

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2004

Press
~~Mis.~~

201-202

Dated 9-8-1866.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
9th August 1866.*

No. 201. Read the following Proceedings of the Board of Revenue, dated 17th July 1866, No. 4,896.

Read the following letter from the Government Solicitor, to the Secretary to Government, Revenue Department, dated Madras, 10th May 1866, No. 268 :—

1. I have the honor to report, for the information of Government, that during my professional career, and more especially during the past and present years, when purchasing and acquiring under the Public Purposes Act, land and buildings on the south beach at Chepauk, on behalf of Government, I have had occasion to refer to and search the Maps and Registers of the Collectorate of Madras, to identify land and trace its history and devolution during a long, or a sufficient number of years, to evidence a good and marketable or a sufficient holding title, and to satisfy myself, as far as was practicable, that parties claiming purchase money, or compensation from Government, in respect of such land and buildings, were legally and properly entitled to it, and with this object, I have found the Maps and Registers of the Collector's office most useful and valuable.

2. The principles upon which the Maps and Registers have been framed appear to me sound; and the result shows that great care has been taken to give these principles, and the system of registration generally, thorough practical effect. By means of such Maps and Registers, I have been able to trace, and verify, the history of land, and the various devolutions as regards ownership, with comparative ease and satisfaction. I consider the records in question of great public value, and I think it desirable they should be kept up, as far as change of circumstances and practice will admit of.

3. It seems to me absolutely necessary, that the Collector of Madras should have a sufficient establishment, for collecting and recording that portion of the data and information which the present Registers contain, which is needful to his realizing, with effect, the very important item of quit-rent, and to his preserving and exercising an effectual superintendence over the waste land belonging to Government, which lies within his District.

4. The duties of the Registration Department of the Collector's office will be very materially reduced, by limiting the issue of certificates to those cases only in which there is *no* existing Choultry Bill of Sale, Lease, Revenue or Collector's Certificate, or other such evidence of title; *or* where there is a sub-division of land comprised in any such evidence of title as above-mentioned, by means of a partial sale, partition, or exchange, and a rateable apportionment of quit-rent thereupon becomes both equitable and necessary, and, under these circumstances, it may well be feasible for the Collector to reduce, very considerably, the strength and cost of his Registration Department.

5. The limitation mentioned in the last paragraph, as to the issue of certificates for the future, will, of course, render the Registers much less complete, and comparatively less valuable, inasmuch as there will be no registration of conveyances evidencing change of ownership in those cases where the *whole* property passes, and where no apportionment of quit-rent, by reason of sub-division, becomes necessary. In such cases as these, where parties can get no certificate, they will

hardly take the trouble of presenting their conveyances at the Collector's office, for the mere purpose of giving him information as to the change of ownership. This result, however, of the change of system cannot be avoided.

6. I have had much conversation, and discussion, with the Honorable Mr. Norton (as Advocate General), the Deputy Collector of Madras, and the principal Native Officers employed in the Registration Department, on the subject above mentioned, and also as to the circumstances under which, and the forms in which certificates shall hereafter be issued by the Collector of Madras. Immediately before his departure from Madras, Mr. Norton went very thoroughly into the whole question, in conference with the Deputy Collector of Madras, the Officers of his Department, and myself, and on this occasion both Maps and Registers were referred to, and the practical working of the Department investigated. Mr. Norton then wrote the opinion, of which I send a copy, accompanied by copies of the Forms A., B., C., and D., prepared by me, to which Mr. Norton in his opinion refers.

