M.R.O. 14—13,000—27-9-21.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1498 Press ~~Mis.~~

B1-132

Dated 4-8- ~~19~~ 1863

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 14th August 1863.

No. 131. Read the following Proceedings of the Board of Revenue, dated 31st July 1863 :—

Read again letter from the Collector of Coimbatore, dated 2nd June 1863, No. 104, and recorded in Board's Proceedings, 24th June 1863, No. 3,836.

Read also the following letter from P. GRANT, Esq., Collector of Coimbatore, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Coimbatore, 23rd July 1863, No. 137.

SIR,

1. I have received the Board's Proceedings of the 21th ultimo, No. 3,836.

2. In reply I beg to report that a reference to the records of this Office shows that Mr. Mullaly's original application was dated 2nd October 1861, and received by my predecessor on the 5th idem. Mr. Thomas at once wrote to the Assistant Conservator of Forests for his opinion as to whether there was any objection to the grant of the land applied for, and also sent a reply to Mr. Mullaly to the effect that a reference had been made to the Forest Department. Major Babington's report as to the absence of any objection to the disposal of the land was received on the 22nd November 1861, and Mr. Thomas immediately wrote to the Executive Engineer, Neilgherry Range, for a survey and plan of the land with a view to enable him to apply to the Board of Revenue for permission to put up the land to public auction. From the whole tenor of the correspondence (copy of which is enclosed) it is evident that Mr. Thomas was of opinion that the land should be put up to auction under the rules then in force, viz., those prescribed in paragraph 30 of His Excellency Sir Charles Trevelyan's Minute of 23rd February 1860, and in paragraph 7 of the Government Order of 4th April 1860, No. 517, Revenue Department, but the delay was owing chiefly to the non-receipt of the plan applied for. Meantime the new rules were promulgated.

3. Adverting to paragraph 3 of the Board's Proceedings under reply, I regret that I made a mistake in my letter of 2nd June 1863, No. 104, in stating that Mr. Mullaly sold the Pilloor Valley lands to Mr. Hunter. The fact is that the former made over in the latter's favor his claim as prior applicant.

4. Referring to paragraph 4 of the Board's order, I beg to state that there is nothing ont the records to show that Mr. Thomas gave Mr. Mullaly permission to enter on the lands ; that such was the case, however, I believe to be a fact, as at that time if the Collector said that an application for any particular piece of land was unobjectionable, the case was virtually settled, and the party was almost sure to get it. Mr. Mullaly's letter on the subject is forwarded in original, and the Board will learn from it that he claims the land on the following grounds :—

First.—That Mr. Thomas gave him verbal permission to commence operations on it.

Secondly.—That at the time of his application, two years ago, auctions were "but a name," a mere matter of form, and that not a single Native was ever found bidding for land.

Thirdly.—That had the matter been settled within a reasonable period, he could have obtained the land for a trifling sum as land was not sought after at the time.

5. On the above considerations Mr. Mullaly thinks that he may fairly claim any benefi or advantage arising from Lord Canning's Resolution.

6. Mr. Hunter's letter on the subject is also forwarded herewith, under the impression that he would be able to get the lands on moderate terms. Mr. Hunter has undergone no small amount of trouble, and expended much time and capital on them, so that I trust the terms proposed in my first letter may be acceded to.

1. Ordered that the above papers be submitted to Government for their decision.

2. The Board consider that Mr. Hunter may fairly be dealt with as Mr. Mullaly's representative, and have the benefit of the rules in force at the date of original application, which however vary but little from the prevailing rules.

3. The Board accept Mr. Mullaly's repeated assertion that Mr. Thomas, the late Collector, permitted him to enter on the land although this was contrary to rule before the sale had taken place.

4. The result is that a considerable sum has been expended on the land without the occupier holding any title.

No. 132.

ORDER THEREON, 14th August 1863, No. 1,498.

1. From the papers submitted it appears that Mr. W. Mullaly applied on the 2nd October 1861 to the then Collector of Coimbatore (Mr. E. B. Thomas) for 200 Acres of jungle land on the Neilgherries, for his brother Mr. J. Mullaly then residing at Kurrachy in Scinde.

2. By the rules then in force the land, supposing the application to have been complied with, would have been put up to auction without any upset price and sold to the highest bidder, subject to a yearly assessment of one Rupee per Acre redeemable at twenty years' purchase.

