M.R.O. 14—13,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 839 Press ~~Mis.~~

170-173

Dated 13-5-1863.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 13th May 1863.

Read the following papers :—

No. 170. Read the following Proceedings of the Board of Revenue, dated 28th January 1863.

Read the following letter from G. N. TAYLOR, Esq., Inám Commissioner, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Coimbatore, 5th January 1863,

No. 1.

SIR,

In obedience to the orders conveyed in a letter from the Secretary to Government, dated 28th November last, No. 2,503, I have the honor to submit for the consideration of the Board of Revenue, and for transmission to Government, a Draft Bill embodying the various points on which legislation is necessary in regard to Ináms, together with a Memorandum explanatory of its provisions.

1. Ordered that the above papers be submitted to Government. The Board approve the provisions of the Draft Bill, which, however, include one of great importance and of more extended application than was perhaps contemplated by Government.

2. Section 6, which is evidently the Section intended to be quoted in Section 9, where Section 7 is referred to, provides that the summary process for realizing rents and revenues by distraint, which Regulations 28 of 1802 and Regulation 5 of 1822, confer upon landholders paying revenue direct to Government, shall be extended to all landholders and their under-farmers whether paying revenue to Government or not.

3. The Board do not agree with Mr. Taylor in the opinion expressed in paragraph 8 of his Memorandum that these powers apply only to the realization of the assessment due to a Zamindar, Jaghirdar or Inámdar paying Peshcush or Jody as distinguished from the rents due to a Ryot proprietor. They conceive that the expression used in the ruling of the Sudder Court, (Board's Circular Order, page 135, Volume I,) viz., "*all* persons liable to pay revenue to Government for their lands," and the spirit of the further ruling (Board's Circular Order, page 137, Volume I) regarding holders of "land paying revenue *however trifling*," clearly include Ryot proprietors, and extend to them the summary powers for realizing their rents from sub-tenants. The decision of the Sudder Court quoted at page 89 of Campbell's Code of the Regulations also supports this construction. But all these rulings hinge on the liability of the landholder to pay revenue to Government, to some amount however small, and therefore will not apply to the cases of Jaghirdars or Inámdars holding their land as Lakhiraj or Surva Inám, although it may be doubted whether the principle does not really include such lands also, inasmuch as they are still as a rule liable to pay assessment although the Government leaves the *whole* collections in the hands of the grantee.

4. However this may be, it has been considered that only when the landholder was liable for a payment to Government, was it necessary to vest him with summary powers of distraint for the realization of his dues from sub-tenants, and Mr. Taylor now proposes to abolish this limitation, and to vest all landholders and their under-farmers with these summary powers.

5. The Board approve this proposal which is in accordance with the intention of Chapter 5 of the Draft Revenue Code.

6. They have above noticed how it is in their opinion doubtful whether the application of the principle can logically be limited as at present. Its extension in the manner proposed is, they believe, in accordance with the spirit of the English Law of Landlord and Tenant, and they need scarcely recall to mind the difficulty which the present restriction has thrown in the way of the commutation of money payments to the religious institutions of the country for grants of land tax free. The measures for the sale of Waste Land free of assessment now in course of introduction, render it still more desirable that the restriction should be withdrawn, and it does not occur to the Board that any hardship or injustice to individuals would follow its abolition.

7. Had the Board taken the same view of the case as Mr. Taylor they would have deemed it proper to alter the wording of the Section, so as to confine its operation to Inámdars only, for which special class the benefits of the Act are designed.

8. The second Member of the Board requests it may be recorded that he dissents from the views expressed in these Proceedings, commencing from paragraph 3. Mr. Brett is of opinion that the Revenue Regulations of 1802 (whether considered separately or in connection with Regulation 2 of 1800) do not confer on any one powers of distraint in regard to private rent, *i. e.* payments made by tenants to landowners irrespective of the public assessments for the use of the soil, and that if the legislature should consider it expedient to confer such powers on the owners of the soil, it should be done by a separate enactment.

(A true Copy and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

No. 171. From G. N. TAYLOR, Esq., Inám Commissioner, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Ootacamund, 11th March 1863, No. 8.

SIR,

1. With reference to the remarks of the Board of Revenue on the Draft Inám Bill submitted by me, which are recorded in their Proceedings dated 28th January last, No. 566, and in which they differ from me as regards the construction to be placed on Regulations XXVIII of 1802 and V of 1822, I have the honor to forward for the perusal of the Board, copy of a recent decision by the High Court of Madras which has lately come under my observation, and in which the Court hold that the Regulations in question do not apply to ordinary Mirássidárs or other [illegible]t proprietors of land.

