

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1065	Press Mis.
Dated	4 - 5 -	1866.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
4th May 1866.*

No. 90. Read the following Proceedings of the Board of Revenue, dated 13th March 1866, No. 1,714 :—

Read the following letter from the Collector of Malabar, to the Secretary to the Board of Revenue, dated Lakadi in Wynad, 9th December 1865, No. 261A.

1. I have the honor, in accordance with the Orders of Government noted, to report on the Appeal Petition presented by the Trustees of the Tirunhalli Pagoda, dated 1st May 1861. With Appendix containing copies of documents marked A. to M. Wynad Talook, and the documents that accompanied it.

2. The Government observe that these documents do not appear to have come under the consideration of Mr. Collector Grant, or Mr. Deputy Collector Stuart.

Vide Collector's letter to Board, 12th December 1859, No. 293. This appears to be the case; for the Trustees, it will be remembered, failed to

Vide his report, dated 20th February 1862, No. 18, paragraph 16. attend Mr. Grant's summons; and it is clear the documents were not produced before Mr. Stuart, as he expressly says none in support of the claimants' title of earlier date than 1851 were presented to him.

Vide deposition before Deputy Collector of Wynad from Vadaka Muthaniam, dated 11th November 1865, No. 7. 3. The Trustees, questioned by the Deputy Collector as to why the documents

were not produced in the inquiries above said, simply deny having received any call from Mr. Grant; and assert that all documents were produced before Mr. Stuart. Both statements are puerilely false; but are the only explanations afforded.

4. As to the genuineness of the documents—

The Deputy Collector, Mr. Richardson, doubts the genuineness of E., but I see no reason to question the genuineness of the others, and several are supported by the records.

5. I proceed to offer some remarks as to their value—

Those marked K, L, M, call for no remark here. It will be convenient to dispose of E, H, I, first.

These are leases to different persons to cut timber on stamp fee. They are dated 1836, 1856, and 1860, respectively.

The genuineness of the first, as abovesaid, is doubted by the Deputy Collector: I do not think the matter one of any real importance. The documents only go to shew that the Pagoda Trustees did lease certain of the forests. But this is really showing little germain to the issue, unless it is also shewn that Government were cognizant of the transactions, and allowed them to pass unchallenged. That the Trustees claimed the forests many years ago, and that they were willing to lease to any persons who would rent from them, is undisputed. That considerable uncertainty regarding the proprietorship of the forests prevailed must be allowed. That, under the lax supervision which the remote and unopened state of the country induced, rights were often unjustifiably assumed without challenge is little wonder.

But it must be remembered that Government acts are naturally of a more public character than private ones; and if the former are allowed to pass unchal-

lenged, by persons in the position of these Trustees, the argument is far stronger in behalf of Government, than it is in behalf of the Trustees, if a private and unknown arrangement of their's escapes challenge from its very obscurity.

A, dated 23rd Mitunom 9 8, or July 6th, 1823. Order from Mr. Vaughan to the Tahsildar of Wynad, directing felling by private individuals in the forests on the borders of the Mysore country. It calls for the names of the owners of the forests, lists of timber cut, stump fees due, &c.

B, dated 12th Chingom 999, or 26th August 1824. Order from Tahsildar of Wynad to the Tirunhalli Trustees, informing them that a person was coming from the Mysore Rajah to cut wood, and directing them to report his arrival to the Tahsildar.

C, dated 19th Kain 1000, or September 23rd, 1824. Order from Tahsildar of Wynad to the Tirunhalli Trustees, telling the Trustees how many trees were to be cut, and that they would get the stump fees through the Talook.

D, dated 19th Dhanu 1003, (1827). A complaint from Trustees of an agreement having been taken from them forcibly in Mysore regarding timber.

Simply endorsed by Collector that they must apply to the Resident.

to pay him stump fee on a certain number of trees, for eventual payment to the "owners of the forests."

* On Karkeri and Kadagom-palla mala. Karkeri is No. 9 on Mr. Stuart's list in the Appendix to his report. Kadagom-palla is not mentioned in the list.

The Trustees of the Tirunhalli Pagoda claimed these logs, and after some discussion as to the rate of stump fee payable, Rupees 22½ was† paid over to them.

Here, whether rightly or not, they seem to have been treated as the proprietors.

‡ A. D. 1824.

§ Masla Kudrakot.

The Tirunhalli Trustees, perhaps from ignorance, did not claim this money; but the transaction seems to have been no secret, for an Agent of the then Kotiot Rajahs did on the score that the Rajah was proprietor of the forests.

‖ Collector's Order, dated 13th October 1824. The claim was rejected. It was decided that the forest was an escheat, and the money was|| accordingly credited to Government.

A claim subsequently advanced for this money on the Rajah's account was rejected by a subsequent Collector.