3. Mr. Thomas on the 9th October wrote to the Assistant Conservator of Forests to enquire whether any objection existed to the sale of the land, and informed Mr. W. Mullaly of this reference adding that on receipt of the Assistant Conservator's reply, he *would consider about recommending the application to the Board of Revenue.*

4. The Assistant Conservator did not visit the land, but from previous acquaintance with the locality reported (21st November 1861) that so far as his Department was concerned there was no objection to its sale.

5. Mr. Thomas thereupon (25th November 1861) wrote to the Executive Engineer for a plan of the land, to enable him *to apply to the Board of Revenue for its being put up to public auction.*

6. No plan appears to have been prepared, no application consequently was made to the Board and the land was never put up to auction. Fifteen days after Mr. W. Mullaly's application Lord Canning's Resolution regarding the sale of waste lands was issued, and in February 1862 all Collectors were directed to abstain from any other proceedings in regard to waste lands beyond registering and notifying the applications, and especially *not* to give possession.

7. Mr. W. Mullaly states that shortly after the publication of Lord Canning's Resolution he called on Mr. Thomas and received verbal permission to commence upon the land.

8. Mr. Mullaly, however, must have known that the Collector had no power to grant any such permission. He says himself "it is quite true that under the rules existing at the time of "my application the land must have been put up to auction," and shortly before the Collector informed him that "on the Conservator's favorable report he would address the Board of "Revenue to have the land put up to auction," yet he accepts verbal permission to enter on the land without auction and without the sanction of the Board of Revenue. He urges that "auc-"tions then, two years ago, were but a name; no European even now bids against another, but "then not a single Native was ever found bidding for land." This state of things, if it really did prevail, might have lessened the risk of anticipating the result of the auction; but Government cannot recognize a combination against its interests.

9. Mr. W. Mullaly seems to have done nothing to the land, and nothing is said of his brother, on whose behalf he made the application. About April 1862, Mr. W. Mullaly made the land over to Mr. Hunter, who describes the transaction thus "Mr. Mullaly did not sell the land "to me but merely made over in my favor his right as first applicant for it."

10. Mr. Hunter goes on to say "the land at that time, say in April 1862, had little or no "intrinsic value beyond the annual assessment. Indeed, it was a matter of anxious consideration "with me for some time whether I would incur the risk and heavy outlay involved, ere it could "be opened up," and yet he took no steps to establish the validity of his title, no reference to the

Proceedings of the Madras Government, Revenue Department,
14th August 1863.

Government or the Board was made, and now the Government are asked to recognize as valid a title based on a "verbal permission," which both giver and receiver knew to be an infringement of rules, and of which the receiver (who acted for another) made no further use than to transfer it without any valuable consideration to a stranger, and as if to make the complication more complete the land now appears to be 400 instead of 200 Acres.

11. The Government cannot admit Mr. Hunter's claim, but in consideration of the outlay he has incurred they resolve to permit the sale of the land by auction under the present rules at the upset price of the sum expended by Mr. Hunter in clearing and planting it, which sum will be remitted if he is the purchaser, and refunded out of the sale proceeds if the land is bought by any one else. Mr. Hunter must of course satisfy the Collector that the upset price has really been expended. The sale notice will stipulate for payment of this price by the purchaser (if other than Mr. Hunter himself) immediately after the sale, otherwise Government may have to pay Mr. Hunter the value of his improvements at once, and not receive them from the purchaser for three years.

12. Mr. Hunter will thus at least recover his outlay.

(True Extract.)

(Signed) C. G. MASTER,
Deputy Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

No. 3,836.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 24th June 1863.

Read the following letter from P. GRANT, Esq., Collector of Coimbatore, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Ootacamund, 2nd June 1863, No. 104:—

I beg to place before the Board, for their favorable consideration, the following case:—Previous to the issue of Lord Canning's Order dated 17th October 1861, for the sale of waste lands, Mr. Mullaly, a Bombay Gentleman, applied to Mr. Thomas for certain lands in the Pillur valley on the Southern slopes of the Neilgherries. The lands are about 400 acres in extent, and consist of 200 acres of sholah and 200 acres of grass land. Mr. Mullaly, in connection with other members of his family, has opened out lands extensively on the same part of the Hills, and expended a considerable amount of capital. On the grant of the (Pillur) lands now under reference to Mr. Mullaly, he was, it appears, authorized by Mr. Thomas to commence operations on them at once in anticipation of their being formally made over to him, but as his other lands took up his time fully, he sold the Pillur valley lands to Mr. Hunter, a Bombay Gentleman, who has opened them out partly at an expenditure of from 10 to 15,000 Rupees. Mr. Hunter now objects to the sale of these lands under the new rules for the sale of waste lands on the Neilgherries: first, because they were opened out on the verbal sanction of the late Collector and second, because if they are put up to auction he is likely to lose all the money he has hitherto invested in them, besides the value of the time he has been working on the estate. The arguments brought forward appear to me to be just and equitable, and I would certainly recommend that Mr. Hunter be allowed to hold his lands under the old rules on payment of assessment from the date of possession, at the rate of Rupees 2 for sholah, and 1 Rupee for grass land without being subjected to the risk of losing them at auction under the present rules for the sale of waste lands.