2. The Court, it is true, lay special stress upon the circumstance of proprietors and farmers of land holding direct from Government, whereas, under the Ryotwary Settlement this circumstance is equally applicable to the Ryot proprietors; but, I submit, nevertheless, that the distinction made by the High Court is fully borne out by the general tenor of the Regulations, notwithstanding the conflicting constructions which they have subsequently undergone.

3. The difinition of the term "Proprietor of land" which is given in Section II, Regulation XXVII of 1802, is not, perhaps, sufficiently precise, because it depends very much upon the signification to be attached to the term "Estate," which is no where defined. It will be seen, however, that throughout the Regulations of 1802, the terms "Proprietors" and "Landholders" are used indiscriminately as synonymous with "Zamindar" and "Talookdar," and in Section IV, Regulation II of 1806, this class is clearly distinguished from Ryot or individual occupiers of land; so that the powers conferred upon the former alone cannot, it seems to me, be extended to the latter without an express enactment.

4. Again, the entire bearing of Regulation XXX of 1802, and of Regulations IV and V of 1822, contemplates a class of superior farmer or landholder, with separate rights quite distinct from the Ryot proprietors, providing as does the first of those Regulations, for the exchange of Pattas between the landholders and their under-tenants upon terms so definite as necessarily to exclude the idea of a private rent. Section VI of XXX of 1802 treats of the commutation of the terms of an already existing revenue, disputes regarding which are to be settled by the Collector under Section IX, while Section VII prohibits the exaction of any new assessment, and as, under Regulation V of 1822 no arrear of revenue can be enforced unless Pattas and Muchilkas have been exchanged according to the terms prescribed by Regulation XXX of 1802, I submit that the provisions of Regulation XXVIII of 1802, are not applicable to cases of private rents which cannot be regulated by those terms.

5. The rulings of the Sudder Court in 1832, which are quoted by the Board of Revenue from pages 135 and 137 of their Circular Order Book, Volume I, are no doubt to some extent favorable to the view adopted by the Board; but the question at issue on that occasion was simply the distinction to be made between landholders paying the full, and those who paid a favorable revenue; and as regards the decision of the Sudder Court, quoted at page 89 of Campbell's Code, I submit that the term "private rent of the proprietor" is simply placed in contradistinction to the Revenue of Government, which is of a public character, but does not

necessarily imply a rent which is temporary and fluctuating, and not regulated by the public accounts.

6. Under any circumstances, however, in view of the decision of the High Court now submitted, it will be considered necessary that the question should be placed upon a definite footing by the Legislature.

(True Copy.)

(Signed) G. N. TAYLOR,
Inám Commissioner.

No. 172. Proceedings of the Board of Revenue, dated 10th April 1863,
(Here enter 11th March 1863, No. 8.)

1. Ordered to be submitted to Government in continuation of the Board's Proceedings, dated 28th January 1863, No. 566.

2. The Board see no reason whatever to alter their opinion of the effect of the early decisions passed in this matter, nor of the equitable construction to be put upon the Regulations Nos. 27 and 28 of 1802, No. 2 of 1806, and Nos. 4 and 5 of 1822, but they readily admit that the recent decision of the High Court, of which Mr. Taylor submits copy, runs counter to the early decisions of the Sudder Court, and has again unsettled the question of the rights of Ryot proprietors.

3. The Board observe that in the recent decision the concluding part of the definition of proprietors of land contained in Section II, Regulation XXVII of 1802, viz., "all actual proprietors of land who pay the revenue assessed on their Estates immediately to Government" which was so interpreted in the early rulings as to include Ryot proprietors, has been absolutely ignored, and a Ryot landlord who is liable to be dealt with *summarily* for the recovery from him of arrears due to Government is left without any remedy against his defaulting tenants than the institution of a Regular Suit.

4. It is needless for the Board to point out how serious the effect of this judgment must be in such Districts as Tanjore, Canara, Madras, and in fact in Ryotwary Districts generally, nor how injurious it is likely to prove towards the easy realization of the public revenue from land belonging to Ryots, but they presume that it is useless to demur to the present interpretation of the Law, and they would, therefore, urge most strongly on Government the imperative necessity of an Act being passed which shall remove all doubt as to the rights of Ryot proprietors to recover their rents by summary process according to that interpretation of the law which has so long and so beneficially operated.

5. Under the circumstances now brought to notice the Board are of opinion that the Act should be distinct from that drafted by the Inám Commissioner for purposes connected with his especial province.

(A true Copy and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

No. 173. ORDER THEREON, 13th May 1863, No. 839.

The Governor in Council observes that the Bill just introduced into the Legislative Council to "consolidate and improve the laws which define the process to be taken in the recovery of "rent" will remove the difficulties brought to the notice of Government by the Revenue Board, and will render unnecessary further special legislation for Inám tenures.

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

(Before Mr. Justice Strange and Mr. Justice Frere.)

Vuvemandrum Venkiya, Plaintiff - Appellant.

