

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 867	<u>Press</u> <u>Mis</u>
280.231	
Dated	20.5.1866

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
20th May 1864.*

No. 230. Read the following Proceedings of the Board of Revenue, dated 9th May 1864, No. 2,790.

Read the following letter from the Collector of Malabar, dated Calicut, 21st April 1864, No. 92:—

1. A short time ago copy of a Petition purporting to be addressed to Government by certain individuals, claiming to be Jenmis of certain lands in the Talook of Ernad, long considered as Government escheats, was sent to my Office.

No notice appears to have been taken of the Petition by Government; but it refers to an important question which has often been agitated, and on which, though it may be said to have been definitely settled long ago, it may be desirable again to take the Orders of Government, with reference to the escheat settlement now progressing in Malabar.

The correspondence and papers noted refer to the matter which may be briefly stated as follows.

2. In 1801-2 certain Mopillas in the then Talooks of Shernad and Ernad were declared rebels, and the lands in their possession were declared escheats.

These lands were gradually given out by Government to other occupants, often the immediate relations and heirs of the rebels. The occupants paid the assessment, as well as the Jenmi Shistom or proprietor's due, to the Government; and this has continued up to the present day.

3. So far back as 1817 the then Collector Mr. Vaughan brought to the notice of Government that it was desirable to sell the proprietary

Letter to Board of Revenue, dated 16th June 1817.

Do. from do. do. " 24th July " "
Do. to do. do. " 2nd September 1818.
Do. from do. do. " 17th do. "
Do. to do. do. " 15th do. "

Do. from do. do. " 8th February 1819,
1 enclosure.

Mr. Græme's Report to the Board of Revenue, Section 6,
paragraphs 1,356 to 1,388.

Letter to Board of Revenue, dated 14th September 1843,
2 enclosures.

Do. from do. do. " 16th October "
Do. to do. do. " 25th July 1848, "
2 enclosures.

Do. from do. do. " 21st August 1848.
Do. to do. do. " 2nd September "

Do. from do. do. " 26th October "
Decree of Sub-Court, Calicut, in Original Suit No. 329
of 1812, forwarded to the Board with letter dated 2nd
September 1848.

Petition presented by the Hindu Inhabitants of Ernad
Talook to His Excellency the Governor of Madras, dated
5th April 1852.

right vesting in Government in the escheats in Malabar; as the purchasers, becoming Jenmis, would take far greater interest in the improvement of the land, and have a greater stake in the tranquillity of the country.

Further correspondence passed and the question was referred for the consideration of Mr. Commissioner Græme.

4. Mr. Græme distinctly states* that many lands whose rebel occupants were merely mortgagees or lessees, had been declared escheats; and considered that if the proprietors

came forward and cleared the mortgages, the lands should be made over to them.

But no arrangements of this sort were then made, either with respect to these escheats, or for the sale of the proprietary right in any of the other escheats in Malabar.

5. This principle, that lands escheated from rebellion of occupants would be restored to proved proprietors, seems to have been immediately recognized; at least I do not find it any where controverted. But difficulty even then appeared to exist in determining who were the proprietors; and very few and feeble attempts appear to have been made by proprietors themselves to establish their claims. In no single case has claim been established hitherto.

6. In 1823 it seems certain individuals petitioned the then Collector† with a view to the recovery of certain escheats of which they claimed to be the Jenmis. They offered to pay the mortgage liens if their proprietary right was admitted.

† Mr. Vaughan.

*Proceedings of the Madras Government, Revenue Department,
20th May 1864.*

They were directed to prove their claims. They appear to have taken no steps to do so however, for about a year afterwards the Ernad Tahsildar was directed again to call on them for their proofs; and a further order distinctly informed them that if further delay took place their claims would not be afterwards attended to. Petitioners however do not appear to have taken further action.

1824.

7. In December 1828 a somewhat similar Petition was presented; and several like Petitions at various intervals afterwards; but beyond petitioning no steps appear to have been taken to substantiate claims till 1842 when a suit was brought against the then occupants of certain escheats, and the Collector, by a Jenmi* and his assignee† to establish right to the Jenm of the lands on payment of the mortgages.

* Nilakanden Musad.

† Kateat Krishna Menon.

Mr. C. R. Baynes.

The plaint was dismissed as the Sub-Judge of Calicut declared the power of proof to be entirely wanting.

This Judgment was upheld by the Civil Judge on appeal.

‡ Nephew of the abovesaid Kateat Krishna Menon.
1847.

Same parties.
Same lands.

disposed of by the previous Judgment. This order was confirmed by the Appeal and Special Courts.

§ This man claimed to have purchased the Jenm title from Parameswara Musad, his own father. Both parties must have been perfectly aware of the doubtful nature of that which they purported to be selling and buying.

|| Mr. T. Onslow.

10. In 1852 a Petition was addressed to Government praying that the Special Commissioner Mr. Strange, then in Malabar, might be deputed to inquire in the question of these escheats.

The then Collector was called on for a report; and after its receipt Government referred Petitioners to the Courts if they had any claims to urge.

