MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2296 Press ~~Mis.~~

264.65-

Dated 15-12-~~1863~~

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 15th December 1863.

No. 264. Read the following letter from CLEMENT DALE, Esq., Government Pleader, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 3rd December 1863, No. 142:—

SIR,

30th November 1863, No. 2,159, Revenue Department.

1. I have the honor to acknowledge the receipt of the Proceedings of Government under the date and number noted in the margin.

2. In the papers sent to me it does not appear who are the parties to O. S. No. 5 of 1862, there referred to, I however conclude that Government was not a party, Plaintiff or Defendant thereto.

3. Neither is it stated by whom, or for what purposes, the lands in question were granted. The Collector refers to Regulation 6 of 1831, while from the language used by the Principal Sudder Ameen in his Order of the 5th of November 1863, it appears that the land had been given by Government "in lieu of service," from which it may be inferred that the case would come within the purview of Regulation 4 of 1831; and in corroboration of that view the Government Vakeel at Madura appears to have relied on the Circular Order of the late Sudder Court of the 30th of April 1853, which was passed with reference to Regulation 4 of 1831, and in which no reference is made to Regulation 6 of 1831.

4. In former communications I have referred to the mischief of the Law Officers being called upon to advise on uncertain data.

5. I am of opinion that the Collector was right in his applications to the Court, and that the Principal Sudder Ameen was wrong in refusing to withdraw the attachment on the lands in question.

6. It is not, however, free from doubt, what course should be pursued for the purpose of obtaining a decision by the High Court on the point, for no appeal lies from the decision of the Principal Sudder Ameen; and as at present advised, I do not think the Government (in the present state of the proceedings at any rate) could successfully sustain a Suit, as I do not see what claim or right the Government has in the land, for the establishment or support of which a Suit could be maintained, or that the Government has sustained any such injury as is contemplated by the Code of Civil Procedure.

7. I do not observe that the Courts are precluded from entertaining and adjudicating upon any Suit which may be brought against Judicial Officers for injury sustained consequent on acts which have not been confined within the scope of their jurisdiction, and the inferior Officers who execute process illegally issued.

8. On consideration I have the honor to advise that the best course which suggests itself to my mind is, that if the Decree-holder persists in asking the Court to sell the lands in question, a Suit for the trespass should be brought against him and his Vakeel, including probably the Principal Sudder Ameen, the Nazir, and the Officer who executes the process; I am further of opinion that under the 13th Section of the Charter establishing the High Court, application should be made to remove the Suit into that Court.

9. I am of opinion that such Suit should be instituted by the land-holder and not by Government.

10. Whether or not Government may eventually be advised not to assist the land-holder the Honorable the Governor in Council doubtless will wish their Law Officers should watch the case, and if it be removed into the High Court, that duty will devolve on Mr. Advocate General, I recommend therefore that the papers with this letter should be laid before that gentleman, for if he concurs in the view I have taken it would, in my opinion, be desirable that the form of Plaint should be settled by him and, if he wishes it, in consultation with the Government Pleader at Madras.

11. The preparation of the Plaint must necessarily be deferred till the land has been sold or a refusal by the Plaintiff to withdraw the attachment.

12. I presume the lands in question have been attached; if that be the case, and I were advising the land-holder, I should recommend that a Notice should be served on the Decree-holder pointing out the illegality of his attaching the lands in question, and giving him notice that unless he within a certain period withdrew his application for execution and the attachment on those particular lands, such steps would be taken against him and all other necessary proceedings as he, the land-holder, might be advised to adopt.

13. If Mr. Advocate General should concur in the opinion I have offered, and Government should desire to take part in the proceedings, I would recommend that full and detailed instructions showing the whole case and what has been done, should be laid before him or myself, when Government could be advised as to the precise course which should be pursued.

14. I return the papers.

No. 265. ORDER THEREON, 15th December 1863, No. 2,296.

1. From the papers submitted it appears that the Principal Sudder Ameen of Madura ordered the sale of a Kavil Inám in Madura in satisfaction of a Decree against the Inámdar.

2. The Collector objected to the sale on the ground that the Inám was one of the description reserved from the jurisdiction of the Civil Courts by Regulation VI of 1831, that the land itself and not merely its assessment formed the emoluments of the Kavil office, and that the attachment should be withdrawn under a Circular* Order of the Sudder Uadlut which he quoted.