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1. The Collector will report the date of Mr. Mullaly's original application, and under what rules it would have been disposed of had delay not occurred.

2. They observe that the Government Order, communicated to the Collector on 21st April 1860, required that Farm and Plantation allotments on the plateau and slopes of the Neilgherries should be *sold by auction*, subject to a quit-rent of one Rupee per acre, but without any upset price (see paragraph 30, His Excellency Sir C. Trevelyan's Minute dated 23rd February 1860, and paragraph 7, Government Order, dated 4th April 1860, No. 517, Revenue Department), so that unless Mr. Mullaly's application was of earlier date than these orders, the Collector could not have dispensed with the preliminary auction sale.

3. It is observed that Mr. Mullaly *sold* the land in question to Mr. Hunter.

4. Any evidence of the Collector having permitted Mr. Mullaly to enter on, and deal with the land should be forwarded to the Board.

5 They understand from the Collector's letter that Mr. Mullaly claims no benefit or advantage from Lord Canning's Resolution of October 1861.

(A true Copy and Extract.)

(Signed) W. HUDLESTON,
Secretary.

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

Rxd. J. Tulloch.

Rupee per acre redeemable at

Enclosure to Board's Proceedings No. 1807 dated 24th June 1863.

Encl in the Proc of the Bd of Revn to the Govt to Govt No D. dated 31 July 63.

1863. Department

No.
Revn 1807/63.

PROCEEDINGS OF THE BOARD OF REVENUE

Dated 24th June 1863.
Despatched
Received

No. 3,836.

Requesting a further report regarding the land in the Pillur valley which Mr. Hunter wishes to hold.

at 20 years purchase-

Mr. Thomas on the 9th October wrote to the Assistant Conservator of Forests to enquire whether any objection existed to the sale of the land, and informed Mr. W. Mullaly of this reference adding that on receipt of the Assistant Conservators reply, he would consider about recommending the application to the Board of Revenue-

The Assistant Conservator, did not visit the land but from previous acquaintance with the locality reported (21st November 1861) that so far as his department was concerned there was no objection to its sale-

Mr. Thomas thereupon (25th November 1861) wrote to the Executive Engineer for a plan of the land, to enable him to

to apply to the Board of Revenue for its being put up to public auction-

No plan appears to have been prepared- no application consequently was made to the Board and the land was never put up to auction - 15 days after Mr. W. Mullaly's application Lord Canning's resolution regarding the sale of Waste Lands was issued and in February 1862 all Collectors were directed to abstain from any other proceedings in regard to waste lands beyond registering and notifying the applications and especially not to give possession-

Mr. W. Mullaby states that shortly after the publication of Lord Canning's resolution he called on Mr. Thomas and obtained verbal permission to commence upon the land-

Mr. Mullaby however must have known that the Collector had no power to grant any such permission & he says himself "quite true that under the Rules

"existing at the time of my
"application the land must
"have been put up to auction"-
and shortly before the
Collector informed him that
"on the Conservator's favo-
=rable report he would ad-
=dress the Board of Revenue
"to have the land put up
"to auction" - yet he accepts
verbal permission to enter
on the land without auc-
=tion and without the sa-
=nction of the Board of
Revenue - He urges that a-
"uctions then - two years
ago - were but a name -
No European even row bids
against another but then
not a single native ever
ever found bidding for
land." This state of things -
if it really did prevail -
might have lessened
the risk of anticipating
the result of the auction,
but it is at least a-
=bsolute to ask Govern-
=ment to recognise
a title based on a
combination a-
=gainst its interests -

Mr.