It is noteworthy, as Mr. Conolly remarks, that the Plaintiff in all the suits mentioned above and the originator of the address on which report was then being made is in effect or reality on and the same person. This individual petitioned Mr. Grant, and again appears in the Petition which has led to this letter.

11. Having sketched the progress of the question to the present time. I would observe that I think there can be no doubt but that in these Ernad escheats the Mopilla occupants were seldom or never the Jenm proprietors. They were generally mortgagees; and their rebellion could not of itself affect the real proprietors' title. But there is as little doubt that had the rightful proprietors appeared in due time, with any thing to substantiate their claims, they should and would have had their Jenm right acknowledged on fair settlement of the mortgage liens.

The spirit of the early correspondence shows not only willingness but desire to settle the Jenm rights with proprietors.

It is difficult to conceive therefore why if the true Jenmis existed they did not come forward. The families of some had doubtless become extinct in the troubles of Tippoo's time, whilst others fled to Travancore never to return. Some however must have remained in, or returned to, the

*Proceedings of the Madras Government, Revenue Department,
20th May 1864.*

country, but it is evident they were too apathetic, or too ignorant, or too timid, to do more than address an occasional feeble petition.

The Government through its officers repeatedly opened the way for the substantiation of asserted rights; but no efficient action was taken; and the most indulgent must I think decide that whatever rights may have been, have lapsed, and deserve no consideration now unless they can be clearly established in a Court of Law. Of this there does not seem the remotest probability, and on the simple score of the absence of all other Jenmis the Jenm right of these lands clearly vests in Government.

12. In the settlement of escheats now progressing in this District Government sells its proprietary right relinquishing claim to the collection of landlord's rent or other due, save only the simple assessment.

As a rule a very moderate valuation is fixed on the land and its Jenm is sold to the tenant presently occupying under Government.

The valuation accounts of these Ernad escheats have to a great extent been already prepared by Deputy Collector C. Kanaren, and the rest will soon be completed.

13. The general beneficial effects of a fair and certain settlement of the Jenm right will tell with increased effect in the part of Malabar in which the escheats under notice lie.

The only question is, Is the Jenm to be disposed of as usual to the long standing occupants and payers of Jenmi Shistom to Government, or is any attention to be paid to the claims I have above described?

The Jenm title is most eagerly sought at the very easy valuations fixed. The occupants on the one hand are most desirous to purchase it, whilst I doubt not any claiming Jenmis would be only too happy to pay the valuation money to have their claim allowed.

But I am clearly of opinion that the claims of the occupants are much the strongest. To favor the alleged Jenmis at the occupant's expense would be in my view contrary to justice; and would be quite contrary to the practice hitherto followed in the escheat settlements.

I propose therefore that the Jenm be sold as usual to the tenants occupying under Government.

14. Under the circumstances I have stated above, and with the previous decrees of the Courts on record, I do not think there is any probability of claims being seriously urged. There is certainly none of their being substantiated. But, if it is thought desirable, perhaps a short

As in Act XXIII of 1863 with regard to waste land sales, enactment might be passed declaring that any suit founded on claim to the Jenm of these lands shall lie against Government for the purchase money received; and be barred as against the purchaser or for the land itself.

15. I beg an early reply as I merely await instructions to have the sales proceeded with.

1. The Board see not the slightest reason why the Collector should hesitate to proceed with the sale of the Jenm right in these Escheats to the occupying tenants as in the case of the Betutnad Escheat.

2. The Board were fully aware of the fact that these vague shadowy claims had from time to time been presented, but never established. They do not doubt that originally there was some foundation for the statement on which they are all based, but they cannot suppose that at this distance of time and in spite of the many vicissitudes through which the lands have passed since the Mopilla tenants or mortgagees who were subsequently proclaimed rebels, first obtained possession, there is any possibility of the Government or the Courts being able to adjust the claims so that right shall be done to all parties.

*Proceedings of the Madras Government, Revenue Department,
20th May 1864.*

3. It is not to be presumed that in this country more than elsewhere great political changes can take place without some injury to private rights. It is highly probable that when the Musulman Government of Mysore had the pre-eminence in Malabar, Mopilla tenants of Hindu landlords availed themselves of the opportunity to assert undue claims of propriety right without much fear of successful opposition, and that when the Government of their co-religionists ceased to be in the ascendant, and they themselves were denounced as rebels against the British Government, their asserted rights were held to be forfeited to the Crown, to the injury of the old Hindu landlords. But ample opportunity has been given for the establishment of all claim of Jenmi right capable of proof, without producing any favourable result to the claimants, and meanwhile rights based on long undisturbed occupancy and deserving of much consideration have been growing up, about which there can be no mistake.

4. It appears to the Board that the chance of doing injustice by ignoring these last claims is far greater than that involved in the proposal to sell to the occupying tenants the Jenm right, irrespective of these vague misty claims based on an asserted right of heirship to those who were the Hindu proprietors in times so long past that probably only tradition can be appealed to as evidence.

5. The question will however be submitted to Government as desired by Mr. Ballard.

No. 231.