* Dated 30th April 1853, No. 126 M.

3. The Principal Sudder Ameen overruled the Collector's objections, maintaining that the landed emoluments of all village offices are restricted to the Mélwaram or Government share of the produce, represented by the assessment; the Coodevaram or Ryot's share, which alone he was about to sell, forming no part of them, and therefore not coming within the operation of Regulation VI of 1831.

4. There can be no doubt that in laying down this doctrine the Principal Sudder Ameen has committed a serious mistake.

5. In some cases the lands annexed to village offices under Regulation VI of 1831 were already in the occupancy of Ryots, whose tenure of course could not be disturbed, so long as they paid the regulated assessment. In such instances the emoluments of the office to which the lands were attached were necessarily limited to the assessment, for Government could assign no more than they themselves possessed. To such Ináms the doctrine enunciated by the Principal Sudder Ameen undoubtedly applies.

6. But there are other and numerous cases in which the lands attached to the offices were not in the occupancy of Ryots, but wholly belonged to the State; in all such cases, and the present is said to be one of them, the land as well as the assessment forms the emoluments of the office, and neither the Inámdar nor any one else can, as the Principal Sudder Ameen supposes acquire the occupany, right to the land, for the whole emoluments are inalienable by law.

7. It is also of some consequence to prevent the occupancy right and Coodevaram from being dissociated from the office for two reasons:—

I. The knowledge that if he is dismissed from his office he will also lose his land with all his improvements is a powerful check on the Inámdar.

II. If the Inámdar has a right only to the assessment, he is much at the mercy of the Ryot and can realize his dues only by a Civil Suit.

8. It is to be regretted that the Principal Sudder Ameen was so ignorant of the tenure of Village Service Ináms and did not, at least, call for evidence to establish the mooted point. There can be no doubt that the terms of Regulation VI of 1831, and the Circular Order of the Sudder Udalut quoted by the Collector, at least preclude a Court from deciding without a little of evidence what form and what do not form the emoluments of a village office; yet this is what the Principal Sudder Ameen has done.

Proceedings of the Madras Government, Revenue Department,
15th December 1863.

9. The decision of the Principal Sudder Ameen cannot be appealed from, and it is a matter of difficulty to obtain a decision of the High Court on the point.

10. The Government Pleader advises, as probably the best course, under the circumstances, that if the Decree-holder persists in asking the Court to sell the land, a Suit for trespass should be brought against him and his Vakeel, including probably the Principal Sudder Ameen, the Nazer and the officer who executes the process, and that under the 13th Section of its Charter application should be made to remove the Suit into the High Court. Mr. Dale is of opinion that the Suit should be instituted by the Inámdar and not by Government, and as the Government should at least watch the proceedings in the High Court, which duty would devolve on the Advocate General, he suggests that the papers should be forwarded to that Officer, in order that if he concurs in the course proposed the form of Plaint should be settled by him.

11. Mr. Dale also suggests that if the land has been attached, the Inámdar should have a notice served on the Decree-holder pointing out the illegality of his attachment, and warning him that in the event of its not being withdrawn within a certain period, legal measures would be adopted against him.

12. It is open to doubt whether the Inámdar would move in the matter, for as he cannot evade the execution of the Decree, he is little interested in obtaining the transfer of the distress from the Inám to his own property, and the Principal Sudder Ameen's decision in fact gives him a larger interest in the Inám than he possesses.

13. Independent of this consideration the course proposed seems to place Government in an undesirable position in regard to one of its own Judges, and on this ground they would rather prefer a Suit for the recovery of the land as State property or an injunction, if either course is practicable. The case is, as Mr. Dale remarks, beset with difficulties, and as no immediate measures are practicable, the Government will as he suggests forward the papers, in the meanwhile, through the Government Solicitor to the Advocate General for his opinion, after consultation if necessary with Mr. Dale.

(True Extract.)

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

To the Board of Revenue.
„ Government Solicitor.
„ Government Pleader.
„ Judicial Department.

Exd. S. T. Augustin.

