

MADRAS RECORD OFFICE.**Government of Madras.***Revenue* **DEPARTMENT.**

G.O. No.	692	<u>Press</u> <u>Mis.</u>
272-73 Dated	/ 7 - 3 -	18 68.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
17th March 1868.*

No. 272. Read the following Proceedings of the Board of Revenue, dated 16th March 1868, No. 1,887.

Read the following letter from the Collector of Tanjore, to the Secretary to the Board of Revenue, dated Combaconum, 4th March 1868, No. 50 :—

1. With reference to the correspondence contained in the Board's Proceedings marginally noted, I have the honour to report that I have received a notice from the Deputy Registrar of the High Court, intimating that an appeal has been preferred to that Court by Chandrakasa Muppanar, against the decree of the Civil Court of Tanjore, dismissing the suit brought by him for the recovery of certain Inam land belonging to His Highness the Rajah's Chuttrum at Muktabapuram under my charge. It is stated in the notice that the hearing of the appeal is posted for the 20th instant.

2. It is unnecessary for me to reiterate the facts of this case, as a full account of them is contained in my letter to the Board, printed in their Proceedings of the 19th January 1867, No. 394, as also in the written statement put in by me in the Civil Court, which is also printed in the same Proceedings. The paragraph which I subsequently added to the written statement as originally prepared, will be found in the Board's subsequent Proceedings, dated the 23rd March 1867, No. 1,842.

3. I beg the Board will be pleased to communicate the above papers to the Government Pleader, with a request that he will attend at the hearing of the appeal in the High Court on my behalf as respondent, and make the necessary defence.

4. Mr. Brockman will, of course, be able to obtain from the High Court, a copy of the Appeal Petition as also of the Pleader, my Written Statement and the Judgment of the Civil Court, all of which latter are contained also in the printed Proceedings of the Board I have quoted. I beg he may be requested to send me a copy of the Appeal Petition, in order that I may be enabled to see what are the grounds urged by the appellant, in order to show that the sanction of Government under existing law was not required for his instituting this suit for the recovery of what is most undeniably unenfranchised Inam land.

5. Should the Government Pleader require to know any further details of the history of this case, they will be found in the previous correspondence noted in the margin, though, I do not imagine, there are any hearing on the merits of the case that will not be found in my letter to the Board and the written statement put in by me in the Civil Court to which I have referred in paragraph 2.

6. In order to place before Mr. Brockman in a concise and convenient form the grounds which constitute the main argument in favor of the defence, I enclose a copy of the Memorandum which I sent to the Government Vakeel at the Civil Court, showing distinctly the pleas which he was to urge at the hearing of the suit.

7. Should the original Title-deeds and Sikha Sunnuds in support of the right of the Chuttrum to the land in question, which were produced in the Civil Court, be required to be produced also in the High Court at the hearing of the appeal, they will, on his application, be sent up to the Government Pleader; but as they are in the Mahratta language, it will take some time to translate them into English, and if, therefore, they are required by that officer, it will be necessary to apply for a postponement of the hearing of the appeal for two or three weeks, as the translations cannot be completed and sent so as to reach Madras before the 20th instant.

MEMORANDUM.

1. The plaintiff does not pretend to deny that the land for which he sues is Inam. The very fact of his claiming the Melvaram of the land shows that he seeks to have it on Inam tenure; for it is the Melvaram that constitutes the ruler's share of the produce of land, and it is exemption from liability to the payment thereof, that constitutes the Inam or tax-free tenure.

belonging to His Highness

*Proceedings of the Madras Government, Revenue Department,
17th March 1868.*

2. The fact, therefore, of the land in question being exempt from the payment of revenue to Government being thus clear on the face of it, the plaintiff is bound to produce with his plaint a certificate from Government permitting him to sue for it, or to show before his plaint can be filed, either that the Inam is of the nature of a Chuttrum Inam falling under Regulation VII of 1817, or that, being a personal grant, it has been enfranchised, and thereby exempted by the Madras Act No. IV of 1862, from the operation of Act No. XXXI of 1836.

3. The plaintiff has neither produced a certificate from Government nor shown the Inam to be enfranchised; neither has he attempted to show that the Inam falls under Regulation VII of 1817, for he has nothing to adduce in support of such an assertion. It has been shown, beyond all doubt, by the original Deeds of Sale produced in Court, that the land in question forms part of that purchased by His Highness the late Rajah Sarboji from various individuals, and it is obvious, therefore, that it is of the nature of a personal grant. It is from the character of the grant as originally made, and not from the purpose to which it is at present applied, that it must be classed as personal or charitable, and it is on this principle that Inams have always been dealt with by the Government as well as by the Inam Commissioner. Indeed, if a private individual could take a personal Inam out of the pale of Regulation IV. of 1831 and Act No. XXXI. of 1836, by alienating it in favor of a charitable institution, the control as well as the reversionary interest of Government would be effectually defeated.

