

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1013	Press
		~~Mic.~~ Q
7-9	Dated	8-7-
		1870

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
8th July 1870.*

Read again G. O., dated 10th January 1870, No. 58.

Read also the following papers:—

No. 7. Proceedings of the Board of Revenue, dated 15th January 1870, No. 282.

Read the following letter from the Government Pleader, to the Acting Secretary to the Board of Revenue, dated Madras, 17th December 1869, No. 387.

With reference to the Proceedings of the Board of Revenue noted in the margin, and in continuation of my letter under date the 26th ultimo, No. 376, Dated 10th November 1869, No. 8,332.

I have the honour to forward, for the information of the Board, a copy, just obtained from the High Court, of the Proceedings of that Court in Civil Miscellaneous Regular Appeal No. 244 of 1869, relating to the Ammayanaickanoor Zemindary.

2. I have this day transmitted a similar copy to the Officiating Collector of the Madura District.

ENCLOSURE No. 1.

In the High Court of Judicature at Madras, Wednesday, the Twenty-fourth day of November, One thousand Eight hundred and Sixty-nine.

Present: {The Honourable Mr. JUSTICE HOLLOWAY.
The Honourable Mr. JUSTICE COLLETT.

Civil Miscellaneous Regular Appeal No. 244 of 1869.

Manthreswara Aiyar Petitioner.
The Officiating Collector of Madura Counter-Petitioner.

Appeal against the orders of the Civil Court of Madura, dated the 5th May 1869, passed on Miscellaneous Petitions Nos. 271, 338, and 339 of 1869.

ORDER.—This appeal coming on for hearing, upon perusing the petition of appeal and the orders of the Civil Court, and upon hearing the arguments of Mr. Miller, Counsel, and Subramaniya Aiyar, Vakeel for the petitioner, and of Mr. Government Pleader for the counter-petitioner, it is ordered that the orders of the said Civil Court, dated 5th May 1869, be, and the same hereby are, reversed; and it is further directed that the sale of Judgment-debtor's right and interest be proceeded with; and it is further ordered that the counter-petitioner do pay to the petitioner Rupees 136-4-9 for his costs in prosecuting this appeal.

Memorandum of Costs.

Petitioner's Costs.

	RS.	A.	P.
1 Stamp for Vakalutnamah...	2	0	0
1 Of Vakeel's fee on Rupees 17,860-11-4...	126	12	9
1 Stamp used for Memorandum of Civil Petition...	2	0	0
2 Do. for copy of the Order, dated 5th May 1869	1	0	0
1 Do. do. do.	0	8	0
Printing charge	2	0	0
Batta and Postage	2	0	0
To be paid to the petitioner by the counter-petitioner	136	4	9

By the Court,

(Signed) H. WIGRAM,
Acting Registrar, Appellate Side.

(True Copy.)

(Signed) J. W. HANDLEY,
Government Pleader.

*Proceedings of the Madras Government, Revenue Department,
8th July 1870.*

SUBMITTED for the information of Government, in continuation of Board's Proceedings, dated 8th December 1869, No. 9,004.

No. 8. Proceedings of the Board of Revenue, dated 9th May 1870, No. 3,094.

Read the following letter from the Officiating Collector of Madura, to the Acting Secretary to the Board of Revenue, dated 5th April 1870, No. 90.

ADVERTING to the Proceedings of the Board noted in the margin, I have the honour to report that I attended at the Court on the 16th ultimo for the purpose of bidding for the Siroomallay Hills, but the sale was again postponed.

18th February 1870, No. 1,133.	
1st March " " 1,486.	
4th " " 1,528.	
21st " " 1,952.	

2. The Government Vakeel of the Madura Court has since informed me that the order for the sale has been countermanded by the Court; and, as an arrangement has been made between the debtors and the judgment-creditors for the liquidation of the debts due by the estate, there is no present prospect of any portion of the Zemindary again coming into the market.

3. With reference to the Proceedings of the Board, No. 937, dated 9th February 1870, I take this opportunity to solicit the early sanction of Government to pay Rupees 263-1-6, the costs ordered by the Court to be paid by Government to the petitioner in Appeal Petition No. 244 of 1869 on the file of the High Court, and the fee to the Government Pleader.

SUBMITTED for the information of Government in continuation of Board's Proceedings, 18th February 1870, No. 1,133. There is now no prospect that the Siroomallays will be sold.

