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MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2354 Press Mis.

128-29. Dated 10 – 9 – 19 1858.

Not to be folded or roughly handled

No. 128. Read the following letter from the Advocate General, to the Chief Secretary to Government, Fort St. George, dated 3rd July 1868 :—

1. On considering, with the Government Solicitor, the subject of the new form of Title Deeds proposed to be issued to Inamdars, it appears that there exists in all the Title Deeds already issued a far more fatal defect than that which it was the object of the lately passed Inam Act to rectify.

2. These Title Deeds purport to be executed by the Inam Commissioner on behalf of the Governor in Council. No mention whatever is made of the Secretary of State.

3. Now, by 21 and 22 Vic., Cap. 106, Section 40, as amended by 22 and 23 Vic., Cap. 41, all real and personal property of the East India Company is vested in the Queen, and is disposable of either by the Secretary of State in Council, or by the Governor General or any Governor in Council in India.

4. But when the latter course is pursued, the Contract or Conveyance must be in the name of the Secretary of State, and executed either by the Governor in Council or by his order.

5. In point of fact the Governor in Council, who purports to release to the Inamdar the Government rights in the land revenue, has nothing to convey, and the Title Deeds are mere waste paper.

6. There is only one possible view under which the Title Deeds hitherto issued could be right in form.

7. Section 2 of 22 and 23 Vic., Cap. 41, provides that the Conveyances, Contract, &c., executed by the Governor General, or any Governor, as the case may be, *may* be in the name of the Secretary of State. If then this expression could be regarded as merely permissive, it might be held that such instruments might be executed in either of two ways: that is to say, by the Governor General, or Governor, in his own name, under the previous Section (1) on the one hand, or in the name of the Secretary of State under Section 2, on the other.

8. But I am of opinion that there is no room for any such contention. I think this is one of those cases in which the word "*may*" is not to be construed as merely permissive, but that it is peremptory, and has the full forces of "*shall.*"

9. The Act was passed in consequence of doubts as to the powers of the Governor General, or Governor, to execute any Conveyance, Contract, &c., after the passing of 21 and 22 Vic., Cap. 106, whereby the whole property, in India, of the East India Company, was vested in the Queen (Section 39), and the Secretary of State named (Section 40) as the *only* authority to execute Conveyance, Contracts, &c.

10. Section 1 of the remedial Act 22 and 23 Vic., Cap. 41, vests in the Governor General and Governors the power to execute Conveyances, Contracts, &c. Section 2 then proceeds to point out how such instruments are to be executed, and here only one form is specified: that in which the Secretary of State is to be named as a party, and the instrument to be, and to be expressed to be, executed on his behalf, by the Governor General, or Governor, or his order.

11. It appears too that the Title Deeds are also informal, inasmuch as they have been executed by the Inam Commissioner without any order by the Governor in Council authorizing such execution.

12. The lately passed Inam Act does not purport to remedy this defect. It only deals with the substitution of the term Inam for land, nor do I think the Indian Legislature would be competent* to deal with an Act of the Imperial Legislature.

* See Indian Councils Act, Section 22, which expressly refers to Acts 21 and 22, Vic. Cap. 106, and 22 and 23, Vic. Cap. 41.

13. If the question as to the validity of title were simply between the Government and the Inamdar, possibly no great mischief might arise from leaving matters, as far as concerns the Title Deeds hitherto issued, *in statu quo*. For the Government would never seek to take advantage of this slip as against the Inamdar. But, unfortunately, the case is not likely to be confined to questions arising between the Government and the Inamdars. Third parties have purchased, and otherwise dealt with this property since the titles were issued; and questions may at any moment arise between the Inamdars and their representatives by assignment, or otherwise, on the one hand, and third parties on the other, questioning their title in our Courts of Law. I am of opinion that a Court would hold, necessarily, that the Title Deeds hitherto issued convey no title whatever to the Inamdar: because the donor, that is the Local Government, had nothing to convey, the estate in the Inam being vested in the Queen, and two Acts of Parliament having expressly pointed out how and by whom any interest in such estate is to be parted with to third parties.

14. Under these circumstances, I am in doubt as to the form in which the new titles ought to be drawn: and as this will depend upon the course which His Excellency the Governor in Council shall adopt, I have the honor to request further instructions before the Government Solicitor proceeds with the drafts of the Deeds.

15. I am bound to draw up legal instruments, and to bring all these difficulties under the notice of Government: and the question now is, what is the best course to pursue?

16. It appears to me that it is impossible to leave the Title Deeds, hitherto issued, in their present condition. How is the blot, now it is hit, best to be amended?

17. One course would be to apply to Parliament for an Act, declaring that the Title Deeds, hitherto issued, shall be read, or have the same effect, as if they had been expressed to be made on behalf of the Secretary of State.

