M.R.O. 14—13,000—27-9-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2073 Press ~~Mis.~~

137—138

Dated 11—11— 1864.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 11th November 1864.

No. 137. Read the following letter from J. R. BOYSON, Esq., Government Solicitor, Madras, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, dated Madras, 31st October 1864, No. 576 :—

SIR,

Dated 30th September 1864, No. 1,805, Revenue Department.

1. I have the honor to acknowledge the Proceedings of Government noted in the margin, (with its enclosures), requesting the Advocate General's further opinion as to the course to be pursued with respect to certain "Kavil Mainem" land at Madura, attached and sold under decree of the Principal Sudder Ameen's Court at Madura in O. S. No. 5 of 1862.

2. I have submitted them for the consideration of the Advocate General, with whom and with the Government Pleader I have also conferred, and

3. I now forward a copy of the Advocate General's further opinion, and return the enclosures above noted.

COPY—OPINION.

1. I have carefully perused these papers and considered the case in conference with the Government Pleader, Mr. Dale.

2. It appears to me, and Mr. Dale concurs with me, that as matters stand at present, no action can be taken by the Government in respect to the decision of the Principal Sudder Ameen.

3. The case on behalf of the Government is that the land was originally granted as a service Inám, in consideration of services to be performed by the donee and his representative. The further evidence adduced on this point is far from conclusive or satisfactory; but it is probable that the Collector's Records contain better testimony of the original nature of the grant.

4. The Government has a right to see that the services are duly performed; and if they should not be, to resume the Inám. If, as asserted, it includes the Kudivarum, the present decision cannot conclude the Government.

5. Upon Government deciding to resume, it will be time to consider what precise legal steps ought to be taken for enforcing its determination. It appears to me that if any suit should have to be brought, the proceedings ought to be had in the ordinary Court. I see nothing in the novelty or difficulty of the case to take it out of the ordinary course. On the contrary, the questions involved appear to me capable of being much more satisfactorily discussed and settled in a Mofussil Court than in the High Court on its original side.

6. I think therefore that the case is one falling rather within the province of the Government Pleader than the Advocate General, though I shall be happy to consider the case in conjunction with the Government Pleader, if either the Government or that Officer should wish it.

7. The Inámdar might possibly institute proceedings to try the question if so disposed: but I do not think that the Government ought to seek to put him in motion, or that the Government Pleader or I need consider the case on his behalf.

8. The Principal Sudder Ameen was clearly wrong in deciding what is the character of this particular Inám without calling for evidence on the point. He appears to have proceeded on his own general knowledge of Inám tenures picked up in the course of his former duties.

9. His *ratio decidendi* opens up a very large question, as it strikes me. What is the interest of the Government in the soil? The Principal Sudder Ameen seems to think that in no possible case can the Government possess more than the Mailvarum, and therefore that it cannot in any case give away a larger interest in the soil. The Principal Sudder Ameen relies on what he has seen in South Arcot. But it is clear that the state of things in South Arcot need not necessarily be the same as in Madura; and as I gather from the information before me, as a matter of fact, Ináms in the Madura District are of different kinds, some being of the Mailvarum alone, others (among which the present Inám is said to be) of the Kudivarum as well as the Mailvarum.

10. That the Principal Sudder Ameen was bound, on the allegation that this Inám was of the latter kind, to have called for the evidence and have decided thereon, I have already observed. In my opinion he was also in error in his theory of the Government interest in the soil.

11. Where a Kudivarum right already exists, all that the Government can have is the Mailvarum, but where there never has been any Kudivarum right, and the waste uncultivated land is not subject to any Merassee right, I have always understood that the Government may deal with the land as it pleases.

12. The interest of the Government in the soil is, I think, very analogous to that of the Crown in England, under the feudal system. Theoretically the ultimate dominion or *dominium directum* of all the land in the kingdom is vested in the Crown, though it cannot interfere with the *dominium utile* which has vested in the individual proprietor. It is upon this principle that the Government in this country disposes of waste lands upon the hills and elsewhere. There, the *dominium directum* and *dominium utile* have never been severed. No one has ever occupied the land; and it is competent to the Government to deal with the *entire* interest in the soil, whether by granting it as Inám, selling it outright, leasing it for a term of years, or occupying it for its own purposes.

13. To hold, therefore, that in *no* case can the Government possess or deal with more than the Mailvarum, appears to me an unsupportable proposition. Each case must be judged of on its own facts, not upon any general reasoning. And it is quite clear that had the Principal Sudder Ameen pursued the former course, he might have come to a different decision as to the character of this particular Inám. The Collector asserts, and very possibly might have been able to prove, if the opportunity had been allowed him, that the Kudivarum as well as the Mailvarum constituted the Inám in the case before the Court.

14. The Principal Sudder Ameen has, in my opinion, miscarried; no appeal unfortunately lies from his decision. But I do not myself attach any very great importance to the matter, inasmuch as the decision cannot form a precedent; the Government is not at present damnified; and if it should be hereafter, it has, I think, the remedy in its own hands.

27*th October* 1864.

(Signed) J. B. NORTON,
Advocate General.

(True Copy.)

(Signed) J. R. BOYSON,
Government Solicitor.

No. 138. ORDER THEREON, 11th November 1864, No. 2,073.

Land Revenue.

Under the circumstances stated the matter will be allowed to lie over.

(True Extract.)

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

To the Board of Revenue.

Exd. S. T. Augustin.

W. 2073.

Under the circumstances stated the matter will be allowed to lie over.—

Fort St. George
11th November 1864.

Copies Letter to Revenue Board Dept. 11th Nov.
4 — Govt. Solicitor
2 — Govt. Reader
5 — Govt. Dept.

Pro 30 September 1864 A 447 448

Revenue - 1864 Oct 25
Pro. of Govt for 1864 Nov 5 No. 2848
From The Govt Solr, Madras
To The Chief Secy to Govt, Madras
Dated 31st October
Recd 1st Novr.

No. 576

5 enclosures - 4 Dft. l.
No. 63 76

Forwards Copy Advocate Generals further opinion as to the course to be pursued with respect to certain "Kanil Mainem" land at Madura, attached and sold under Decree of the Principal Sudr Ameens Court at Madura in O.S. No. 50 of 1862.-

No. 137 + 138.

Copies 64 47

A 2979 - 1 Nov.

William Oxley