Mr. W. Mullaly
seems to have done nothing
to the land - and nothing is
said of his brother, on whose
behalf he made the applica-
-tion. About April 1862 - Mr.
W. Mullaly made the land
over to Mr. Hunter - who des-
-cribes the transaction thus
"Mr. Mullaly did not sell
the land to me but merely
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right as first applicant
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Mr. Hunter goes on
to say "the land at that
time - say in April 1862 - had
little or no intrinsic value be-
-yond the annual assessment.
Indeed it was a matter of
anxious consideration with me
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incur the risk and heavy outlay involved, ere it could be opened up" and yet he took no steps to establish the validity of his title no reference to the Govt or the Board ever made - and now the Govt are asked to recognise as valid a title based on a "verbal permission" which both the giver and receiver knew to be an infringement of rules - & of which the receiver (who acted for another) made no further use than to transfer it without any valuable consideration to a stranger - And as if to make the complication more complete the land now appears to be 400 instead of 200 acres.

It seems to me that the proper course is that already pursued in several similar cases viz to sell the land by auction under the present rules at the upset price of the sum expended by Mr Hunter in clearing and planting it - which sum will be remitted if he is the purchaser and refunded out of the sale proceeds if the land is bought by any one else. Mr Hunter must of course satisfy the Colr that the upset price has really been expended and payment of this price must be made by the purchaser (if other than Mr Hunter himself) immediately after the sale - otherwise Govt may have to pay Mr Hunter the value of his improvements at once, and not receive them from the purchaser for 3 years.

Mr Hunter will thus

This seems the best course to pursue - it is a liberal one to the past & Govt since they lose a portion of the price which the land would have fetched had it been put to sale in an unimproved state

Yes - this must be stipulated in the sale commencement -

thus at least recover his outlay and if he does not get the lands on which he has so imprudently entered he has but himself to blame.

Orders requested.

C 12 Aug 63

Revenue Department

No. 1498.

Proceedings of the Madras Government

Under date the 14th August 1863.

Read the following Proceedings of the Board of Revenue.

Submitting for decision with the Board's remarks letters from the Collector of Coimbatore relative to the land applied for by Mr. Mullaly. (Here enter 31st July 1863 &c.)

From the papers submitted it appears that Mr. W. Mullaly applied on the 2nd October 1861 to the then Collector of Coimbatore (Mr. E. B. Thom) for 200 acres of Jungle land in the Neilgherries, for his brother Mr. J. Mullaly then residing at Kurrachee in Scinde.

By the rules then in force the land - supposing the application to have been complied with, would have been put up to auct

auction without any upset price and sold to the highest bidder; subject to a yearly assessment of 1 Rupee per acre redeemable at 20 years' purchase.

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The Assistant Conservator did not visit the land but from previous acquaintance with the locality reported (21st November 1861) that so far as his Department was concerned there was no objection to its sale.

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that shortly after the publication of Lord Cannings' resolution he called on Mr. Thomas and received verbal permission to commence upon the land.

Mr. Mullaly however must have known that the Collector had no power to grant any such permission. He says himself "It is quite true that under the Rules existing at the time of my application the land must have been put up to auction" and shortly before the Collector informed him that "on the Conservator's favorable report he would address the Board of Revenue to have the land put up to auction" yet he accepts verbal permission to enter on the land without auction and without the sanction

the Board of Revenue. He urges that "auctions ten two years ago were but a name no European ever now bids against another but ten not a single native was ever found bidding for land." This state of things if it really did prevail might have lessened the risk of anticipating the result of the auction; but Government cannot recognise a combination against its interests.

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more complete the land now
appears to be 400 instead of
200 acres.

The Govt cannot admit
Mr. Hunter's claim but in con-
sideration of the outlay he has
incurred they resolve to per-
mit the sale of the land by
auction under the present
rules at the upset price of
the sum expended by Mr
Hunter in clearing and plant-
ing it - which sum will be
remitted if he is the purchaser
and refunded out of the sale
proceeds if the land is bought
by any one else. Mr. Hunter
must of course satisfy the

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is that the upset price has
ally been expended. The sale
notice will stipulate for pay-
ment of this price by the pur-
chaser (if other than Mr. Hunter
himself) immediately after
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value of his improvements at
once, and not receive them
from the purchaser for 3 years.
Mr. Hunter will
thus at least recover
his outlay.

Mr Copies Letter B. of Dec. 2nd No. 3 Encls. Copy of Min. of Exec.

Pro. No. 30-31
4-4-60

Revenue 1863 Desp.
& Corr. of Govt for Chap

£1498

& Corr. of the Madras Govt
of the 4th Aug. 1863.

Rec. Bd. of Rev. 19th Jan. 1864 Co. No. 186.

Papers relative to
land applied for by Mr.
Mullaly on the Kalgherries,
disposed of.

No 131/432