M.R.O. 14—18,000—27-8-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2973 Press ~~Mis.~~

6ts. 616

Dated 28 11 1865.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
28th November 1865.

No. 615. Read the following letter from the Registrar of the High Court of Judicature at Madras, to the Chief Secretary to Government, Fort Saint George, dated Madras, 22nd November 1865, No. 68 :—

1. I am desired by the Honorable the Chief Justice and Judges to acknowledge the receipt of your letter of the 21st ultimo, No. 2,579, requesting the High Court to make a general order that, whenever land paying revenue is sold under a Decree of Court, a statement of the arrears due on it should be included in the Sale Notice.

2. It appears to the Chief Justice and Judges that they cannot properly make such a rule as is desired.

3. In the first place, it is difficult to see who would be benefited by the new information. The rights of Government are already fully secured by the formalities which have to be observed under Section 249 of the Code of Civil Procedure, and under Section 248 it is competent to them to direct that the sale be conducted by the Collector. Intending purchasers would possibly be saved some trouble, but very slight pains will enable them even now to ascertain the amount of arrears claimed.

4. The amount really due is often a subject of dispute, and it would clearly be improper for the Courts to accept the *ex parte* statement of the Collector as conclusive.

5. It would appear, moreover, from the Proceedings which accompanied the letter under reply, that the object of Government is to secure satisfaction for the arrears out of the purchase money paid into Court. But the land is sold subject to all encumbrances, and the purchaser regulates his offer accordingly. The stoppage of the arrears from the price would therefore be injurious to the judgment debtor, and possibly to the creditor also. The object sought, too, is one which the High Court are unable to recognize. They consider it highly objectionable that the Courts of Justice should be rendered ancillary to the convenient collection of the revenue in the extra-judicial manner proposed.

6. There are other minor objections to the proposal of Government; but the above are the principal considerations which have led the Court to their present conclusion.

No. 616. ORDER THEREON, 28th November 1865, No. 2,973.

Land Revenue.

Communicated to the Board of Revenue, who will observe that the effect of the Court's decision is that all steps to recover arrears of revenue from the proceeds of land sold for a judgment debt must be abandoned, and the Collectors must proceed at once against the land without reference to any change of ownership; the procedure provided by Section 249 of the Code of Civil Procedure being, under the Government Pleader's interpretation, too cumbrous to be brought into operation.

(True Extract.)

(Signed) W. HUDLESTON,
Acting Secretary to Government.

To the Board of Revenue.
,, the Judges of the High Court.

Exd. S. T. Augustin.

/No. 68/-

From P. D. Hutchins, Esquire.
Registrar of the
High Court of Judicature
at Madras.-

To The Honorable A. J. Arbuthnot.
Chief Secretary to
Government.-

Honorable Sir,

1. I am desired by the Honorable the Chief Justice and Judges to acknowledge the receipt of your letter of the 21st ultimo, No. 2579, requesting the High Court to make a general order that whenever land paying revenue is sold under a decree of Court, a statement of the arrears due on it should be included in the sale notice.-

2. It appears to the Chief Justice and Judges that they cannot properly make such a rule as is desired.

3. In the first place it is difficult to see who would be benefited by the new information. The rights of Government are already fully secured by the formalities which have to be observed under Section 249 of the Code of Civil Procedure, and under Section 248 it is competent to them to direct that the sale be conducted by the Collector. Intending purchasers would possibly be saved some trouble but very slight pains will enable them even now to ascertain the amount of arrears claimed.

4. The amount really due is often a subject of dispute and it would clearly be improper for

the Courts to accept the Ex parte statement of the Collector as conclusive.

5. It would appear moreover from the Proceedings which accompanied the letter under reply, that the object of Government is to secure satisfaction for the arrears out of the purchase money paid into Court. But the land is sold subject to all encumbrances and the purchaser regulates his offer accordingly. The stoppage of the arrears from the price would therefore be injurious to the judgement debtor and possibly to the creditor also.

The object sought too is one which the High Court are unable to recognize. They consider it highly objectionable that they

Courts of Justice should be rend-
=ered ancillary to the convenient
collection of the Revenue in the
=stead judicial manner proposed.

4. There are other minor
objections to the proposal of Govern-
=ment but the above are the prin-
=cipal considerations which have
led the Court to their present
conclusions.-

High Court of Judicature, Madras,
22d November, 1865.

I have the honor to be,
Honorable Sir,
Your most obedt servant,

[signature]
Registrar.
Appellate Side.

No 2973.

Comm. Rev. Bd of Rev. Who
will observe that the spirit of the
Cs direction is that all steps to
recover arrears of Revt from persons
of land sold from judgment
debt must be abandoned. &
the Collrs must proceed at once
agst the land in their hands & any
charges of wrongful. The powers
given by Sec. 249 of the Code of Civil
Procedure being under the Act
Pleaders in particular operation.
& consequent operation.
It does not appear
that the objections stated by
the High Cs are of sufficient
public importance & do not the
limit time prescribed by the Code of
Land Encumbered with a heavy

liability of an account of public moneys
assist it can spare from any such
liability - pending the decision of the
Officer who is legally competent to
demand & realise public debts
and his property treated as "in parts"
statement. but the liability of
the Estate of the Executors
to the Crown for the moneys of the public
not duly paid over it. being unaffected
by any change of ownership
the remedy for the public not remain
~~unaffected~~ equally strong against it:
: standing that the facilities for
securing it from the proceeds of a
Court sale are relinquished

L.J.

28th June/66

C 5

#

Embrace of fully carried by
insertion of the arrear.
But to the H. Lords it
has seemed otherwise

Why

The Sections in Bill
subjected in the Bill of
the Civil Code amended
an 404 seqq - but
the wording of the Amend
Code is preserved

Why

I would stop at
the end of the first
para - for it is no
purpose to carry on
the consideration
I am not sure
that there is not some
force in the objec-
tion - either as or not
this as one of the

the may as well stop
at the end of the 12th para
of the draft order? The
doubt - what is stated in
the second para is true,
but we are helped under
the construction of Section
249 which the H Court have
placed on it -
Personally, as a member
of a Court of Justice, I did
have been glad to save the
chance of harm by a pur-
chaser, by clearly showing
before the sale was closed,
that there was a rev: arrear
on the land put up for
sale - and I think that
the words of sect 294 &
empower the Court ordering
the sale to relieve them
Notice " any other parties
" have that the Court may
" thereby protect " would
#

Pro-21 October 65. A 4164 15.

Rec'd
~~Judicial~~, 1865. Dept. of Pub. Prosecutions
No. 3370

From
The Registrar of the
High Court of Judicature
at Madras.

To The Chief Secretary to
Government.

Dated 22d
Rec'd 23 } November 1865.

No 68
~~C 2973 - 28 Nov~~
Stating that the High
Court cannot properly
issue a general order
that, whenever land paying
revenue is sold
under a decree of Court,
a statement of the arrears
due thereon be included
in the sale notice. —
With an order

Conveying his sanction to
the Court's
Collector's
The Board's letter
of the Court in the

No 6154 6/6
C 28 Nov 65 A 15 Dec