2. Orders are requested on paragraph 2, Board's Proceedings, 9th February 1870, No. 937, asking sanction for the payment of Rupees 263-1-6, the costs incurred in appealing to the High Court against the order for selling a portion of the Ammayanaickanoor Polliem.

No. 9. ORDER THEREON, 8th July 1870, No. 1,013.

Miscellaneous.

As it appears from the Proceedings of the Board of Revenue last recorded above, that the sale of certain villages in the Ammayanaickanoor Polliem will not now take place, no further orders are necessary in the matter.

2. With advertence to the G. O., under date 5th February 1870, No. 167, in which the Officiating Collector was authorized to purchase the Siroomallay Hills on behalf of Government, the Board of Revenue will be good enough to report, after

*Proceedings of the Madras Government, Revenue Department,
8th July 1870.*

communication with the Collector, whether the Poligar would be willing to cede to Government his rights on these Hills, and on what terms.

3. The costs of Suit, amounting to Rupees 263-1-6, referred to in paragraph 2 of the Board's Proceedings, under date 9th February 1870, were sanctioned in the G. O., dated 17th May 1870, No. 724.

(True Extract.)

Under-Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

I think that the question should be
disposed of in Council. My own opinion
as at present advised is that it
would be highly desirable for Govt.
purchase the property now under
sale or attachment. It comprises
a range of hills most valuable for
planting intertine, forest conservancy
and fuel preserves in a part of the
country which is about to be traversed
by a Railway. Nevertheless the
Govt. might cut the knot by simply
reversing the property value that
could be stretched of Power
unrestrained in recent times. The
Govt. should appear at the sale

G.O. of 1870: 311011.	
REVENUE.	
THE BOARD OF REVENUE.	
No.	
Dated July, 1870.	
Recd.	Dist.
G. O. 8th July 1870, No. 1,012.	
JULY.	
Nos. 7-9.	
Amagarcikanoor Pollen in Madras.	
Board's Proceedings regarding the sale of certain	
villages, the purchase of the Siroonlay Hills on	
behalf of Government, and the payment of costs	
of Suit, with orders thereon.	

were the bidders that they
would purchase under a liability
to redemption and, at the death
of the Mayor, to forfeiture and
then step in and purchase. They
could probably get the property
for a nominal sum.

P

[Faint, mostly illegible handwritten notes in the left margin, possibly continuing the discussion of the Mayor's role or the property purchase.]

10th
Memo. for Order on A. 211 & 237.

See note at the
End. 187

Before giving my
opinion on this case,

I wish to see the
pro: of the 18th Sept
on the present question

of putting permanent
demands, in order to
see why one was not
given or promised in
this case.

L. O. 22/3.

N. A. A.

The papers called for are put
up. The Poligon is to have a
summit when they are correct
but until they are signed and
delivered the estate is unsettled.

M. A.

The Proceedings of
the Board of Revenue
dated 8th Dec. 1869, A. 9004,
& 15th Jan'y 1870, A. 202,

relate to a recent judg-
ment of the High Court
which establishes a

principle not hitherto
allowed by Govt, viz. that
the interest of the holder
of an unsettled Zemindary

or Poligon in his estate
can be sold up in
execution of a decree
without the consent

of Govt. The circum-
stances of the case

are

are detailed in Board's
Proceedings dated 5th
Dec^r 1869, N^o 9004, in-
corporated with G.O.
dated 10th Jan^y 1870.

2. A portion of
the Ammyamaicknoor
polliam, an unsettled
estate in the Madras
district, had been placed
under attachment by
the Civil Court in satis-
faction of a judgment
in Appeal Suit N^o 1 of 1867.
The collector filed a
Petition before the
Court, objecting to the
sale, on the grounds
that such rights as the
Zemindar possessed in
the

the estate were inalienable
without the consent of
Govt, and that no pre-
cedent for the sale in
execution of a decree of
any portion of an un-
settled polliam, existed.
The Civil Judge (Mr.
Shorpe) passed an order
of which the following
is an extract.

The petitioners
"claim is somewhat
difficult of comprehension.
He appears to urge that
"the Zemindar's rights
"cannot be sold, because
"they are merely depend-
"ent upon the will of
"the Government. This
"may under such rights
less

"less valuable, but clearly
does not render them un-
valuable. The judgments
quoted by the petitioner
"had their origin under
"the procedure in force
"before Act VIII of 1859.
"Under the last named
"Act, it is clear that
"this claim must be
"disallowed. It is ad-
mitted that the judgment
"Debtor is in possession
"of the lands attached
"either by himself or his
"tenants, and there is
"no pretence for saying
"nor does petitioner say
"such possession is on ac-
"count of, or in trust
"for himself, or any third
party

✓
"party. I therefore dis-
"allowed this claim."