7. Upon further consideration, I have added to Form A., (since Mr. Norton saw it,) a power of re-entry by Government, on default in payment of rent and failure of realization thereof, by distress and sale. The reservation of this right to Government seems to me most legitimate, and altogether free from any reasonable ground of exception. Form A. will not be granted in any case where there is an existing Choultry Bill of Sale, Lease, Revenue or Collector's Certificate, or other documentary evidence of title, which does *not* contain a power of re-entry, and there will, therefore, be no foundation for the remark, that Government is attempting to import into a renewed written contract, a stipulation to the prejudice of the owner of the land not comprized in the original contract. I think that if parties, having no written evidence of title, apply for a certificate in the Form A., they may well be required to take a certificate containing power of re-entry. The means of preventing the operation of this power will be with themselves, and their representatives, by payment of the quit-rent properly due. I have but little, if any, doubt that Mr. Norton, if he could now be consulted on this point, would concur in the view on which I have acted, and would approve of the addition I have made (as regards re-entry) to Form A.

8. I have, likewise, altered Forms A., B., and D., (since Mr. Norton saw them), by providing that Government shall be at liberty, at their election, to sue, at once, upon the Covenant for payment of quit-rent, and without previous exercise of their remedy by distress and sale. To this there can be no objection. I think Government would have had this right without any special reservation or mention of it in the certificates; but the specific provision puts an end to all doubt on the point, and is, therefore, expedient. The alterations I have made in the Forms, since Mr. Norton saw them, will be found in red ink in the accompanying copies.

9. It will be seen that the Forms A., B., and D., do not contain any guarantee, or confirmation, or warranty of title, but merely evidence, and limit the amount of quit-rent which Government is and shall be entitled to receive, and the alleged owner of the land is and shall be liable to pay, and reserve to Government all available and legitimate remedies for realizing such rent.

COPY—OPINION.

1. I have perused and settled the four Forms—the only four—which it is proposed now and henceforth to issue from the Collector's office with relation to grants and transfers of land in Madras.

2. These Forms have been carefully drawn by the Government Solicitor, and appear to me to meet all that is required.

3. A. is the Certificate when there exists no Lease Certificate or Choultry Bill of Sale for the land in respect of which a certificate is applied for.

4. The Government by this Form is not pledged to any declaration as to the holder's *title*, while it gains the advantage of having an ascertained holder with a personal Covenant to pay the quit-rent.

5. B. provides for the sub-division of land already held. I think that it is only fair and proper that parties purchasing a *piece* of the land comprised in the original certificate should have the amount of quit-rent, which he is liable to pay, ascertained and defined. This is satisfactorily provided for by Form B.

6. This Form will be used when a sub-division takes place of land comprised in any Choultry Bill of Sale, Lease or Certificate not containing a power of re-entry.

7. C. is a Memorandum which will have to be endorsed on the existing Choultry Bill of Sale, Lease or Certificate whenever certificate in Form B. is issued.

8. Form D. will be used whenever there is a sub-division of land comprised in one of the *old* grants which contain a power of re-entry. There is no reason why the Government should forego, in respect to purchases from the holder under an old grant, a right which it possesses under the original grant.

9. Form C. will also have to be endorsed on the old grant, or other document containing power of re-entry, whenever a certificate in Form D. is issued.

10. I think that an Act should be applied for, authorizing distraint of goods by a power of forcible entry in default of payment of quit-rent, such as was given for non-payment of Income Tax, under Section 22 of the Income Tax Act.

11. Act XII. of 1851 contains no such power. For my own part, I see nothing inequitable in giving the Government a power of selling the land summarily for arrears of quit-rent, at any sale where no sufficient moveables are found to satisfy its claim; but it is useless to ask for this form of redress. The exception was taken, by the Legislative Council of India, to the introduction of such a power when the last Bill on this subject, prepared by my predecessor, was laid before the Council. It was then observed that, with respect to the old leases which contained a power of re-entry, such a procedure was unnecessary; and that, with respect to the grants which did not contain a power of re-entry, such an introduction would be inequitable.

12. I deem it *most* advisable to continue the system of registration prevailing in the Collector's office, so far as the altered circumstances required to preserve a ready and perfect guide for ascertaining what quit-rent is due, and by whom for the land in Madras. The office of the District Registrar of Madras, under the Registration Act, will afford no such information. I have gone carefully through the Collector's Register Books, and his system seems to me very compendious and complete.

