M.R.O. 1—30,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No.	1715	Press ~~Mis.~~
438-39 Dated	18-6-	1865.

Not to be folded or roughly handled

1715 Rev

Proceedings of the Madras Government, Revenue Department, 18th June 1868.

No. 438. Read the following Proceedings of the Board of Revenue, dated 20th May 1868, No. 3,756:—

Read the following Proceedings of the Madras Government, dated 6th December 1867, No. 2,925, Revenue Department.

ABSTRACT.—Granting the remission of Rupees 36,000 from the Government demand, for Fusly 1275, against the Devaracottah Zemindar, and directing the Collector of Kistna District to retain the management of the estate in his hands, until the remaining balance due to Government shall have been liquidated, and to report the restoration of the estate when that event takes place.

1. The Board beg to submit, for the consideration of Government, that Madras Act No. II. of 1864 differs from Regulation No. XXVII. of 1802 in prescribing that, when a defaulter holds under a Sunnud-i-Milkeut Istimrar, the mode of recovering the arrear shall be in accordance with the terms of such Sunnud, (Section 6,) and, in directing that when land is attached, the notice of attachment shall set forth that, unless the arrear and expenses be paid *by a certain specified date*, the land shall be brought to sale in due course of law, (Section 27). Both these provisions of the law have undoubtedly been contravened in the case of the Devaracottah Estate, and the Board are still of opinion that the course taken by the Collector was not such as the law contemplates.

2. The Board do not see how the omission to attach, at least *pro forma*, the personal property of the Zemindar, as his Sunnud expressly prescribes, can now be remedied, except by releasing the estate and commencing proceedings *de novo*.

3. The Board submit that it would be well to obtain a legal opinion on the points raised, for future as well as present guidance.

No. 439. ORDER THEREON, 18th June 1868, No. 1,715.

Land Revenue.

1. The Government do not consider that their Order, in regard to the Devaracotta Estate, raises the question discussed by the Board.

2. In that instance the Government have granted a large remission out of the permanently settled peshcush of the estate, making it a condition of this act of grace that the Collector shall retain charge of the estate until the balance due be discharged.

3. It is not likely that the Zemindar will complain of this arrangement, nor does it anywhere appear that he has done so.

4. As regards the general question, however, the Government do not concur in the opinion expressed by the Board, which they gather to be that, under Madras Act II of 1864, for the recovery of arrears of revenue, the attachment of a Zemindar's personal property must be the first step taken against him for the recovery of any arrear due, and that when the land of a defaulter has been attached *it must be sold*, unless the arrear be paid within the time specified.

5. The Act provides at Section 6 that when a defaulter holds under an Istimrar Sunnud, "the mode of recovering the arrear shall be in accordance with the terms of such Sunnud."

6. This form of Sunnud provides (Section 5) that, in default of due payment of the permanent assessment, "your Zemindary and your personal property shall be answerable for the consequence of such failure (Section 6). In this event, your

the permanently settled
Peshkush

personal property will be liable to attachment in the first instance, and your lands will ultimately be liable to be sold and transferred from you for ever for the payment of the public revenue."

7. Section 7, Regulation XXV. of 1802, is in identically the same form of words, and it is to be observed that, although *attachment* of personal property is provided for, there is nothing said as to its sale, and in both cases only *liability* to attachment in the first instance is spoken of. There is no absolute direction on the point.

8. The matter is elucidated by the terms of Section 6, Regulation XXVII. of 1802, which, it is to be observed, though now repealed was passed into law on the same day as Regulation XXV. The Section in question provides that "the landed estate shall be regarded as the security of the public revenue.

"It shall, however, be at the *option of the debtor* to yield up his personal property, or a portion thereof, to discharge the debt, in preference to the sale of his lands."

9. There seems no reason to doubt that the intention of the Government was, while saving themselves from the necessity of attaching the estate on every occasion of an arrear however trifling, still to save the Zemindar from the indignity and inconvenience of having his personal property attached, except by his own expressed preference, and under this view the Government are not prepared to admit that the terms of the Sunnud debar them from attaching the land of a Zemindar without first attaching his personal property.