3. The Ag Collector
reported the case for
the orders of the Board,
who requested the first
Pleader to give his
opinion on it. The
latter replied that
"assuming that the
"attachments in question
"were of the right title
"and interest only of
"the Pylgari in his
"estate, he was of opinion
"that those attachments
"were regular." He
recommended that
if

if any sale was directed consequent on the attachments, full notice should be given by the Collector at the time of the sale, that all purchasers at such sale would buy subject to the right of Govt. to dispose of the estate as might be most expedient for the realisation of the public revenue and to impose the full Ryotwary assessment on

on the purchasers of the villages, and that upon the determination of the present Pottigar's interest in the Pottigar, the villages would revert to, and be again incorporated with the Pottigar. Subsequently, the plaintiff in the suit in execution of which the sale of the Pottigar villages had been attached, made application to the Civil Judge of Madras for their sale. By that time Mr. Goldingham had succeeded Mr. Sharpe and the former took a different view of the case from his predecessor. He reported

rejected the application for sale
on the ground that "no good
could result from the Court
putting up to auction the right
and title of the Zamindars
when that right and title is
not vested in him absolutely
and that it would be the duty
of the Court to warn intending
purchasers that the Court was
selling what had no real
existence, and no bona-fide
purchaser would ever come
forward."

5. Against this order
the plaintiff appealed to the
High Court who (vide Bds' Pros
dated 15 Jan'y 1870) reversed
Mr. Goldingham's order and
directed that the sale of the
Judgment

Judgment debtors' right and in-
terest in the villages should be
proceeded with. Mr. Handley
(vide Pros of Govt dated 15 Jan'y 70)
reports that the High Court while
declining to express any opinion
as to the question of the
liability of unsettled Zamun-
dars and Pollenis to attach-
ment and sale in execution
of decrees against the holders
of such estates held that the
Order of the Civil Court appeal-
ed from was wrong and
the late Civil Judge (Mr. Harp)
Order of the 21st July 1868 right
that the rights and interests
of Government could not be
in any way affected by
the

the sale of the right, title
and interest of Kamala
Naik in any portion of
the Annaya Naikanoor
Pollum, and consequently
the collector's interference was
unnecessary, and that
therefore, the order of Mr
Sharpe, above mentioned
must be upheld, and the
subsequent orders and pro-
ceedings of the civil court
to the contrary must be
set aside.

The decision of the
High Court exhibits the
anomalous position of
unsettled estates. There is

no legislative enactment
which would prevent
the Zamindar from sell-
ing his interest in the
estate quantum valet,
and at the same time
there is nothing to prevent
the executive from render-
ing that interest of no
value by simply resuming
either the whole estate or
that portion of it which
has been alienated.
In the present case,
this anomaly is intensi-
fied by the fact that

on G. O. dated 5 February
1870, the Government have
authorized the collector to
purchase on their behalf
the zemindar's interest in
the villages in question
(which comprise the
Siamalays) thus pay-
ing for an "interest"
when they might, if so dis-
posed, acquire the property
itself for nothing.

The Government
Member has assumed that
the purchaser of the zemindar's
interest in an unsettled
estate merely purchases the
life interest of the living zemindar.
It

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It appears however that
unless the Government
publish a notification
to the contrary, he may
reasonably expect to
purchase the family
interest, for practically
an unsettled estate is
never resumed as long
as a member of the
zemindar's family
remains.

For course ap-
pear open to the go-
vernment, viz,
(1) To treat the pur-
chaser of the zemindar's
interest in an
unsettled

unsettled estate or
any portion, as if
he had purchased
from a Sumud-holding
Zemindar and allow
the portion purchased
to vest in him and
his heirs forever.

(2) To treat him as if
he had succeeded to the
Zemindar's title, and
his tenure were subject
to the same conditions
as that of the Zemindar.

(3) To consider him as
merely the purchaser
of the Zemindar's life
interest, and to declare
that after the death of
the

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the living Zemindar, the
purchaser's interest will
revert to and be incor-
porated with the living
Zemindar.