13. The Act is one which will have to be passed by the Legislative Council of India. I am of opinion that the most that this Government can look to obtain, is a provision for distraints with power of forcible entry.

6th March 1866.

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

(True Copy)

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

Referred to the Board of Revenue for any observations they may wish to offer.

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

ENCLOSURES A, B, C, D.

ABSTRACT.—Forms to be used relating to grants and transfers of land.

1. Land in the Presidency Town is held in the following manner:—

On Government leases for ninety-nine years, providing for re-entry on breach of condition.
On Certificates to the effect that the land concerned is included in such a lease as the above.
On Choultry Bills of Sale.

On Certificates to the effect that certain statements as to possession have been made, and payment of quit-rent agreed to.
On the "New Form Certificates" of 1828, which contain no provision for re-entry, and without any document of title.

2. The Government, in Government Order dated 6th August 1863, No. 1,461, decided that no new Certificates should be issued for land held in that title, except with the reservation of the power of re-entry, and that the right should be maintained in all cases when it existed under the original lease.

3. The Forms now submitted by the Government Solicitor, for giving effect to the wishes of Government, appear to the Board to be quite unobjectionable, and well adapted for the purpose. They include:

(1.) A Form (A.) of grant reserving the power of re-entry to be used where no document of title already exists.

(2.) A Form (B.) of certificate that the land concerned is included in an existing document of title, in which the right of re-entry is not reserved.

(3.) A Form (C.) of endorsement to be made on the original document of title in all cases of sub-division.

(4.) A Form (D.) of certificate that the land concerned is included in an existing document of title in which the power of re-entry is reserved.

4. The Board recommend that the Collector of Madras be directed to adopt these Forms henceforward, in lieu of those of 1828.

5. The opinions of the Advocate General and Government Solicitor are conclusive as to the expediency of retaining the Registration Department in the Collector's office on the reduced footing recommended by the Board in their Proceedings, dated 7th August 1865, and the Board request that this may now be sanctioned.

6. They also request that the requisite steps may be taken to procure the passing of an Act by the Imperial Legislature, to legalize forcible entry for distraint of goods in default of payment of quit-rent, as is advocated by the Advocate General.

No. 202.

ORDER THEREON, 9th August 1866, No. 2,004.

Land Revenue.

1. The Governor in Council approves of the Forms of Deeds submitted by the Government Solicitor, with his letter dated 10th May 1866, No. 268, and directs their adoption in future.

2. The Registration Department in the Collector's office must evidently be kept up; but the Governor in Council would not, for the trifling sum involved, lessen the utility and value (to which the Government Solicitor bears such emphatic testimony) of the Collector's Registers and Maps, by adopting the limitation proposed in paragraphs 4 and 5 of the Government Solicitor's letter. The Board will, therefore, re-consider the reduction proposed by them in the Collector's establishment, as it seems very questionable whether the reduced office could satisfactorily and efficiently perform all the duties devolving on it. It will be necessary, as pointed out by the Registrar General of Assurances, for the Collector periodically to depute a person to his office to take note of transfers registered there, and not in the Collector's office.

3. Application will be made to the Government of India to amend the Madras Land Revenue Act in the manner indicated in paragraph 6 of the Board's Proceedings.

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

8. Form D. will be used whenever there is a sub-division of land comprised in one of the old grants which contain a power of re-entry. There is no reason why the Government should forego, in respect to purchases from the holder under an old grant, a right which it possesses under the original grant.

9. Form C. will also have to be endorsed on the old grant, or other document containing power of re-entry, whenever a Certificate in Form D. is issued.

10. I think that an Act should be applied for, authorizing distraint of goods by a power of forcible entry in default of payment of quit-rent, such as was given for non-payment of Income Tax, under Section 22 of the Income Tax Act.