Shillakuru Venkatanárayana Reddi & others.

(Defendants) - Appellants.

The 22nd. November 1862.

Regulation V of 1822. - Meerasidar.

Regulation V of 1822 is inapplicable to land held under a mirásidár or any ordinary proprietors.-

This was a special appeal from the decree of Mr. E. Story, Civil Judge, Zillah Nellore, dated the 9th. July 1861, modifying the original decree passed by T. Krishnaiya, District Munsiff of Gudiur, dated the 24th. April 1861. The action was brought by the plaintiff, a mirasidar to eject the defendants, his tenants, and for arrears of produce. The 3rd. defendant pleaded permanency of tenure. The district Munsiff gave judgment for the plaintiff. The Civil Judge, on appeal, awarded the Plaintiff produce, but refused to eject the defendant, considering that the plaintiff was bound to deal with them pursuant to Regulation V 1822. Both the lower Courts concurred in disallowing the defendants plea of permanent lease.

J. W. Branson for the Appellant.

S. Sivanada Chári for the Respondent.

Judgement- We consider Regulation V of 1822 inapplicable to land held under

a

a mirásidárs or any ordinary proprietor. That Regulation, among other things, is designed to give better effect to the provisions of Regulations XXVII and XXX of 1802 and the said enactments have respect to "proprietors" of land "and farmers" of land of a particular order. The "proprietors" spoken of as appears by section III Regulation XXV of 1802, and elsewhere, are "Zamindárs" holding lands from Government under a permanent assessment and by permanent Sanad. "The farmers of land," as shewn by section III, of Regulation XXVIII of 1802, and elsewhere, are those "holding farms immediately from Government" that is, having a temporary occupancy of lands subject like those of the Zamindar to a fixed assessment. The Mirásidars being ordinary proprietors, not holding from or under the Government, and having the lands not permanently assessed to the revenue, are a different Class, who have not been specially legislated for in the several Regulations, including Regulation V of 1822, above referred to.

Under these circumstances, we resolve to amend the decree of the Civil Judge by awarding possession of the land in issue to the plaintiff as decreed by the District Munsiff. The costs in appeal and special appeal are to be paid by the 3rd defendant.

/True Copy/

Secretary

Enclosure No 1 in the Proceedings of the Board of Revenue to the Secretary to Government Revenue Department dated 10 April 1863 No—

Rev: 826/63.

Copy of a Decree passed by the High Court.

Cº No 264 of 63

13.6.93 -
30/6/93

Rev = 1863 Vol
Pro. of the 1st May
1826.

Proceedings of the
Board of Revenue

Dated 10th }
Desp. 10 } April 1863
Recd. 11th }

C. L.

No

S.O No 839. 13th May

Submitting a letter from the Inam Commr offering observations on the Draft Inam Bill submitted by him with reference to the remarks of the Bd in regard to the applicability of Regn XXVIII of 1802 & V of 1822 to Ryot proprietors of land.

No 172

C 13 April 93 R 1 May 1863 Reg

Rev: No 264

With this letter this Board of Revenue submit Mr Taylor's Inam act.

I have made a few remarks in pencil on the draft and memo: regarding points of no very material importance.

The chief question for consideration, is Section VI of the draft act giving to landholders of all classes summary powers of distraint on their under-renters, tenants or Ryots.

Mr Taylor in his memo: remarks that it has been held that Regn XXVIII of

The Bill now before the Legislature for the collection of Rent" will confer the holders of Land in freehold to Land whether Government or Inam the same description of property as the Ryotwar Act - I do not see any principle object - I do not see any principle for granting such powers to the holders of Inam Land in preference to the holders of Land in Ryotwar - Inam Land is in Ryotwar Districts -

Lay Secretary to Govt

of 1802 applies only to persons holding lands subject to a Revenue or Quit rent payable to the Govt and that consequently doubts may arise as to whether Inamdars paying no Quit Rent could exercise the powers it gives. He urges that a distinction of this kind is unjust and that the fairest course is to place all landholders in the same position. This, he adds, seems to have been the intention of the framers of the draft Revenue Code (at present postponed) and he has framed his draft accordingly. But he states

But he states if the Government are not prepared to enter into a consideration of the general question his draft must be modified so as to embrace only Inamdars paying or free from Quit Rent.

Mr Taylor goes on to remark that Regulation ~~XXVIII~~ of 1802 is governed by Reg: ~~XXX~~ of 1802 which evidently contemplates a defined assessment payable by the ryot and not a rent variable at the will of the land holder. The majority of the Board

Board (Messrs Pelly and Clarke) do not agree with Mr. Taylor in his opinion that Regulation XXVIII applies only to the realization of the assessment due to a Zemindar as distinguished from the rents due to a Ryot-proprietor. They hold that it applies to every landholder paying any sum — however trifling to the Govt — and quote 2 or 3 rulings of the Sudr in support of this opinion. They are

therefore

therefore in favor of Mr Taylor's proposal to grant these summary powers of distraint to all land holders whether paying Revn to Government or not.