6. Passing to A, B, C, D.

It seems from these papers, and some farther communications that passed between the Collector and Tahsildar of Wynad in 1823, that have been found in the office records, that the Trustees of the Tirunhalli Pagoda had about that time complained to the Collector of people from Mysore cutting teak in the forest lands of the Pagoda, without payment of stump fee. That the Pagoda had forest lands does not then appear to have been questioned.

Orders were issued by the Collector stopping the felling of timber, save by the Agents of the Rajah of Mysore, who had apparently agreed with the Collector.

The Tahsildar, a little later, reported that, on the issue of orders stopping promiscuous felling, all the Mysore people had disappeared, leaving forty-five logs on the ground.*

7. Next year,‡ however, a sum of Rupees 144½ was paid into the Talook Treasury by a Government Engineer as stump fee for timber felled in part§ of the forests included in these claims.

8. The remaining papers (F and G) are communications from Mr. Baber, both dated in 1840. Mr. Baber had left the Government service when he wrote these letters which are private communications; but he certainly seems to have considered that the Trustees of the Tirunhalli Pagoda had proprietors' rights in some or all of the forests under notice; and his knowledge of the country gives great weight to his opinion.

9. From the papers A, B, C then, and several others above alluded to on the records, it is clear that Mr. Collector Vaughan recognized the Trustees of Tirunhalli as proprietors of forest land in 1823; and the inference I draw from the papers is that the Trustees were generally recognized as proprietors of forest land in and about 1823.

Mr. Baber's letters (F and G) shew his opinion, as expressed in 1840, that the Trustees were forest land proprietors; and his opinion, I think, carries great weight.

But again, Mr. Vaughan, after recognizing the Trustees as proprietors in 1823, finds forests, which is portion of the great forest tract under notice, a Government escheat in 1824.

10. And I would here beg attention to a very important point which it will be well to dispose of definitely, as it has been constantly brought forward, though its true value seems to me to have been quite misapprehended.

I allude to Mr. Vaughan's oft-quoted proclamation of August 9th, 1823. It is erroneously quoted in some of the correspondence as dated 1824.

In Mr. Robinson's report* on Wynad it is said—

"In this uncertain state matters continued till 1824, when the then Principal Collector, Mr. Vaughan, issued an official proclamation enumerating twenty-four hills and forests over which, and no more, the Government held claims within Wynad."

I append a translation of the only proclamation that I can find on the subject, and which I have no doubt was the one alluded to by Mr. Robinson. It will be observed that the above description is inaccurate.

In Wynad the proclamation enumerates, as escheats, 156 paddy flats (Niloms); but there is only one entry made of any hill or forest, and that is as follows, as one item, "Kodungola Moodalaya Ela Mala," i. e., literally "Kodungola, et cœtera Cardamom Hill."

The proclamation starts by saying that during the rebellion in Kottayom the property of the rebels was forfeited to Government and entered in the accounts; that besides there was other property, not entered in the accounts, but held by certain persons as escheats, on which however Government received nothing but revenue.

Then follows the lists of the escheats entered in the accounts as such; and the proclamation concludes by saying that Government has no right to other than the above.

It seems to me very evident that this proclamation had reference only to rice, garden, or other lands on which, if the proprietary right vested in Government, Government had a right to demand not only assessment but the landlord's rent; whereas, if this right vested in private individuals, Government could demand assessment only.

The proclamation, I believe, mainly to have been issued to define the lands on which Government claimed rental as well as assessment.

The Government now collect the rental, *plus* the assessment on the paddy lands mentioned in the proclamation; but on many others, which there is little doubt should equally have escheated, no such claim is put forward by Government. We only collect the assessment and the rental is enjoyed by private proprietors, whether temple Trustees or other.

As forest and waste paid neither rental nor assessment, I do not conceive the proclamation had reference to forest or waste land.

Practically this view seems but past question by the fact that Mr. Vaughan himself, not very long after his proclamation, directed certain stump fees, paid on account of teak felled in one of the most important forest tracts, to be credited to Government (in opposition to claims urged by the then Kotiot Rajah) on the distinct ground that this forest was an escheat on account of the Pychy Rajah's rebellion.

In considering the question of proprietary right in these forests, then, I conceive, Mr. Vaughan's proclamation of 1823, is absolutely irrelevant.

11. From what has been said it would seem that the proprietary right of the temple in some forest land was recognized in former years.

But there are considerations which tend to throw great doubt on the justice of the temple claims; and certainly it seems to me that the Trustees have, by their own infatuation or ignorance, allowed any rights that they may have ever had absolutely to lapse and pass away.

Vide Mr. Stuart's Report, dated 20th February 1862, No. 18.

12. I need not go over again the arguments adduced by Mr. Stuart. I will content myself with a few remarks on the present appeal petition.