11. Act XII. of 1851 contains no such power. For my own part, I see nothing inequitable in giving the Government a power of selling the land summarily for arrears of quit-rent, at any sale where no sufficient moveables are found to satisfy its claim; but it is useless to ask for this form of redress. The exception was taken, by the Legislative Council of India, to the introduction of such a power when the last Bill on this subject, prepared by my predecessor, was laid before the Council. It was then observed that, with respect to the old leases which contained a power of re-entry, such a procedure was unnecessary; and that, with respect to the grants which did not contain a power of re-entry, such an introduction would be inequitable.

12. I deem it most advisable to continue the system of registration prevailing in the Collector's Office, so far as the altered circumstances require to preserve a ready and perfect guide for ascertaining what quit-rent is due, and by whom for the land in Madras. The Office of the District Registrar of Madras, under the Registration Act, will afford no such information. I have gone carefully through the Collector's Register Books, and his system seems to me very compendious and complete.

13. The Act is one which will have to be passed by the Legislative Council of India. I am of opinion that the most that this Government can look to obtain, is a provision for distraints with power of forcible entry.

6th March 1866.

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

(True Copy.)

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

Referred to the Board of Revenue for any observations they may wish to offer.

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

ENCLOSURES A., B., C., D.

ABSTRACT.—Forms to be used relating to grants and transfers of land.

1. Land in the Presidency Town is held in the following manner:—

- On Government Leases for ninety-nine years, providing for re-entry on breach of condition.
- On Certificates to the effect that the land concerned is included in such a lease as the above.
- On Choultry Bills of Sale.
- On Certificates to the effect that certain statements as to possession have been made, and payment of quit-rent agreed to.
- On the "New Form Certificates" of 1828, which contain no provision for re-entry, and without any document of title.

2. The Government, in Government Order dated 6th August 1863, No. 1,461, decided that no new Certificates should be issued for land held in that title, except with the reservation of the power of re-entry, and that the right should be maintained in all cases when it existed under the original lease.

3. The Forms now submitted by the Government Solicitor, for giving effect to the wishes of Government, appear to the Board to be quite unobjectionable, and well adapted for the purpose. They include:

- (1.) A Form (A.) of grant reserving the power of re-entry to be used where no document of title already exists.
 - (2.) A Form (B.) of Certificate that the land concerned is included in an existing document of title, in which the right of re-entry is not reserved.
 - (3.) A Form (C.) of Endorsement to be made on the original document of title in all cases of sub-division.
 - (4.) A Form (D.) of Certificate that the land concerned is included in an existing document of title in which the power of re-entry is reserved.
4. The Board recommend that the Collector of Madras be directed to adopt these Forms henceforward, in lieu of those of 1828.
5. The opinions of the Advocate General and Government Solicitor are conclusive as to the expediency of retaining the Registration Department in the Collector's Office on the reduced footing recommended by the Board in their Proceedings, dated 7th August 1863, and the Board request that this may now be sanctioned.
6. They also request that the requisite steps may be taken to procure the passing of an Act by the Imperial Legislature, to legalize forcible entry for distraint of goods in default of payment of quit-rent, as is advocated by the Advocate General.

(True Copies and Extract.)

W. A. L. C.

Acting Secretary.

To the Acting Secretary to Government, Revenue Department,
with Forms A., B., C., and D. returned.

Exd. J. Wright.

Recommending that Collector of Madras be directed to adopt Forms of certificates for lands submitted by Government Solicitor in lieu of "New Form certificates" of 1828; soliciting sanction for retention of Registration Department in Collector's office and requesting that steps may be taken to procure the passing of an Act to legalize forcible entry for distraint of goods in default of payment of quit-rent.

No. 4896.

Dated 17th July 1866.

PROCEEDINGS OF THE BOARD OF REVENUE,
No. 2214.

1866. Department.
Pro of Govt for Aug.

N^o 268.

Madras May 10th 1866.

From John Robert Boyson
Government Solicitor - Madras.

To J. D. Sim Esq.
Secretary to Government, Revenue Dept.
Madras.

