

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1891	Press Mis.
440-42 Dated	30-11-1870	10

Not to be folded or roughly handled

694 1870

*Proceedings of the Madras Government, Revenue Department,
30th November 1870.*

Read the following papers:—

No. 440. Proceedings of the Board of Revenue, dated 25th July 1870, No. 5,024.

Read the following letter from the Acting Collector of Tinnevely, to the Acting Secretary to the Board of Revenue, dated Trichendur, 14th April 1870, No. 154.

I HAVE the honour to submit the accompanying correspondence between the Head Assistant Collector and the Principal Sadr Amin, and to ask the Board's orders as to how I am to proceed to collect the amounts* due to Government.

* Peishcush due from Sivagiri Zemindari, Rupees 27,000.
In Tennampatti and other villages, Rupees 2,343.

2. According to Mr. Dale's opinion, expressed in Board's Circular Order, No. XXXVII., dated 6th October 1866, Board No. 7,166, paragraph 2, "if the attachment of the lands be made *after judgment*, then the Revenue authorities are "debarred from attaching the land during the time it is under such attachment." The arrears in question became due after the Court had attached the land in satisfaction of judgment.

3. According to the ruling of Tinnevely Court, and after a receiver is appointed, Government is precluded from collecting any arrears on lands attached by the Court, and, under this ruling, the large Peishcush balance is outstanding in the Sivagiri Zemindari where the Court's receiver is in charge, as Mr. Webster says, "with the express object of collecting money for the judgment creditor," and the receiver declared not competent to satisfy any Government claim.

4. The question is one of considerable importance, as the Court's receiver in Sivagiri has been in charge for the last three months.

—
ENCLOSURE No. 1.

From the Acting Head Assistant Collector, to the Acting Collector of Tinnevely, dated Tuticorin, 19th March 1870, No. 109.

I HAVE the honour to forward copy of my letter to the Principal Sadr Amin of Tinnevely, and his reply* thereto, No. 109, dated 10th instant, enclosing Proceedings* of the Civil Court, dated 18th October last, No. 613.

* To be returned.

2. The attachment by the Principal Sadr Amin of the lands on which the arrears have accrued, being after judgment, we are debarred from realizing the revenue by enforcing the provisions of Revenue Recovery Act—*Vide* Board's Standing Order No. 267-1, dated 6th October 1866.

3. I request your instructions in the matter, as it is quite uncertain how long the land may remain under attachment, and as far as I can gather there is no other property left to attach.

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From the same officer, to the Principal Sadr Amin of Tinnevely, dated Tuticorin, 1st March 1870, No. 73.

I HAVE the honour to inform you that arrears of revenue are due to Government in Ottape-daram Taluq as noted below :—

Village.	Fasli.	Defaulters.	Amount of arrears.
	1279.		RS. A. P.
Tennampatti	Up to January 1870.	Periatambia Pillay	473 8 11
Amaulpatti	Do.	Adinarayanair	75 5 0
Gengicondan	Do.	Do.	268 8 8
		Total...	817 6 7

2. The Tahsildar reports that the lands upon which the arrears have accrued are under attachment by your Court, and that upon demand being made upon the Court's receivers, they declined to pay the amount without your order.

3. Tahsildar further reports that for Fasli 1278 arrears are due by the Court as follows :—

							RS. A. P.
Tennampatti Village	...	...	...	...	...	...	659 1 7
Gengicondan	...	...	...	...	...	...	867 12 6
						Total...	1,526 14 1

I request, therefore, you will be good enough to instruct the receivers to pay the amount of arrears to the Tahsildar as early as possible, and also to pay the future kists at the appointed times.

From the Principal Sadr Amin, to the Acting Head Assistant Collector of Tinnevely, dated 10th March 1870, No. 109.

WITH reference to the Acting Civil Judge's Proceedings of the 18th October last, a copy of which is herein enclosed, I have the honour to inform you that I am unable to remit to you the sum called for in your letter, No. 73, of the 1st instant.

No. 613.

Proceedings of the Civil Court of Tinnevely, dated 18th October 1869.

READ Miscellaneous Petition No. 1,466 of 1869, presented by Narayanadasarathi, a decree-holder in Original Suit No. 127 of 1868, on the file of the Principal Sadr Amin, appealing against the Order of that officer, dated 10th July 1869.