10. Then as regards the absolute necessity, under Section 27, Madras Act II. of 1864, for selling land which has been attached for arrears, unless the debt be paid within the time specified, the Government hold that such an interpretation of the expression used in that Section, when prescribing what the notice of attachment shall set forth, is utterly inconsistent with the terms and provisions of Sections 28 to 36 of the same Act, which contain detailed instructions for the retention of the lands of a defaulter *under management* by the Collector after attachment until such time as, from the proceeds of the land credited to the defaulter under management, "all arrears, interest, costs of attachment, and expense of management, shall have been liquidated," on which event "the attachment shall be withdrawn and accounts rendered."

11. The Government hold it to be simply preposterous to declare, in the face of these provisions, that attachment and *management* of a landed estate in arrears is barred, and sale rendered inevitable and peremptory, by the Section which declares that the notice of attachment shall state that, if the arrear be not cleared by a date named, the land will be brought to sale in due course of law. It appears to Government to admit of no question, that all that this Section contemplated was to give due notice to the defaulter of the liability to which he was exposed.

12. The Government are always averse to taking the opinions of their law officers on hypothetical cases, as they carry with them no legal force; and as it does not appear that any complaint has been made, or that any difficulty is likely to arise in the present instance, to which in fact the Board's reasoning is not applicable, the Government must decline to adopt the Board's suggestion that the abstract question be referred for a legal opinion.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

Revl Department

No 1715.

Proceedings of the Madras Government

Under date the 18th June 1868.

Read the following

Prs: of the Board of Revenue.

Submitting for consideration of Govt certain points connected with attachment of Devaracottah estate in Kistna Distt on account of arrears due to Govt, & suggesting that a legal opinion be obtained on these points.

(Here enter 20th May/68 No 2756)

No 1

The Government do not consider that this order in regard to the Devaracotta Estate raises the question discussed by the Board.

In that instance the Government have granted a large remission out of the permanently settled

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It is not likely
that the Zemindar will
complain of this arrangement,
nor does it any where ap-
pear that he has done so.

As regards the ge-
neral question however
the Government do not
concur in the opinion ex-
pressed by the Board
which they gather to be
that under Madras Act
2 of 1864 for the recovery
of arrears of Revenue. the
attachment of a Zemindars

personal

personal property must
be the first step taken
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of any arrear due- and
that when the land of a
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it must be sold- unless the
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time specified.

The Act provides at
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Section 7 Regulation 25
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The matter is elucidated
by the terms of section 6- Re:
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It shall however
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sonal property or a portion
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necessity of attaching the estate on every occasion of an arrear however trifling still to save the Zemindar from the indignity and inconvenience of having his personal property attached except by his own expressed preference and under this view the Government are not prepared to admit that the terms of the section debar them from attaching the land of a Zemindar without first attaching his personal property.

Then as regards the absolute necessity under section 27 Madras Act 2 of 1864 for selling land which has been attached for

for arrears unless the debt be paid within the time specified - the Government hold that such an interpretation of the expression used in this section when prescribing what the notice of attachment shall set forth - is utterly inconsistent with the terms and provisions of sections 28 to 36 - of the same Act which contain detailed instructions for the retention of the lands of a defaulter under management by the Collector after attachment until such time as from the proceeds of the land credited to the defaulter under management "all arrears interest - costs of attachment and expense of management

management shall have been liquidated" on which event "the attachment shall be withdrawn and accounts rendered."

The Government hold it to be simply preposterous to declare in the face of these provisions that attachment and management of a landed estate in arrears is barred and sale rendered inevitable and peremptory by the section which declares that, the notice of attachment shall state that, if the arrear be not cleared by a date named, the land will be brought to sale in due course of law. It appears to Government to admit of no question that, all that this section contemplated was to give due notice to the defaulter of the liability to which he was exposed.

The Government are always averse to taking the opinions of their law officers on hypothetical cases as they carry with them no legal force - and as it does not appear that any complaint has been made or that any difficulty is likely to arise in the present instance, to which in fact the Board's reasoning is not applicable - the Government must decline to adopt the Board's suggestion that the

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Revenue 1868 Dep^te
Proof Govt for June

No. 1715

Proof the Madras Govt
D/18 June 1868.

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