It does not appear
that Govt was a party
to Civil Suit No 5 of 1862 in
which the order com-
plained of was passed.
by the Principal Sudr Ameen
of Madura,
That the objecting Mahom-
-ds of the Collectorate
to have been presented
in pursuance of the
C. O. of the late Sudr Board
which directs that wher
ever the Courts in the
Provinces condemn the
sale of lands of what
ever description the
same shall be notified
first to the Collector of
the District in order
that he may have an

of producing of shaking any objections that he may have to the sale.

The Courts are enjoined by the said C.O. to dispose of the objections raised by the Collector in conformity with the provisions of the General Regn.—

As the sale ordered by the D.J. Ellore is in execution of a Decree his order directing the sale is not, under section 246 of the Code of Civil Pro; subject to appeal; but it is open to the Party against whom it was given to bring a suit in due Year to set aside the order.

If the Court directs that the Principal sum decreed by the Principal Court, the institution of the original suit is, and: ordered by the Court Pleas the daily course of proceedings under the Executing Law It appears however doubtful whether the Valuation of the Mamium land the Rudhuram interest which has been ordered to be sold in Execution of the Decree against him, both ought to institute the suit The Order of the Principal Court however complained of is as favourable to him as the Judgment creditor. Under that order the Ravalyar has a share interest in his mamium land that the Collector both account to him, and if the P.C. Ellore order continued he will

time to occupy the
Inam land though he
shall cease to be the
office holder, provided
he agrees to give to his
successor the mail
warrant on the assets.

From the C. Os of the
Ludr Local which guided by
the Board of Revenue in
their Proc: 26th Nov/63
para 3. it is clear
that the P.S.C was
not justified in selling the
land which the Collector
declared to be Inam.
The ~~Col~~ C. Os in question
do not enjoin any
enquiry into the cor-
rectness or otherwise
of the statements made
by the Collector: but
direct that the ~~Collectors~~
~~report on the question should~~
decide Proceedings
should be stayed &

the attachment with-
drawn if it shall ap-
pear from the report
of the Collector that
the lands under attach-
ment under Civil Pro
cess are held on Inam

Reg. VII of 1831 & clause
from Civil Procedure
"the emoluments derived
"from lands in lieu fees"
have been assigned
by the state to various
hereditary village & other
officers in the Revenue and
Police Departments
as wages for the per-
formance of public
services: and it has
to be decided whether
these emoluments en-
hance both the Civil
Inam & Mail warrant
of the lands assigned
or only the latter-

From the papers
submitted it appears that the Principal Sudr Ameen
ordered the sale
of a Kabil Zemin
in Madura in sa-
tisfaction of a
decree against the
Zemindar.

The collector
objected to the sale
on the ground that
the Zemin was one
of the description
reserved from the
jurisdiction of the
Civil

Civil Courts by Re-
-gulation VI of 1831
that the land
itself and not
merely its assess-
-ment formed the
Emoluments of the
Kovil office - and
that the attachment
should be with-
-drawn under a
Circular Order of
the Sudr Adalut
which he quoted.-

The Principal
Sudr Ameen over-
-ruled the Collector's
objections, main-
-taining that the
Lands & emoluments
of

of all village
offices are, to the
Melvaram or Govt
share of the pro-
duce, represented
by the assessment,
the Coodevaram
or eyot's share
which alone he
was about to sell
forming no part
of them and there
by not coming
within the ope-
-ration of Regu-
-lation VI of
1831.-

There can be
no doubt that in
saying those doctrine
the

the Principal
Sudr Ameen has
committed a de-
minimis mistake.

In some cases
the lands annexed
to village offices un-
der Regulation
VII of 1831 were at-
tached in the oc-
cupancy of ryots
whose tenure of
course could not
be disturbed, so
long as they paid
the regulated assess-
ment. In such in-
stances the emo-
luments of the office
to which the lands were
attached

were necessarily
limited to the assessment
for Government could assign
no more than they themselves
professed. To such cases the
doctrine enunciated by the
Principal Sudr Ameen un-
doubtedly applies.

But there are other
and numerous cases in
which the lands attached
to the offices were not in
the occupancy of ryots but
fully belonged to the State - in such
such cases if the present is said
to be one of them, the land as well
as the assessment forms the emo-
luments of the office and neither
the Sunder nor any one else
can, as the Principal Sudr
Ameen supposes acquire the
occupancy right to the land

for the whole emoluments are inalienable by law.