Sir,
1. I have the honor to report for the information of Government that during my professional career and more especially during the past and present years, when purchasing and acquiring under the Public Purposes Act, Land and Buildings on the South Beach, at Chiepurth, on behalf of Government, I have had occasion to refer to and search the Maps and Registers of the Collectorate of Madras to identify Land and trace its history and devolution during a long or a sufficient number of years to evidence a good and marketable or a sufficient holding Title; and to satisfy myself, as far as was practicable, that parties claiming purchase money or compensation from Government in respect of such Land and Buildings, were legally and properly entitled to it; and with this object I have found the Maps and Registers of the Collector's Office most useful and valuable.

2. The principles upon which the Maps and Registers have been framed appear to me sound; and the result shows that great care has been taken

to give these principles and the system of Registration generally thorough practical effect. By means of such Maps and Registers I have been able to trace and verify the history of Land and the various devolutions as regards ownership, with comparative ease and satisfaction. I consider the Records in question of great public value; and I think it desirable they should be kept up, as far as change of circumstances and practice will admit of.

3. It seems to me absolutely necessary that the Collector of Madras should have a sufficient Establishment for collecting and recording that portion of the data and information which the present Registers contain, which is needful to his dealing with effect the very important item of Quit Rent and to his preserving and exercising an effectual superintendence over the Waste Land belonging to Government which lies within his District.

4. The duties of the Registration Department of the Collector's Office will be very materially reduced by limiting the issue of Certificates to those cases only in which there is no existing Choultry Bill of Sale, Sease, Revenue or Collector's Certificate or other such Evidence of Title; or where there is a Subdivision of Land comprised in any such Evidence of Title as above mentioned, by means of a partial Sale partition or Exchange, and a notable apportionment of Quit Rent thereupon becomes both equitable and necessary; and under these circumstances, it may well be feasible for the Collector to reduce very considerably the strength and cost of his Registration Department.

5. The limitation mentioned in the last para-

as to the issue of Certificates for the future will, of course, render the Registers much less complete and comparatively less valuable - inasmuch as there will be no Registration of Conveyances evidencing change of ownership in those cases where the whole property passes and where no apportionment of Quit Rent by reason of Subdivision becomes necessary. In such cases as these, where parties can get no Certificate, they will hardly take the trouble of presenting their Conveyances at the Collector's Office for the mere purpose of giving him information as to the change of ownership. This result, however, of the change of System cannot be avoided.

6. I have had much conversation and discussion with the Honorable Mr. Norton (as Advocate General, the Deputy Collector of Madras, and the principal Native Officers employed in the Registration Department on the subject above mentioned. And also as to the circumstances under which and the forms in which Certificates shall hereafter be issued by the Collector of Madras. Immediately before his departure from Madras Mr. Norton went very thoroughly into the whole question in Conference with the Deputy Collector of Madras, the Officers of his Department and myself, and on this occasion both Maps and Registers were referred to and the practical working of the Department investigated. Mr. Norton then wrote the opinion of which I send a copy accompanied by copies of the Forms A. B. C and D prepared by me to which Mr. Norton in his opinion refers.

7. Upon further consideration I have added to Form A (since Mr Norton saw it,) a power of Re Entry by Government on default in payment of Rent and failure of realisation thereof by Distress and Sale. The reservation of this right to Government seems to me most legitimate and altogether free from any reasonable ground of exception. Form A will not be granted in any case where there is an existing Choultry Bill of Sale, Sease, Revenue or Collectors Certificate or other Documentary Evidence of Title which does not contain a Power of Re Entry and there will therefore be no foundation for the remark that Government is attempting to import into a renewed Written Contract, a stipulation, to the prejudice of the owner of the Sand not comprised in the original contract. I think that, if parties having no written evidence of Title, apply for a Certificate in the Form A they may well be required to take a Certificate containing Power of Re Entry. The means of preventing the operation of this Power will lie with themselves and their Representatives - by payment of the Quit Rent properly due. I have but little, if any, doubt that Mr Norton, if he could now be consulted on this point, would concur in the view in which I have acted and would approve of the addition I have made (as regards Re Entry) to Form A.