18. But this is a clumsy procedure, and I think it very problematical whether Parliament would grant such relief. The natural answer might be: You have made the blunder, rectify it yourselves. The Acts of Parliament are perfectly clear and explicit; you ought to have followed them in the first instance. Recall your faulty titles, and issue new in conformity with the provisions of the Acts.

19. Unless it could be shewn that to recall the Title Deeds hitherto issued would be attended with dangerous or very serious consequences, it seems to me difficult to escape the force of such a reply.

20. It has been stated that the recall of Title Deeds already issued would create great alarm and suspicion among the 400,000 Inamdars who have had Title Deeds given them. On this point I am of course not competent to form or offer an opinion. It is a question on which the Revenue Board can be consulted.

21. But it appears to me, that if such a measure can possibly be adopted, it is the best and shortest way of meeting all difficulties: and I think, as a general rule, the straightforward and open way of rectifying admitted errors is, in the long run, found to be the shortest and easiest.

22. Should His Excellency the Governor in Council determine on this course, a notification would be necessary, explaining that by an oversight the Title Deeds had been issued in the name of the Governor in Council instead of the Secretary of State, and that fresh Title Deeds in the name of the latter, who by Act of Parliament is the proper authority to grant Inams, will be issued on application. This should not be done till the new Deeds are ready.

23. Difficulties may arise where the Title Deeds have passed into the hands of third parties; but I make little doubt that all will be only too glad to perfect their titles, and if they do not choose to apply, it is their own fault. Government will at any rate have done all in its power to rectify its mistake.

24. If this course be decided on, I should propose to substitute for the present forms a legal form, in the shape of a release of the reversionary interest of the Queen in the Inam, which would not be longer than the forms at present used.

25. This form would apply to all cases: those in which Title Deeds have already been issued, as well as those in which they have yet to be issued.

26. I should scarcely like to introduce so totally different a form of Deed, if Government determines to refer the matter home, for a considerable time must elapse before an Act would be passed, if an Act were conceded; and the wide difference between the new and old form of Title Deeds would be sure to attract attention, and, unexplained, probably excite much suspicion and alarm.

27. I should, in such a case, propose to adhere as closely as possible to existing forms, simply introducing the words, "acting on behalf of the Secretary of State," after the introduction, and omitting all allusion to "land." The old form makes an improper use of the word "freehold," which the framers appear to have thought meant "held free of tax, &c.," but I should not, for the same reason, strike it out, as it is applicable in its legal sense—an estate *at least* for life to Inams—which are incorporeal hereditaments, as well as to land itself.

28. In any case, an order must be issued by His Excellency the Governor in Council empowering the Inam Commissioner to execute the Title Deeds in whatever form they may be issued.

29. If the new Title Deeds adhere to the old forms as closely as possible, *they* would have to be recalled and fresh Title Deeds issued in their stead if Parliament should refuse to interfere. For then they would have to be assimilated to the forms to be issued to the old Title Deed holders; or again, there would be two different forms existing for one and the same species of property.

30. If new Title Deeds are to be issued to the old Title Deed holders at once, the lately passed Inam Act will be a dead letter. I have, therefore, advised that a request for suspension of action respecting it should be telegraphed to the Supreme Government, and have, at your request, drawn up this statement of my views for the consideration of His Excellency the Governor in Council.

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Proceedings of the Madras Government, Revenue Department, 10th September 1868.

No. 129. ORDER THEREON, 10th September 1868, No. 2,354.

Land Revenue.

1. Under the circumstances brought to notice in the foregoing letter, and in consideration of the very strong and decided opinion which is expressed by the Advocate General, as to the course which the Government should adopt in order to remedy the additional defect which has been discovered in the Inam Title Deeds, the Right Honorable the Governor in Council resolves to re-issue these documents in a new and legal form.

2. The recall of the Deeds already issued, even if it could be successfully effected, which is questionable, would perhaps lead to alarm and misconception, and the Government are of opinion that the grant of supplemental Deeds in the proper form would meet all requirements.

3. The Advocate General will accordingly be requested to prepare, in communication with the Inam Commissioner and the Government Solicitor, and to submit for the approval of Government, a form of Title Deed which will serve as a supplemental document in those cases in which Title Deeds have already been issued, and which will form a competent title where no document has yet been granted.

4. When the form has been approved, the Inam Commissioner will at once set about the preparation of the new Deeds, district by district, and when those appertaining to any district are complete, the requisite notification will be issued to the Inamdars, titles will be granted to those who have not yet obtained them, and supplemental documents to all who produce the corresponding original Deeds, to which the supplemental Deeds will then be attached.

5. These Proceedings will be reported to the Government of India, with the request that no further steps may be taken in regard to the Inam Titles Bill, as the course now ordered will render unnecessary any enactment of the kind.

(True Extract.)

(Sd.) R. A. DALYELL.