4. The Collector, however, submits that it is for the plaintiff to show that the Inam for which he sues is of a class not falling within the scope of Act No. XXXI. of 1836, and, moreover, contends that it has always been the invariable practice of Civil Courts to adopt the classification of Inam as personal, or otherwise, as denoted by the Revenue authorities, without putting them on their proof for so classifying them. He would further only call the particular attention of the Court to the following rulings of the highest Judicial authority on this point:—

Proceedings of the Sudder Court, 20th October 1858.

Decree in Sudder Adawlut, No. 58 of 1859, 3rd December 1859.

Proceedings of do., 14th August 1861.

Rules of Practice, 18th November 1861, page 27.

Vide Sloan's Code, page 450, Notes 3 to 7.

(True Copy.)

(Signed) G. L. MORRIS,

Collector.

1. Submitted for the orders of Government, with the Board's recommendation that the Government Pleader be directed to appear on behalf of Government in the Appeal Suit which is stated to be posted for hearing, in the High Court, on the 20th instant.

2. Mr. Brockman will be furnished with copies of the papers noted in the margin, and requested to state whether he requires the original Title-deeds and Sikha Sunnuds mentioned by the Collector in paragraph 7 above, and if so, to apply to the Court to have the hearing postponed for a month, in order that the Collector may have translations of those documents prepared and forwarded to Madras.

3. Mr. Brockman will also be requested to furnish the Collector with a copy of the Appeal Petition as applied for by him.

4. The Board will briefly allude to the circumstances which have given rise to the appeal.

5. Government are aware* that the present appellant (Chendracasa Muppanar) petitioned the Revenue authorities in 1863, praying that the lands (about 10 Valies) forming the subject of this appeal, may be made over to him rent free together with the arrears of Melvaram and

Board's Proc., 8th July 1868, No. 3,845.	6,500.
" " 17th Oct. 1865, " 2,707.	1,230.
Court Order, 7th Novr. 1865, " 2,707.	299.
Board's Proc., 31st Feb. 1866, " 1,230.	1,812.
" " 19th Jan. 1867, " 299.	691.
" " 23rd March 1867, " 1,812.	
" " 24th Jan. 1868, " 691.	

*Proceedings of the Madras Government, Revenue Department,
17th March 1868.*

and Mirasivaram which had accumulated in the Treasury since 1856, when the Commissioner Mr. Forbes placed those lands, together with all others which were in any way mixed up with the estates of the late Rajah, under attachment, and that Government, for whose orders the matter was submitted, considered that the Melvaram of the lands in question formed part of the endowment of the Muktamhalpuram Chuttrum belonging to the late Rajah; and accordingly ordered that the accumulation of Melvaram should be made over to the Chuttrum, and that of the Mirasivaram paid to the petitioner.

* Letter dated 23rd December 1865, No. 427.

6. The Collector, however, subsequently reported† that the petitioner refused to receive the Mirasivaram portion alone of the proceeds of the land, or to take charge of the land on ordinary Mirasi tenuro subject to the payment of Melvaram to the Chuttrum; and the Board in their Proceedings, dated 21st February 1866, No. 1,230, directed the Collector to collect the Melvaram of the land in ordinary course of law for the benefit of the Chuttrum; not to interfere with the Mirasivaram, and as regards the arrears which were in deposit, to advertize that such a sum was lying at the disposal of the owner, and that if not claimed within a stated period, it would be carried to the credit of Government.

7. Upon this, Chendracasa Muppanar instituted Original Suit No. 18 of 1866, in the Civil Court of Tanjore, for the recovery of the aforesaid land, together with mesne profits amounting to Rupees 14,191-14-7.

† This word the Collector explained means literally Department, and is used to denote the late Rajah's Department or territory.

8. The plaint alleged—First, that the land claimed was an old Illakha† Sarvamaniam granted for the maintenance of plaintiff's family Choultry, and that, therefore, the permission of Government to sue for its recovery was not necessary.

Secondly.—That for thirty-five years previous to its attachment in 1856, it had always been treated as Sarvamaniam, and the receipts and disbursements connected with the income thereof were included in his family accounts.