Mr Pratt dissents from his Colleagues.

I do not think it necessary that I should trouble you with any lengthened argument on this subject.

The great objection to the course taken in the draft act is that an Imam law is not the place in which to legislate for all land-holders. The Sudr rulings quoted by the Board are very comprehensive in their language

language but Govt will recollect that in 1856 the Legislative Council held that Govt came under Regulation XXVIII of 1802 and so enacted in Act 23 of 1856! Of course if Govt came under that law the Ryot could not also do so! I mention this merely to show what mere arguing on the words of laws and rulings may lead to.—

I never heard of a ryot distraining under Reg: XXVIII of 1802 and in fact the thing is out of the question

* In Canara proprietors of land have always been used to distrain for the recovery of their rent under Reg 28 of 1802 & Reg V of 1822 with the sanction of the local Courts & the said until now. Ed

question - His land is assessed - say at 10 Rs. - and more than that he cannot (if he comes under Regulation XXVIII of 1802) levy under Reg: XXV of 1802 so that if he is a "Proprietor" in the sense used by the Board his proprietary rights are valueless - He never can get more for his land than just the sum he has to pay over to Govt. I do not think the Board saw this consequence of their argument - of course under such a system

system we should
never have any thing
but a cultivating, &
peasant-proprietary
whereas under the &
present system the
ryot can make his
own bargain with
his sub-tenant - The
Board's interpretation
would render "Sub—
tenancy impossible.

Mr. Taylor saw
this diffidently as is
apparent from para
8 of his Memo.

An Inamdar
paying a quit rent
I think does come
under

Under Regulation
~~XXVIII~~ of 1802 - but
in that case his rights
and powers are clearly
limited by Reg: V of 1822.
If the government
think it desirable
that the Inam Act
should include a provi-
sion to this effect,
Mr. Taylor should be
make his draft more
precise and quote the
specific laws appli-
cable or better still
embody their provi-
sions. I should my-
self prefer leaving
the parts out until
parts are in a position
to

to pass a general law between land-lord and tenant - There is nothing in the Inam settlement requiring legislation on this point and it is an intricate question -

Inamdars who have redeemed their quit rent do certainly do not come under Reg: XXVIII of 1802 - Their number however is so few that the course adopted in regard to the other Inamdars may be extended to them -

I would here draw attention to the great addition which bringing Ryots and Inamdars universally under Reg: XXVIII of 1802 & V of 1822 will make to our Collectors work -

Sect VIII about Sub divisions needs consideration - My own opinion is that it is impolitic to interfere further than to

to require registry and apportionment of the Quit Rent - Landed property like all other property is mutable and Government cannot prevent sub. division in reality - If they attempt to do so or refuse to recognise such changes I believe perfect freedom is the best and safest course. But endless sub. division would cause much trouble and expence in collecting the dues of Govt., and Government may reasonably enact that whenever sub-division shall reduce the Quit-rent below a certain point - say 8 annas the Quit rent must be redeemed - Mr Taylor would allow sub-divisions down to 2 annas I think too that where parties prefer to hold jointly the onus of collecting

collecting each shareholders
share (clause 4) from
himself should not be
thrown on the Collectors.
The parties should be
required to make their
own arrangements or
divide

Orders Registered

Revenue Department.

No. 839.

Proceedings of the Madras Government

Under date the 13th May 1863.

Read the following papers.

Proceedings of the Board of Revs

Submitting with the Board's opinion a letter from the Inam Commissioner forwarding a draft bill embodying various points on which legislation is necessary in regard to Inams. } (Here enter 28th January 1863

From the Inam Commissioner

Submits further observations on the Draft Inám Bill submitted by him with reference to the remarks of the Board in regard to the applicability of Reg: XXVIII of 1802 & V of 1822 to Ryotwar proprietors of land. } (Here enter 11th March 1863 ult.o

Proceedings of the Board of Revs.

Submitting a letter from the Inam Commr offering observations on the Draft Inam Bill submitted by him with reference to the remarks of the Bd in regard to the applicability of Reg: XXVIII of 1802 & V of 1822 to Ryotwar proprietors of land. } (Here enter 10th April 1863

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I. A. S.

14 Office Lo. Mem. Bd. of Rev. Cert.
5 " Inam Comm.r

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27-6-12

Revenue 1863 Dep.tt.
Pro: of Govt for May.

N: 839.

Pro: of the Madras Govt
Dy 13th May 1863.

Pro: of the Board of Rev
dy 13 July 63 C no 1661

Draft Inam Bill
proposed by the Inam
Commissioner, considered
to be unnecessary.

N: 170@173.

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