It is also of some consequence to prevent the occupancy right & Cooclewarum from being dissociated from the office for two reasons.

I. The knowledge that if he is dismissed from his office he will also lose his land with all his improvements is a powerful check on the Inamdar.

II If the Inamdar has a right only to the assessm^t, he is much at the mercy of the ryot & can realise his dues only by a Civil Suit.

It is to be regretted that the Principal Sudr Ameen with his manifest ignorance of the tenures of the country was so self-opinionated refusing to believe in the possibility of a tenure which had not come within his limited knowledge - & not even calling for evidence to establish the mooted point. There can be no doubt that the terms of Reg: XII of 1831 & the S. C. of the Sudr Udalut quoted by the Colln. at least precludes the Court from deciding with-

a title of evidence which form and which do not form the emoluments of a village Office - yet this is what the Principal Sudr Ameen has done.

The decision of the Principal Sudr Ameen cannot be appealed from and it is a matter of difficulty to obtain a decision of the High Court on the point.

The Government Pleader advises - as probably the best course under the circumstances - that if the decree holder

persists in asking the
Court to sell the land,
a suit for trespass
should be brought
against him and his
Vakeel, including
probably the Principal
Sudr Ameen the
Nazer and the officer
who executes the
process – and that
under the 13th Section
of its Charter appli-
cation should be
made to remove
the suit into the
High Court. Mr.
Dale is of opinion
that the suit should
be

be instituted by the
Pramdar and not by
Government – and as
the Government shall
at least match the
proceedings in the
High Court – which
duty would devolve
on the Advocate
General he suggests
that this letter should
be forwarded to that
Officer, in order that
if he concurs in
the course proposed
the form of pleading
should be settled by
him.

Mr.

Mr Dale also suggests that if the land has been attached, the Promulgation should have a notice served on the Decree-holder pointing out the illegality of his attachment and warning him that in the event of its not being withdrawn within a certain legal period, measures would be adopted against him. It

It is open to doubt whether the Promulgation would move in the matter for as he cannot evade the execution of the decree, he is little interested in obtaining the transfer of the decree from the Promulgation to his own property - and the Principal Sudder Ameen's decision in fact serves him a larger interest in the Promulgation than his possession.

Independent of this consideration the course adopted seems to me calculated to place Government in an undesirable position in regard to me as the only Judge though he is highly deserving to be recommended for his correct and strenuous

Unless there is some General
Law which can sustain such
an Act as this plea of the Land
Bill's State property
assigned for a public
purpose, or certain
an injunction, it would
perhaps be better to
let matters with you
as Defendants the Land-
The papers might go,
as Old Dale proposed
to the Advocate General
who can confer upon
the subject with Old
Dale.

LPS

Revenue Department.-

No. 2296.

Proceedings of the Madras Government under date the 15th December 1863.

Read the following letter from the Govt. Pleader:

Advising that the decree-holder persists in asking the Court to sell the lands in question, a suit for the trespass should be brought against him and that such suit should be instituted by the land-holder and not by Govt.

Here enter 3 2/7 Dec. 1863 No. 1042

From the papers submitted it appears that the Principal Sudr Ameen of Madura ordered the sale of a Kaval Sudan in Madura in satisfaction of a decree against the Zamindar.

The collector objected to the sale on the ground that the Sudan

was one of the description reserved from the jurisdiction of the Civil Courts by Regulation VII of 1831, that the land itself and not merely its assessment formed the emoluments of the Karil office - and that the attachment should be withdrawn under a Circular Order of the Sudr Udalut which he quoted -

The Principal Sudr Ameen overruled the Collector's objections, maintaining that the landed emoluments of all village officers are restricted to the Melvaram or Govt share of the produce, represented by the assessment; the Codevaram or ryots' share - which alone was about to sell - forming no part of them, and thereby not coming within the operation of Regulation

Regulation VII of 18[illegible]

There can be no doubt that in laying down this doctrine the Principal Sudr Ameen has committed a serious mistake -