ORDER THEREON, 20th May 1864, No. 867.

The Government entirely concur in the Board's views. Ample time and opportunity have been afforded for the establishment of just claims, and any that may now be preferred should be disregarded as barred by lapse of time.

(True Extract.)

(Signed)

C. G. MASTER,

Deputy Secretary to Government.

To the Board of Revenue.

Exd. S. T. Angustin.

The Government through its officers repeatedly opened the way for the substantiation of asserted rights; but no efficient action was taken; and the most indulgent must I think decide that whatever rights may have been, have lapsed, and deserve no consideration now unless they can be clearly established in a Court of Law. Of this there does not seem the remotest probability, and on the simple score of the absence of all other Jenmis the Jenm right of these lands clearly vests in Government.

12. In the settlement of escheats now progressing in this District Government sells its proprietary right relinquishing claim to the collection of landlord's rent or other due, save only the simple assessment.

As a rule a very moderate valuation is fixed on the land and its Jenm is sold to the tenant presently occupying under Government.

The valuation accounts of these Ernad escheats have to a great extent been already prepared by Deputy Collector C. Kanaren, and the rest will soon be completed.

13. The general beneficial effects of a fair and certain settlement of the Jenm right will tell with increased effect in the part of Malabar in which the escheats under notice lie.

The only question is, Is the Jenm to be disposed of as usual to the long standing occupants and payers of Jenmi Shistom to Government, or is any attention to be paid to the claims I have above described?

The Jenm title is most eagerly sought at the very easy valuations fixed. The occupants on the one hand are most desirous to purchase it, whilst I doubt not any claiming Jenmis would be only too happy to pay the valuation money to have their claim allowed.

But I am clearly of opinion that the claims of the occupants are much the strongest. To favor the alleged Jenmis at the occupant's expense would be in my view contrary to justice; and would be quite contrary to the practice hitherto followed in the escheat settlements.

I propose therefore that the Jenm be sold as usual to the tenants occupying under Government.

14. Under the circumstances I have stated above, and with the previous decrees of the Courts on record, I do not think there is any probability of claims being seriously urged. There is certainly none of their being substantiated. But, if it is thought desirable, perhaps a short enactment might be passed declaring that any suit founded on claim to the Jenm of these

As in Act XXIII of 1863 with regard to waste land sales. lands shall lie against Government for the purchase money received; and be barred as against the purchaser or for the land itself.

15. I beg an early reply as I merely await instructions to have the sales proceeded with.

1. The Board see not the slightest reason why the Collector should hesitate to proceed with the sale of the Jenm right in these Escheats to the occupying tenants as in the case of the Betumad Escheat.

2. The Board were fully aware of the fact that these vague, shadowy claims had from time to time been presented, but never established. They do not doubt that originally there was some foundation for the statement on which they are all based, but they cannot suppose that at this distance of time and in spite of the many vicissitudes through which the lands have passed since the Mopilla tenants or mortgagees who were subsequently proclaimed rebels, first obtained possession, there is any possibility of the Government or the Courts being able to adjust the claims so that right shall be done to all parties.

3. It is not to be presumed that in this country more than elsewhere great political changes can take place without some injury to private rights. It is highly probable that when the Mussulman Government of Mysore had the pre-eminence in Malabar, Mopilla tenants of Hindu landlords

availed themselves of the opportunity to assert undue claims of proprietary right without much fear of successful opposition, and that when the Government of their co-religionists ceased to be in the ascendant, and they themselves were denounced as rebels against the British Government, their asserted rights were held to be forfeited to the Crown, to the injury of the old Hindu landlords. But ample opportunity has been given for the establishment of all claim of Jenmi right capable of proof, without producing any favorable result to the claimants, and meanwhile rights based on long undisturbed occupancy and deserving of much consideration have been growing up, about which there can be no mistake.

4. It appears to the Board that the chance of doing injustice by ignoring these last claims is far greater than that involved in the proposal to sell to the occupying tenants the Jennom right, irrespective of these vague misty claims based on an asserted right of heirship to those who were the Hindu proprietors in times so long past that probably only tradition can be appealed to as evidence.

5. The question will however be submitted to Government as desired by Mr. Ballard.

(A true Copy and Extract)

[Signature]

Secretary.

To G. A. Ballard, Esq., Collector of Malabar.

Copy to J. D. Sim, Esq., Secretary to Government, R. D.

14 copies to the Secy of the Board of Revenue as may be required for the purpose of the Jenmi right, and may that every man be free to sell should be as regarded as having by lapse of time

The Govt. entirely con- sider in the 18th

revenue - Ample time and opportunity have been afforded for the settlement of the

17-2-06

Recd 1864. Department

Recd 1864. Department

No. 1252

PROCEEDINGS OF THE BOARD OF REVENUE

Dated 9th May 1864.

24/5/1864

22.1300

No. 2780.

Granting authority to proceed with the sale of the Jennom right in certain Escheats in the Taluk of Ernad.

21st May

W. H. C. B. C.

21st May 1864

21st May 1864

21st May 1864