(4) To levy from the pur-
chaser the full ryotwary
assessment during the
lifetime of the living Ze-
mindar, and after his
death, to make the portion
purchased revert to and
be incorporated with the
Zemindar. This was the
course proposed by the
Board in para 5 of their
Proceedings dated 22nd
September 1868. The
Board apparently pro-
posed this course, be-
cause, in their opinion,
if the estate passed out
of the family of the holder
it would be no longer
proper

proper to continue the
favorable rate of as-
sessment.

9. The Board have
now directed the Collector
to adopt the Govt. Esti-
mate's advice to the effect
that notice should be
given to the purchasers
that they buy subject
to the Govt. right of re-
sumption and that
the giving of pos-
session to them
should be op-
posed in the
the

17
The Board are perhaps
hardly regular in having
issued orders on so important
a matter, before they have
learnt the views of Go-
vernment, but probably
they considered the G. O.
under date 30th November
1868, No. 2986, as a concurrence
in their opinion.

10. It is submitted
that the adoption of the
3rd course above noted will
be most in accordance
with the recent policy
of Government in regard
to these unsettled Pol-
icies which, in most
cases, have lately been
converted

converted into permanently
settled Estates by the
issue of regular summons.

There can be no
doubt that the Pri-
or's interest is sale-
able and that such
sale is valid as
against him - though
practically voidable
by the State in as-
much as it can
at any time fully
access the land.

This right or power
to buy, I take it to
be the State and with
it.

Edw. S.

the present nor any
future Policy can
have ground of com-
plaint whether the
State exercises or de-
not exercise it.

In the present
instance I see no
reason to say the State
should exercise the
power - but has de-
cided that Verma-
kent's Summons at
the present rates of
Purchase shall be
allowed & the Policy
has a binding force.
The interest of the State
is thus limited to
the promissory bargain
of the Purchase & the
is safe even in any
circumstances. The
interest of the State
being thus limited &

to cure I see no reason
why I should inter-
pose in their behalf the
present Polio from the
consequences of his own
acts or to prevent his
credit from recovering
his dues.

I would therefore
let the sale proceed
without let or hindrance
in the part of the state
leaving the Polio's re-
cess or to assert his
rights to have the interest
of the present Polio
which alone is H.H. &
sons.

If put at the sale,
purchase any willow
it will be in your best
interest in them, in
as much as they will
then have bought the
only proprietary right
than their own. But

Memorandum
for the Board of
Revenue

Wish to have
understand the
present situation

This is a "nice" point, in law.
The tower the same
are it will be the latter.

S. D. S.
11/11/70.
Report in the
M. D. S. April 70

10/10/70 R. 25 R. 1 April 70 R. 8

10/12 3 14 ✓
A-1013 10th July 1870

Send again 40 dated 10 July 1870
Send also no. 237 & 1480

As it appears from
the Proceedings of the
Board of Revenue last
referred above that the
sale of certain villages
as the Annamankur
Pollens will not now
take place, no further
orders are necessary in
the matter.

S. D. S.
The Court's order, as
printed, is not
very clear.

It is observed, however,
that the Board of
Revenue directed the
M. D. S. to give notice
to intending purchasers

at the sale which was
to have taken place, that
they would be subject to
the right of the to impose
the full motuany assess^t
on the lands purchased,
and also instructed him
to oppose any application
made by purchasers to be
placed in possession. It
seems to His Excellency the
Gov. in Council that the
Board should have
refused issuing these
^{orders} instructions until they
had obtained the instructions they asked, the
of Govt in the subject, as
they were strongly con-
sulted to comply to

That the Secy's memo
says they may have
been misled by Govt
30 Nov 18. Any how
as they were given to
right in the heir
they asked, the
can have been hardly
necessary

I am no objection
N:

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depreciate the interest of
the Poligar which was
being brought to sale.

2. With refer-
ence to the G.O under
date 5 Feb 1820 No 167
in which the Offl Col^d
was authorised to pur-
chase the Simmally
Hills on behalf of
Govt. The Bd of Rev will
be good enough to report,
after communication with
the Col^d, whether the Poligar
would be willing to cede
to Govt his rights in these
Hills and on what terms

3. The costs of suit
amounting to Rs 263-4-6.
referred to in para 2 of the
Bds Prof under date 9 Feb 1820
were sanctioned in the G.O
dated 17 May 1820 No 226

14. To the Offl Rev Dept 18