To the Advocate General.
,, the Government Solicitor.
,, the Inam Commissioner.
,, the Board of Revenue.
,, the Legislative Departm

Ex d S. T. Augustin.

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are in anticipation of the orders of Govt. telegraphed to Simla regarding what action may be taken on the Inam Bill until the Govt. of India addressed by letter. Bll

W/4

14/July/68

Revenue 1868. Despatch
Proof Court for Sept.
No. 2288
For or Mem

From

The Hon. John Bruce Norton

Advocate General.

Dated 3d July 1868.
Received 3d July 1868.

S. No. 2364. 10 Sept.

Submitting his opinion
on the proof of
Title deeds proposed
to be issued to Imam=
=dass.

No 128.

6 July/68 Rt Hon Rl Re Despatches

Revenue No 2288 of 1868. 46

with the very strong & decided opinion which the Advocate has now given, of the utter worthlessness of the title deeds already issued, I do not think the Govt can with propriety hesitate about recalling them & proceeding therein.

An application to England for an Act of Parliament to convert the land ownership now enjoyed, in all its details, subject the Govt to a refund of what has been collected & the costs incurred, would occupy much valuable time.

I would return the case herein with the Govt Solicitor now to draw up a form of title deed in the form in the terms advised, which a Respectable number have been prepared & sanctioned in readiness for distribution, would publish the Notification as proposed in para. 22 of Mr Norton's letter.

This course involves a considerable delay but the cost to the Govt will not be great, and unavoidably I think, it is a fair & honest course, for things we have pretended to give and have made no valid gift.

6 July 68.

WR

considering how my
honour better best will
without any preparation
such sum of 400000
other words I should
prefer withdrawing the
Finding of Fact as to
Estoppel & proceeding this
Session upon the Assumption
that the Act was ultra vires
& Void & that a valid
& proper early and effectual
Remedy could & ought
to be provided by
the Imperial Parliament
& Queen Victoria
by proper Act of Parliament
& Queen Victoria
by proper Act of Parliament

G. C. Settled at Council
to report the matter to
Privy Council the Govt of India
with a recommendation that
a new Act of Parliament be
applied for

14/11/68

Dr. Grieve should
of Radcliffe should have
committed an error
in sanctioning a form
of Deed which is
inconsistent with the
law, an error which
might have been
avoided by the simple
expedient of referring
the Deed to the
consideration of the
Law advisers of
Govt. I think that
the Govt. ought to
correct this error
by this present Act. The
simple expedient
is open to us of
giving retrospective
Sanction to the
powers exercised
in practice form. It
may be rather
costly and laborious

Revenue Depart.t
63

P. 2354.

Proceedings of the Madras Government
Under date the 10th September 1868.

Read the following
letter from the Advocate
General

Submitting his views on the new form of Title-deeds proposed to be issued to Inamdars. } (Here enter 3rd July/68 No)

1. Under the circumstances brought to notice in the foregoing letter and in consideration of the very strong and decided opinion which is expressed by the Advocate General as to the course which the Govt should adopt in order to remedy

N.
Govt
Appd.

with are Board to accept the title and the charge. N.

P. 2354

remedy the additional defect ~~error~~ (new) which has been discovered in the Inam title Deeds, the Rt Hon^ble the Governor in Council resolves to re-issue these documents in a new and legal form.

2. The recall of the deeds ~~=cuments~~ already issued, even if it could be successfully effected which is questionable, would perhaps lead to alarm and misconception, and the Govt are of opinion that the grant of Supplemental Deeds in the proper form would meet all requirements.

3. The Advocate General will accordingly be requested to prepare, in communication with the Inam Commr & the Govt Solicitor & to submit for the approval of the Govt, a form of title Deed which will serve as a Supplemental document in those cases in which title Deeds have already been issued, and which will form a competent title where no document has yet been granted.

When

4 When the form has been approved, the Inam Commissioner will at once set about the preparation of the new deeds, district by district, and when those appertaining to any District are complete, the requisite Notifications will be issued to the Inamdars, Titles will be granted to those who have not yet obtained them, and supplemental documents to all who produce the corresponding original Deeds, to which the supplemental Deeds will then be attached.

5 These Proceedings will be reported to the Govt

Government of India with the request that no further steps may be taken in regard to the Inam Titles Bill as the course now ordered will render unnecessary any enactment of the kind.

3 Copies to the Advocate General Desp. 11
3 " Genl Collectors
8 " Inam Commrs
14 " Bo Dist Revs
8 " Legislative Dept

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6

C. J. Holding

128 + 129.

Revenue 1868 Septr
Proof Govt for Septr

No 2354

Proof the Madras Govt
dt 10 September

From the Offg Secy Madras
dt 17 Septr 68 Cto. 2990.
From the Offg Secy Govt of
October 68 No 3128.

Recd

Nos 128-129.