In some cases the lands annexed to village offices under Regulation VII of 1831 were already in the occupancy of ryots - whose tenure of course could not be disturbed, so long as they paid the regulated assessment - In such instances the emoluments of the office to which the lands were attached, were necessarily limited to the assessment - for Govt could assign no more than they themselves possessed - To such instances the doctrine enunciated by the Principal Sudr Ameen undoubtedly applies -

But

But there are other and numerous cases in which the lands attached to the office were not in the occupancy of ryots - but wholly belonged to the State - in all such cases, and the present is said to be one of them, the land as well as the assessment forms the emoluments of the office - and neither the Iruandar nor any one else can, as the Principal Sudr Ameen supposes acquire the occupancy right to the land - for the whole emoluments are inalienable by law.-

It is also of some consequence to prevent the occupancy right and Cadevaram from being dissociated from the office for two reasons.-

1st

1. The knowledge that if he is dismissed from his office he will also lose his land with all his improvements is a powerful check on the Iruandar.-

2. If the Iruandar has a right only to the assessment he is much at the mercy of the ryot and can realize his dues only by a Civil suit.-

It is to be regretted that the Principal Sudr Ameen with his manifest ignorance of the tenures of the country was so self-opinionated, as to refuse to believe in the possibility

possibility of a te=
=nure which had
not come within
his limited know=
=ledge - and not
even calling for
evidence to estab=
=blish the mooted
point - There can
be no doubt that
the terms of Regu=
=lation VII of 1831
and the Circular
Order of the Sud=
=dr Dewanny quoted by
the Collector at
least preclude
a Court from
deciding without
a

a bill of evidence, what
form and what do not
form the ingredients of a
village office - yet this is
what the Principal Sudr
Ameen has done -

The decision of
the Principal Sudr Ameen
cannot be appealed from
and it is a matter of dif=
=ficulty to obtain a decision
of the High Court on the
point -

The Government
Pleader advises - as pro=
=bably the best course -
under the circumstances -
that if the decree-holder
persists in asking the
Court to sell the land,
a suit for trespass should
be brought against him
and his Vakeel, including
probably the Principal
Sudr

Sudr Ameen, the Nazer and, the Officer who executes the process - and that under the 13th Section of its Charter application should be made to remove the suit into the High Court - Mr Dale is of opinion that the suit should be instituted by the Inamdar and not by Government and as the Government should at least watch the proceedings in the High Court - which duty would devolve on the Advocate General he suggests that this letter should be forwarded to that officer, in order that if he concurs in the course proposed, the form of plaint should be settled by him -

Mr

Mr Dale also suggested that if the land have been attached, the Inamdar should have a notice served on the Assessee holder pointing out the illegality of the attachment and warning him that in the event of the not being withdrawn within a certain period, legal measures would be adopted against him -

It is proper to doubt whether the Inamdar would move in the matter, for as he cannot evade the execution of the decree he is little interested in obtaining the transfer of the distress from the Inamdar to his own property and the Principal Sudr Ameen's decision in Suit

Sheen

proceeding a larger number in the Swan than the proveyors -

Independent of this consideration, the course proposed seems to place Govt in an undesirable predicament, regard to one of its own Judges - and on this ground they would rather prefer a suit for the recovery of the land, to State proposed or an injunction, if the course is practicable - The case is, as Mr Dale remarks best with agreeable audacious measures are practicable the Govt will do as he suggests forwarding the papers in the meantime, to the Advocate General for his opinion after

after consultation if necessary with Mr Dale.

Colonial Secretary

11 Copies Letter & Rect Do sept 15 Decr
4 — — Govt Solicitor with Do 2159 & five Enclosures
3 — — Govt Pleaders
5 — — Supl Copies

12/6/63

Pro. No. 398-399

30-11-63

Revenue 1863 Dept.
Pro: of Govt for December

No 2296.

Pro: of the Madras Govt
Dt 15th December 1863.

...n Gr Solicitor Madras dated
...tant 1/64 C No 60. In Pro:

Pro: Bd of Revenue 1st Septr 1864
& No 2387

Certain papers relating
to the sale of a Kavil
Inam in Madura in
satisfaction of a Decree
against the Inamdar,
transmitted to the Advo:
Genl (C) General for opinion.

No 264 & 265

L