8. I have likewise altered Forms A, B, and D (since Mr Norton saw them) by providing that Government shall be at liberty at their election to sue at once upon the Covenant for payment of Quit Rent and without previous exercise of their remedy by

by Distress and Sale. To this, there, can be no objection. I think Government would have had this right without any special reservation or mention of it in the Certificates, but the specific provision puts an end to all doubt on the point and is therefore expedient. The alterations I have made in the Forms since Mr Norton saw them will be found in red ink in the accompanying Copies.

9. It will be seen that the Forms A, B, and D do not contain any Guarantee or Confirmation or Warranty of Title, but merely evidence and limit the amount of Quit Rent which Government is and shall be entitled to receive and the alleged owner of the Sand is and shall be liable to pay - and reserve to Government all available and legitimate remedies for realising such Rent.

I have the honor to be,
Sir,
Your most obedient servant,
J. Boyson
Govt. Secy.

Copy Opinion.

I have perused and settled the four forms - the only four - which it is proposed now and henceforth to issue from the Collector's Office with relation to Grants and transfers of Land in Madras.

2. These forms have been carefully drawn by the Government Solicitor and appear to me to meet all that is required.

3. A is the Certificate when there exists no lease Certificate or Choultry Bill of Sale for the land in respect of which a Certificate is applied for.

4. The Government by this form is not pledged to any declaration as to the holders Tithe, while it gains the advantage of having an ascertained holder with a personal covenant to pay the Quit Rent.

5. B. provides for the subdivision of land already held. I think that it is only fair and proper that parties purchasing a piece of the land comprised in the Original Certificate should have the amount of quit rent which he is liable to pay ascertained and defined. This is satisfactorily provided for by form B.

6. This form will be used when a subdivision takes place of land comprised in any Choultry Bill of Sale, Lease or Certificate not containing a power of Re-Entry.

7. C. is a memorandum which will have to be endorsed on the existing Choultry Bill of Sale,

Lease

Sease or Certificate whenever a Certificate in Form B is issued.

8. Form D. will be used whenever there is a subdivision of land comprised in one of the old grants which contain a power of re-entry. There is no reason why the Government should forego in respect to purchases from the holder under an old grant a right which it possesses under the original Grant.

9. Form C will also have to be endorsed on the old Grant or other Document containing power of Re-entry whenever a Certificate in Form D is issued.

10. I think that an Act should be applied for authorising distraint of goods by a power of forcible entry in default of payment of Quit rent such as was given for nonpayment of Income tax under Section XXII of the Income Tax Act.

11. Act 12 of 1851 contains no such power. For my own part, I see nothing inequitable in giving the Government a power of selling the land summarily for arrears of Quit Rent, at any sale where no sufficient moveables are found to satisfy its claim; but it is useless to ask for this form of redress. The exception was taken by the Legislative Council of India to the introduction of such a Power when the last Bill on this subject, prepared by my predecessor, was laid before the Council. It was then observed that with respect to the old Seases which contained a power of re-entry such a procedure was unnecessary: and that with respect to the grants which did not contain a power of reentry, such an introduction would be inequitable.

12. I deem it most advisable to continue the system of Registration prevailing in the Collector's Office, so far as the altered circumstances require to preserve a ready and perfect guide for ascertaining what quit rent is due and by whom for the land in Madras. The Office of the District Registrar of Madras under the Registration Act will afford no such information. I have gone carefully through the Collector's Register Books and his system seems to me very comprehensive and complete.

13. The Act is one which will have to be passed by the Legislative Council of India. I am of opinion that the most that this Government can look to obtain is a provision for distraints with power of forcible entry.

6th March 1866.

[Sig^d] John Bruce Norton
Adm. Genl.

True Copy
L. R. Moxley
Gov^t Secy.

George May 25/66 d. 1201

Dec 1362/66

John of Grants and
transfers of land to the
James from the collector's
office at Madras.

(Copy) -

Admiral General's opinion

101-2112

1-10/56

in letter from Govt of Madras
May 15/66 to Govt of Madras
No 288 dated 10th May 1866