13. That there is no proof that the forest land has been held by the temple

14. Mr. Vaughan's proclamation has already been shewn* not to affect the case.

15. In 1845, a suit was filed by the senior Kotiot Rajah against the junior

Kotiot Rajah, in consequence of the latter having leased large tracts of the forests under notice to a Mr. Cowley.

The then Collector of Malabar, representing that the lands were escheats, was made a party to the suit.

The suit was eventually withdrawn on the motion of the Plaintiff. The Pagoda Trustees allow they knew of the institution of the suit; but say it would have been "premature" in them to have sought to be included.

This is quite untenable. It is impossible to believe a proprietor, able to substantiate his claim, would remain quiet when others were endeavoring to establish themselves as proprietors of the best portion of his property: even supposing the suit of the Rajah's fictitious, there could be no doubt of the reality of intention when the Collector of the District stepped in and claimed the property as escheated; and be it observed the lease to Mr. Cowley embraced many of the teak forests and hills claimed by Petitioners in the list furnished by them to Mr. Stuart.

16. And petitioners are in absolute error in stating that the lands leased to Mr. Cowley were never afterwards occupied by either senior or junior Kotiot Rajah, Mr. Cowley or the Collector; nor did they ever after severally or collectively endeavour to assert their claims.

It is true the original lease from the junior Rajah was not acted on, because the Government claim prevented it; but the petitioners cannot be ignorant of the fact that Mr. Cowley opened a coffee estate in 1846, which goes by the name of the "Tirunhalli" estate to this day, on portion of the land in question; that he resided there for some time himself; and that Government have collected Jema-bhogum since 1847.

Petition, paragraph 7. 17. "Twenty days" were specified by Mr. Grant in 1859 as the time within which the Trustees were to appear with their proofs. They did not attend Mr. Grant's call.

But, practically, the inquiry into this question was open from the time of Mr. Grant's call (in or about August 1859) to the submission of Mr. Stuart's Report (20th February 1862).

Petition, paragraph 8. 18. The papers here quoted by petitioners have been treated of already. It was entirely petitioners' fault that Mr. Stuart had not these papers before him when reporting on their claims.

The uninterrupted collection of dues on ivory, wax, and honey, or any control over ragi cultivation in these forests, has not been established by petitioners in any way.

19. The rest of the Petition calls for no special remark.

20. It must be also observed that in 1850, Mr. Chatfield submitted applications to the Collector from certain parties for permission to fell timber on the Kudrakot and Massala Mala, stating that the Tirunhalli Davasum claimed one of the hills, (Kudrakot I presume,) but that he had rejected the claim. No attempt to rebut this assumption of proprietary right on behalf of Government by the Revenue authorities was made by petitioners, though the permission to fell timber was granted and acted on.

21. In 1853 the late Mr. Conolly granted Mr. A. Brown permission to plant coffee on one of the hills claimed by petitioners; they filed a suit in the Court of the Principal Sudder Ameen of Tellicherry in which they were non-suited, and the decision confirmed by both the Civil Court of Tellicherry and Sudder Court at Madras.

No. 14, in Mr. Stuart's Appendix A.

Vide Decrees of the Principal Sudder Ameen and Civil Judge of Tellicherry, forwarded to Board with letters dated 26th February 1857, and 10th January 1859, Nos. 25 and 4.

22. In 1860, all timber felled and claimed by the Tirunhalli, Trichelleri, and Pulpully temples were ordered to be detained, and the Conservator of Forests commenced operations in these forests in 1861. In January 1863, Government gave up the lands claimed by Pulpully Davasum; and, as an act of grace, ordered payment to the Tirunhalli and Trichelleri Davasums for all timber they had *bona-fide* sold previously.

23. In October 1862, the petitioners sold Kakery Mala to Colonel Woolridge. Government ignored the sale, and ordered the land to be sold under the rules, for the "sale of waste lands," which was done: other lands were also sold by auction under the same rules, viz. :—

Arikara Chola...	...	...	...	...	30th November 1863.
Arnapara, alias Naikala Mala...	...	...	...	...	14th December 1864.
Kundra Kunu...	...	...	...	...	15th February 1865.
Ellambellacheri Kunu...	...	...	...	...	15th March 1865.
South Kudrakot Mala...	...	...	...	...	
Kalli Kolumbu do.	...	...	...	...	
Valia Chamathi do.	...	...	...	...	

In all the above-mentioned sales, which were advertised for three months, the petitioners took no steps whatever to assert their rights, under Act XXIII. of 1863 as provided in the rules for the sale of waste lands.

24. These latter transactions complete the history of this long vexed question.

I have thought it better to repeat some of the information already laid before the Board, as well as to treat of the points immediately raised, and I have given the whole subject anxious attention.

