-61
278.80
27-8-61

Revenue 1861 Depart.
Pro: of Govt for October

No 2074.

Pro: of the Madras Govt
Dy 30th October 1861.

Letter from the Collector of Coimbatore respecting the Surcharge made on Mr Rohdes on account of Income Tax, with orders thereon -

No 366 & 367-