M.R.O. 14—18,000—27-9-34.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 70 Press ~~Mis.~~

135-136

Dated 13 1- ~~19~~ 1864

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 13th January 1864.

No. 135. Read the following letter from J. R. BOYSON, Esq., Government Solicitor, to J. D. SIM, Esq., Secretary to Government, Revenue Department, dated Madras, 6th January 1864, No. 5 :—

SIR,

Dated 15th December 1863, No. 2,296, Revenue Department.

1. I have the honor to acknowledge the Proceedings of Government noted in the margin, as to the course to be pursued with respect to certain "Kavil Maniem" land at Madura, attached under Decree of the Principal Sudder Ameen's Court at Madura in O. S. No. 5 of 1862.

2. I laid those Proceedings with the papers which accompanied them before the Advocate General, and have also conferred with him thereon, and,

3. In now forwarding a copy of his views, I request the favor of your obtaining and furnishing me with the further information he has asked for.

COPY OPINION.

1. The question as to the best course to be pursued under the circumstances of this case, is one of no little difficulty ; and shows clearly that the advantages to be gained from investing Native Judges of the class and quality of M. Sadaseva Pillay with the power of deciding finally, and without any means of appeal, in matters which may involve such very important questions, are not without their corresponding drawbacks. I would submit it for the consideration of Government whether it might not be desirable to consult the Government of India as to the expediency of passing a general enactment giving Government a right of appeal in all cases concerning the Revenue ; or, at least, giving power to the High Court of granting such appeal, upon Petition preferred by Government, whenever the High Court shall consider that a fit case is made out for granting it. If the Government of India should for any reasons of a local nature, decline to pass such a general law, it might be requested to authorize the introduction of a Bill for that purpose confined to the Presidency of Madras.

2. The Collector of Madura and the Principal Sudder Ameen seem to me to be at issue, in substance, as to this, viz., what does the Inám in question consist of. The Principal Sudder Ameen admits* that he is precluded from touching Inám land, and that he is barred from questioning the tenure of any land which the Collector informs the Court to be held as Inám, but he eludes what seems to me the obvious intent of the Regulation and Sudder Order, by declaring that what he has ordered to be sold is not the Inám, whereas the Collector says it is.

* Order 8th November 1803, Para.—

3. The Principal Sudder Ameen says the Inám is merely the Melwaram ; the Collector says it is the Melwaram *plus* the Coodivaram ; the latter being what the Principal Sudder Ameen has attached and ordered to be sold.

4. So far as the papers before me show (for none of the deficiencies pointed out by Mr. Dale have been supplied) the Principal Suddor Ameen seems to me to be clearly wrong on three points, 1stly, an important point having been fully raised before him, he decides it without any evidence being gone into ; 2ndly, he decides it upon his own personal knowledge, an improper and illegal ground, even if his knowledge were clearly applicable to the case before him, whereas he confesses his knowledge to be derived from the practice and usage of a distant District, viz., South Arcot, and yet, without enquiry or hesitation, he decides that the practice and usage in Madura must be precisely similar. These would be good grounds of appeal if any appeal lay. The Principal Sudder Ameen seems to me also to err in questioning "the justice or legality of the Order" of a superior Court.

5. Whether, in this particular case, the Coodivaram forms a part of the Inám in question, or not, is a question which a Court can or ought only to decide upon evidence; but there is no evidence whatever before me ; and without knowing what evidence can be given in support of

the view taken by the Collector, the Board of Revenue, and the Government, I am unable to say whether the course recommended by Mr. Dale is advisable or not.

6. I entirely concur in the observation of Government* that it is doubtful whether the Inámdar would consent to be Plaintiff; if he will not, it would seem that only Government or the Collector on its behalf, could sue; but then again, Mr. Dale observes† that he "does not see what claim or "right Government has in the land," "or that the Government "has sustained any such injury as is contemplated by the "Code of Civil Procedure."

* Paragraph 12, Order December 15th, 1863, No. 2,298.

† Paragraph 6, letter December 3rd, 1863.

7. This again all depends upon the same matter, whether in this particular instance the Coodivaram forms part of the Inám. The Principal Sudder Ameen says that to his knowledge such is not the case in South Arcot, &c., and Mr. Levinge‡ and the Government§ both admit that the practice and usage is not uniform, but varies in different Districts.

‡ Paragraph 4, letter November 19th, 1863.

§ Paragraphs 5 and 6, Order December 15th, 1863.

8. The first point therefore, as it seems to me, is to furnish me with all the evidence that can be adduced to show that in this particular case the Coodivaram forms part of the Inám. Government observes (paragraph 6) that "in numerous cases 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," that which is *said* to be the case must be *proved* to be so, in order to entitle Government to a Decree, and an adverse Decree by the High Court would obviously do much more injury to the interests of the Revenue than that which Mr. Levinge‖ seems, not unnaturally, to apprehend from the decision of the Principal Sudder Ameen.

‖ Paragraph 7.

9. I therefore request to be furnished with whatever evidence can be adduced on the above mentioned point in favor of the claim of Government, and also with full information on the points noticed by Mr. Dale. Meantime I retain the papers, and shall consider the matter, in consultation with Mr. Dale, with a view to preparing such a Plaint as he has suggested, if sufficient to support it should be forthcoming.

(Signed) T. SYDNEY SMYTH,
Advocate General.

December 28th, 1863.

(True Copy.)

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

No. 136. ORDER THEREON, 13th January 1864, No. 70.

Forwarded, together with the enclosures, to the Board of Revenue, who will be requested to obtain and submit full information on the points noticed by the Advocate General.

(True Extract.)

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

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

Exd. S. T. Augustin.

Pro: 30th November/63 Nos 398-399
- 15th December " " 264-266

12/64

No 135 & 136

11 Jany/64 AW

No 5
1 Enclosure
Nil

Pro: 7 Govt for 1864 Jany
No 80

From The Govt Solr - Madras
To The Secy to Govt Revl Dept

Date 6th Jany
Recd 8th

Requests to be furnished with further information in connection with the "Karl Mariem" Land at Madras attached under Decree of the O.S. Court at Madras in C.S. No 5 of 1862.

No 70 - 13 Jany
Written Order

570

Forwarded together with the enclosures, to the Board of Revenue, who will be requested to obtain and submit full information on the points noticed by the Advocate General.

Fort St George
13 Jany/64

14 Chrs
Bd of Revl Circ: 14
3 Govt Solicitor
3 Govt Pleader
5 Jud. Dept

JV