M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 389	Press ~~Mis.~~
449-450	
Dated 22-2-	18 62.

Not to be folded or roughly handled

REVENUE DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following Proceedings of the Madras Government in the Judicial Department :—

Referring to Sudder Court certain paragraphs of a letter from Mr. Advocate General Smyth, stating his opinions on the case relating to the action of Ejectment against the Secretary of State for the Poliem of Ankusagiri, Zillah of Salem. } (Here enter 17th February 1862, No. 248.)

ORDER THEREON, 22nd February 1862, No. 389.

Forwarded to the Board of Revenue, who will call upon the Collector of Salem for a full report of his proceedings in the matter. He will in particular explain why he did not follow the advice referred to in paragraphs 17 and 18, and forward a copy of the communication mentioned in paragraph 20.

(True Extract.)

Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

JUDICIAL DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following Extract from a letter from T. SYDNEY SMYTH, Esq., Advocate General; to the Chief Secretary to Government, Fort Saint George, dated 5th February 1862.

13. The other case relates to the action of ejectment brought on the 5th September last against the Secretary of State for the Poliem or Poliput of Ankoosagherry in the Zillah of Salem; and amended on the 15th November last, confining the action to certain lands other than the Poliem.

14. My opinions dated 26th September, 21st December and 4th January have, I believe, been before Government and the Board of Revenue.

15. I was at first clearly of opinion that the Supreme Court had no jurisdiction, the claim being confined to the Poliem, and the disposal of that by the Government being an act of State.

16. It was only long afterwards that I was informed that the Collector had taken possession, not only of the Poliem, but also, of private lands and personal property, not included in or belonging to the Poliem, which quite altered the case, and could not possibly be defended as an act of State.

17. Still I was of opinion that the next course for Government was to take no notice of the action; but I advised that the Collector should give notice to all claimants, that he was ready to deliver up all the private property to whoever should produce Letters of Administration or a Certificate under Act 27 of 1860.

18. The Government Pleader in the Sudr Court, as I afterwards learned, had also been consulted, and had given similar advice. It would be better, when that Officer and I are both referred to on the same matter, that each of us should be apprized of it; otherwise, on some accidental difference in the statements made to each, we might possibly advise inconsistent courses, and so prejudice the interests of Government.

19. I naturally supposed that the joint advice of myself and the Government Pleader would have been acted on, as I learned that the claimant had obtained Letters of Administration, and I was therefore not a little surprised to find that a Bill had been filed by her on the Equity side of the Court against the Secretary of State, on the 31st January 1862 in respect of this very property, alleging that the Collector refused to deliver it to her.

20. Upon making inquiry through the Government Solicitor, I learned (demi officially) on the 3rd instant from the Secretary of the Revenue Board, that the Collector states that "he "has not made over the private lands or property as yet; *for*, just as he was preparing to make "over the property to the Plaintiff's Vakeel, he received *a letter* from the Civil Judge of Salem "requesting him to retain the property."

21. The result of the Collector's thus acting, contrary to the advice of the Law Officers, on a mere request, by letter, of the Civil Judge, is this Equity Suit against the Secretary of State, whose defence must now be that he never authorized the act; that it is the unauthorized (and, in legal sense, the wrongful) act of the Collector, who must be personally answerable.

22. The Collector adds that the Civil Judge's letter was written on the application of the Vakeel of a rival claimant, who had filed a Plaint for the Poliput and the private property; but that the Judge had not disposed of the Plaintiff's petition praying him to attach the property.

23. This disposal of legal business by private letters, is I believe not unfrequent, but it is certainly not very regular, and is very hazardous. An Attachment, or Injunction, or Order of Court, would have been a valid authority, and might have been pleaded as a defence; but both the Collector and the Civil Judge ought to know that a private letter is no authority, and cannot be pleaded as a defence.

24. I have no official information before me on the subject, and the matter may perhaps admit of a satisfactory explanation. If so, I should be glad to receive it as early as possible, with a view to the course to be adopted. The Secretary of State must appear and answer the Bill; for the Court clearly has jurisdiction.

25. I would submit however that Government ought not to be exposed to actions, and its Law Officers to the trouble of defending them merely from acts done contrary to their express advice, and that in such cases the party or parties in fault ought to bear the costs both of Government and of their Law Officers.

ORDER THEREON, 17th February 1862, No. 2

2. Paragraphs 13 to 25 will also be referred to the Sudder Court for the explanation of the Civil Judge of Salem.

Chief Secretary.

To the Revenue Department
„ Sudder Court.

Exd. F. Cartledge.

W. 389
Forwarded to the Board of Revenue who will call upon the Collector of Salem for a full report of his proceedings in the matter. He will explain why he did not follow the advice referred to in paras 17 and 18 and forward a copy of the communication mentioned in para 20.

Fort St George
22d July 1862

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