1. The facts in this case are as follow, so far as they are material to the decision of this question.

2. One Narayanadasarathi, a decree-holder in the Original Suit No. 127 of 1868, in the Principal Sadr Amin's Court, attached the immovable property of the judgment debtor Periatambia Pillay. A manager was appointed by the Principal Sadr Amin under Section 243 of the Civil Code, who collected the rents and profits of the lands, and paid them into the Court. On the 10th July 1869 an application was made to the Principal Sadr Amin by the judgment creditor for Rupees 1,156-10-0, already collected by the manager. The Principal Sadr Amin replied that the amount had been paid over on account of kist to the Collector; and against that reply of the Principal Sadr Amin, petitioner appeals to this Court. It is

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clear that, under the terms of Section 243 of the Code of Civil Procedure, a Court has power to appoint a manager for the sole purpose of facilitating the execution of the decree obtained. The manager is to collect the rents and other receipts and profits of the land, and to pay and apply them towards the payment of the amount of the decree and costs. The High Court have ruled that the Courts have nothing to do with the recovery of arrears of revenue, and that being so, it is difficult to see how a Judge is justified in paying to the Revenue authorities a sum of money collected by a manager, who is appointed with the express object of collecting that money for the judgment creditor. The order paying the money to the Collector was, I am of opinion, illegal. But I do not see what remedy this Court can give, now that the money has been paid to the Collector.

WITH this letter, the Collector of Tinnevely submits correspondence between the Head Assistant Collector and the Principal Sadr Amin, from which it appears that the latter, with reference to an order of the Civil Judge, has refused to pay the Government demand due on certain estates which have been attached in execution of decrees, and for which receivers have been appointed under Section 243 of the Civil Procedure Code.

2. With reference to the order of the Civil Judge, and to the opinion of the Government Pleader, embodied in Board's Standing Circular No. 37 of 1866, Mr. Longley solicits instructions as to how the Government dues are to be realized.

3. He observes that, under the ruling of the Civil Court, when a receiver is appointed by the Court, Government is precluded from enforcing its demand against the estate.

4. The order of the Civil Judge is to the following effect, viz :—(1) that a receiver is appointed for the sole purpose of facilitating the execution of the decree by collecting the rents and profits, and applying them towards payment of the amount of the decree and costs; (2) that the High Court have ruled that the Courts have nothing to do with the recovery of arrears of revenue.

5. In the opinion of the Government Pleader attachment of land by the Court, in execution of a decree, bars summary process under Act II. of 1864 (Madras) in respect of such land while so attached. He states, "the Revenue authorities are debarred from attaching land during the time it is under attachment by the Court, no provision being made in the Code, and the maxim of law being that it is repugnant that it should be lawful to take property out of the custody of the law." Adverting to certain protective enactments of the British Legislature in favour of landlords in respect of rent, and of Government in respect of taxes, he observes that he is not aware of the Indian Legislature having passed similar equitable provisions for the protection of landlords and the State.

6. Previous to 1865 the practice was to realize the Government dues from the sale-proceeds of land sold under an order of Court. Certain difficulties in respect of maintaining this rule having arisen, Government referred the matter to the High Court, and requested that the subordinate Courts might be instructed to include a statement of the Government arrears in the Notification of sale, issued under Section 249, Civil Procedure Code.

7. The Judges, in their letter, dated 22nd November 1865, declined to comply with this request, for the following among other reasons :—(1) that the rights of Government are fully secured under Section 249, Civil Procedure Code, and that it is competent for Government to direct that the sale be conducted by

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the Collector; (2) that the amount due to Government being often a subject of dispute, it would be improper to accept the *ex parte* statement of the Collector as conclusive. Adverting to the supposed object of Government, viz., to secure satisfaction of the arrears out of the purchase-money paid into Court, they observed that the land being sold subject to its incumbrances, the stoppage of the arrears from the price would be injurious to the judgment debtor, and possibly to the judgment creditor also. They further observed that the object sought was one that they were unable to recognize, and they considered it highly objectionable that the Courts of Justice should be rendered ancillary to the convenient collection of the revenue in the extra-judicial manner proposed.

8. The Board presume that this letter of the Judges of the High Court is the ruling referred to by the Civil Judge of Tinnevely.

9. Assuming the opinion of the Government Pleader and the Civil Judge's interpretation of the High Court's letter to be correct, it is evident that the interests of Government are liable to be seriously affected, especially in cases such as those under reference from Tinnevely, in which receivers have been appointed under Section 243, Civil Procedure Code. In one case (Sivagiri), arrears amounting to Rupees 27,000 have accrued during three months of attachment. The Court refuses to pay the Government demand. It is uncertain how long the attachment may continue. In the opinion of the Government Pleader, attachment by the Court, after judgment, bars attachment under Act II. of 1864. The consequence is that the Government demand must remain in abeyance for an indefinite period. Meanwhile, in all probability, the interests of Government will be seriously compromised.