That the conclusions Government have already arrived at, viz., that the Pychy branch of the Kotiot family were the proprietors of these forest tracts, and that the lands escheated by the Pychy rebellion are correct, I conceive there can be no doubt. All that is shown by what the Trustees have brought forward subsequent to Mr. Stuart's report is, that claims (whether well or ill founded) were acknowledged by the local Revenue officials, and that these claims were acted on by the Trustees at an earlier date than all the evidence they adduced before Mr. Stuart led him to conclude.

Even allowing these claims to have been well founded, the Trustees by their neglect in not supporting them in the Civil Courts in 1845; by their inability to do so in 1853; and by their neglect or inability to do so subsequently, notwithstanding the frequent public and unmistakeable assertions of proprietary right by Government since, have clearly shown that any former rights have absolutely lapsed; and unless Government were to make over the forests in absolute gift to

them, I do not see on what possible grounds the Trustees could now take the position of proprietors.

25. I beg to enclose papers as per list as record of an inquiry held by the Deputy Collector, Mr. Richardson, in consequence of the Government Order under acknowledgment.

The petition of the Trustees and its enclosures are also returned.

ENCLOSURE No. 1.

ABSTRACT.—Translation of a Proclamation issued by the Principal Collector Mr. Vaughan.

ENCLOSURE No. 2.

ABSTRACT.—List of papers belonging to the Deputy Collector Mr. Richardson's inquiry into the claims of the Tirunhalli Pagoda :—

No. 1.	Statement of Chukka Thiruman.
" 2.	" of Suban Putter.
" 3.	" of Veymoth Emmoo Numbiar.
" 4.	" of Beigoor Mullayan.
" 5.	" of Vadaka Muthanum and Thekka Muthanum.
" 6.	Original letter from Assistant Conservator of Forests, Lieutenant Fullerton.
" 7.	Statement of Vadaka Muthanum.
" 8.	Tahsildar's Report.

1. Submitted to Government, with reference to their Order dated 19th May last, No. 1,052.

2. The several grounds on which the Board reported against the claims of the Tirunhalli temple are briefly stated in paragraph 10* of their Proceedings, dated 20th September 1862, No. 6,295.

* *Note*.—The word "claimed" should be substituted for "retained" in line 13 of this paragraph.

3. The Pagoda Trustees now produce evidence showing that they exercised proprietary rights in the forests previous to 1851-52, (vide third point in paragraph 10 of the Board's Proceedings,) and that such rights were acknowledged in 1823 by the then Collector, Mr. Vaughan. Mr. Ballard admits that the evidence referred to in support of these points is genuine, but argues that Mr. Vaughan in the succeeding year (1824) again disputed the temple's alleged rights in the forests, and that the petitioners have still failed to prove that they held the forests from time immemorial. They have no means for establishing this point, while their having omitted or failed on different occasions to advance their claims, when they ought to have advanced them if they were good, may be construed against them as fair presumptive proof that they were not able to substantiate such claims.

4. The Board agree with Mr. Ballard. It is true that the Trustees advanced claims to the forests at an earlier period than the Government was led to suppose, but it is still obvious that their rights have not been made good on the sole ground on which they have attempted to base them, viz., *immemorial usage*.

5. The Board are of opinion that the *balance* of evidence as given in paragraph 10 is against the claim, and that the Government could not properly allow that the course followed by Mr. Vaughan in 1823, in seemingly acknowledging the Pagoda's claims at that time, precludes them from impugning those claims, now that the whole question has been fully investigated.

3 *Proceedings of the Madras Government, Revenue Department,*
4th May 1866.

No. 91.

ORDER THEREON, 4th May 1866, No. 1,065.

Forests, No. 7.

1. The Right Honorable the Governor in Council has carefully considered the evidence which has now been brought forward by the Trustees of the Tirunhalli Pagoda; and he agrees with the Board of Revenue and the Collector of the District in considering that they have failed to make out their case.

2. Their Memorial will be forwarded to the Secretary of State.

(True Extract.)

(Signed) J. D. SIM,

Secretary to Government.

To the Board of Revenue.

Exd. T. O'Connor.

4th May 1866

N^o 1065

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To the Board of Revenue

Pro 22/3/65 6220-39-40
of Malabar/63/12
19/11/65 33/11

1866. Department.
Pro of Court for Malabar

Reported to England.
of 9th May 1866 of 1866

No. 795
PROCEEDINGS OF THE BOARD OF REVENUE.

18/11/65

Dated 13th March 1866.
of 18-10-1866
of 19th
C. P. with their answer
12-10-1866
No. 1714

18/10/65 of 14 May 66.

Submitting with remarks report of Collector
of Malabar on Petition presented by Trustees
of Tirunhalli pagoda appealing against rejection
of their claims to certain forest tracts.

18/10-91.

18/10/65