Thirdly.—That on the death of the Rajah, his choultries being placed under the management of the Collector, he unjustly appropriated the Melvaram of the said land to the Muktamhalpuram Chuttrum since Fusly 1260 (1856-57); but on the plaintiff's attaining his majority, the land was made over to him together with his other property in February 1861, and a receipt taken from him; and that he, moreover, enjoyed, without objection being raised, the Sambapishanum crop of the land for Fusly 1270, (1860-61,) as also the rent proceeds thereof during the second half of the same Fusly.

Lastly.—That the Collector again attached the land in Fusly 1271 (1861-62,) as belonging to the Muktamhalpuram Choultry to be cultivated in Amani, and that he refuses to make the land over to plaintiff, unless he agrees to give the Melvaram share to the aforesaid Chuttrum.

9. The Collector's answer denied that the land was Illakha Maniam as set forth in the first allegation in the plaint; and affirmed that the whole of the village in which the land was situated having been originally granted on tax-free tenuro by the ancient Mahratta rulers to the Peshwa, the land in question was clearly a personal unenfranchised grant to which Regulation No. IV. of 1831, Section 2, and Act No. XXXI. of 1836 were applicable, and that any private claim to it was not cognizable by the Courts unless the plaint was accompanied by the written permission of Government authorizing the proceeding. Further, that the character of a tax-free grant of land as "service or personal" is determinable only by the object for which the grant was originally made, and not from the purpose to which it is subsequently applied, and that it is on this principle that landed Inams are always dealt with, and that the Inam settlement has been conducted by the Inam Commissioner throughout the Presidency.

10. The Collector was prepared to prove by the production of documents, that the late Rajah's father purchased the whole of the lands in the village, which belong to the Muktamhalpuram Chuttrum, and in which that in question is included, and granted the whole of the said lands to the said institution; while the plaintiff's alleged title is supported by nothing whatever, save the single fact,

*belonging to this
High Court*

R. S. 3

No 692

Proceedings of the Madras Government, Revenue Department,
17th March 1868

that subsequent to the year 1836, his late father wrongfully and contumaciously withheld payment of the Melvaram of the land to the Chuttrum until the attachment in 1850.

11. The answer lastly admitted, that the statement of plaintiff that the land was made over to him in February 1861, together with his estate, was true, but that it was only the Mirasi right which was so made over to him; and he was at liberty to hold the lands, but subject to the payment of Melvaram to the Chuttrum. His assertion relative to the enjoyment of the Sambapishanum crop and the rent for the punjah lands during the latter half of the same year was also true, but his having done so on that single occasion was a wrongful act on his part.

12. At one of the preliminary hearings, the Court observed that "the defendants Vakeel admitted that the plaintiff and his father had paid no Melvaram to the late Tanjore Rajah from 1836 to 1856, and as during ten years of which time, namely, from 1846, when plaintiff's father died, the estate was taken charge by the Court of Wards on behalf of minor plaintiff, and was under its management, it is clear that the defendant must be in error in mentioning in his answer that during that period at least the plaintiff's father had wrongfully and contumaciously withheld all payment of Melvaram on account of the lands in question."

13. The issues framed for final hearing were, (I) whether or not a sanction of Government was necessary before the plaintiff could bring his suit; (II) whether the admitted fact of plaintiff having for upwards of twelve years held possession of the land in question without paying Melvaram, did or did not preclude the right of the Rajah to recover Melvaram on the land for the Chuttrum; and in the event of it being found that it did preclude, then (III) whether under the circumstances the Collector has now such a right.

14. At the final hearing the suit was dismissed with costs on the ground that the permission of Government was necessary for filing it, but the Court observed that "the argument of the plaintiff's Vakeel that inasmuch as no Melvaram had admittedly been paid for upwards of twelve years, (namely, from 1836 to 1856,) the Government had lost its right to sue, and could not be permitted, therefore, to put itself in possession by any exertion of executive power, and that consequently the Court was bound to make an order for its unconditional relinquishment by Government," would doubtless have been entitled to much consideration, had the plaintiff been in an unfettered position to urge it.

15. In conclusion the Board have to express their entire concurrence in the line of argument adopted in the Collector's Memorandum accompanying his present letter.

No. 273.

ORDER THEREON, 17th March 1868, No. 692.

Miscellaneous.

Ordered accordingly that the necessary authority be issued to the Government Pleader to appear and plead on behalf of Government at the hearing of the Appeal to the High Court.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Government Pleader, with authority in duplicate.
.. the Board of Revenue.

Exd. S. T. Augustin.

The Court
Pleader is authorized
to appear before the
High Court to plead
on behalf of Govt
at the hearing of the
Appeal preferred
by Chandrakasa
Mappanar against
the decree of the Civil
Court of Tanjore in
dismissing the suit
brought by him for
the recovery of cer-
tain Inam land in
belonging to this
High Court