10. The Board, therefore, resolve to request Government to submit the matter for the opinion of the Advocate-General, and to ask him to advise as to the course to be pursued for the purpose of realizing the Government dues on land under attachment in execution of a decree.

REFERRED to the Advocate-General for his opinion as desired by the Board.

16th November 1870.

(Signed) W. HUDLESTON,
Secretary to Government.

No. 441. From the Government Solicitor, to the Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 22nd November 1870, No. 600.

I HAVE the honour to acknowledge the receipt of the Order of Government, dated 16th instant, requesting the Advocate-General's opinion as to the course to be pursued for the purpose of realizing the Government dues on land under attachment in execution of a decree.

2. I submitted the matter for the consideration of the Advocate-General, and I now forward a copy of his opinion, and return herewith the enclosures forwarded with the Order above noted.

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30th November 1870.*

OPINION.

ON the best consideration I can give this case, I concur in the opinion of Mr. Dale, the late Government Pleader, that when land has been once attached by a Court, after judgment, the proceeds of the estate under management must, in the first instance, be applied to the liquidation of the execution debt.

2. This being so, Government arrears must, for the time being, remain unsatisfied, and the chances are that they will continue accumulating.

3. I can suggest no means by which this state of things can be altered, the law remaining as it is; except that it is in the power of Government to protect itself against the loss and inconvenience which may at present occur by not permitting any arrears to accrue. Whenever and so soon as any arrears fall due, Government can protect itself, though doubtless reasons often present themselves which may make it undesirable to resort to extreme measures without delay.

4. At present it is only provided that the land shall be the security for the Government demands. If further security is required, it might be expedient to enact that the Government demand shall be the *first* charge upon the land, and the Civil Procedure Code, which will have ere long to be amended, might provide that in cases of attachment or sale, the Government dues shall be first paid and satisfied.

5. The Proceedings of the High Court, dated 22nd November 1865, paragraph 7, refer to a sale and not to an attachment and appointment of a receiver, a state of things perhaps even more detrimental to the interests of Government.

(Signed) JOHN BRUCE NORTON,

21st November 1870.

Advocate-General.

No. 442.

ORDER THEREON, 30th November 1870, No. 1,891.

Land Revenue.

ORDERED that the Advocate-General's opinion be communicated to the Board of Revenue, with reference to

their Proceedings, No. 5,024, dated 25th July 1870.

2. The Government await the result of the Board's further deliberations.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Board of Revenue.
,, the Government Solicitor.

Ed. F. R. Bantleman.

Revenue Dept^{ts}

Proceedings of the Madras Gov^t Under date the.

Read the following
Pro: of the 1st of Revenue

Submitting corres-
pondence regarding refusal of
Principal Sadr Ameen of
Tinnevely to pay arrears of
revenue due to Govt. on certain
estates which have been attached
in execution of decrees of his
Court & requesting that this
matter may be referred to the
Advocate General for his
opinion

H. E. 25 July 1870 H. 5024

The Govt observe
that the land will remain
liable for the arrears as
soon as the Court's attach-
ment is removed, irrespec-
-tive of the person to whom
the proprietary right
may have been transferred.

The Advocate
General

The H^{rs} as H^{rs} in
to refer the matter
to Mr. Norton. The
should be done

N. P. D.
B. A.

Govt. of 1870

REVENUE.

THE BOARD OF REVENUE.

Resolved November, 1870

Arch.

G. O. with November 1870, No. 1301.

NOVEMBER
Nos. 440-442.

Government does on land under attach-
ment in execution of a decree. - Advocate-
General's opinion as to the course to be pursued
for the purpose of their redemption, communicated
to Board of Revenue.

Recd of the H^{rs} of the Govt. on 21
July 1871
No. 4025/71

General's opinion should
however be submitted
to Government.

was

Handwritten notes at the top left of the page, partially obscured and difficult to decipher.

Revenue 1870. Oct 27

W. 3637

From the Government of Madras

To the Secretary to Govt. Revenue Department
Fort St George

Dated 22nd November
Recd 23rd

No. 600.

Enclosed

Forwarded copy of the
Associate Members opinion
as to the course to be pursued
for the purpose of
realizing the goodnes
on land under attack
in execution of
a Decree.

Yr order.

1891-20 Oct 1870

L. D. S.

1891-
Forwarded to the Adm. this opinion &
communicated to the Bd. of Rev. with
ref. & this Bd. 25. July 1870.
Ref. await the result of the Bd. further
deliberations.

Yr order.

14 Feb 1871
4.800
300
1870

Handwritten mark or signature at the bottom left.

25 Nov 1870