

*Proceedings of the Madras Government, Revenue Department,
6th February 1873.*

No. 40. Read the following Proceedings of the Board of Revenue, dated 20th January 1873, No. 76 :—

Read the following letter from C. T. LONGLEY, Esq., Collector of Salem, to the Secretary to the Board of Revenue, dated 25th November 1872,

I HAVE the honour to request that you will be so good as to let me know whether, under the provisions of Act II. of 1864, the personal (movable) property of a proprietor holding a Sanad-i-Milkiat Istimrar, can be sold on account of arrears of peshcush?

2. Section 6, Act II. of 1864, directs that in the case of a defaulter holding under a Sanad-i-Milkiat Istimrar, the mode of recovering the arrear shall be "in accordance with the terms of such Sanad," the terms of which are as follows:—

Paragraph 5. "You shall pay, in all seasons regularly, the permanent assessment above fixed, and if you fail to discharge your engagement, your Zemindari and your personal property shall be answerable for the consequence of such failure."

Paragraph 6. "In this event, your 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, etc."

3. The question arises whether, under Section 6 as it stands at present, the personal property of a Mutadar can be sold at all. It seems to me that it cannot. ~~by itself, the procedure appears to be restricted to simple "attachment" of personal property, but taking it with the latter part of paragraph 5, it would seem that the property may be sold, for, unless it is sold, it cannot be made "answerable for the consequence of such failure."~~

4. Again, I do not understand what object is to be gained by mere attachment. It cannot satisfy the demand, and after the muta or a portion of muta is sold, it would scarcely be found necessary to bring the movable property to sale. The mere attachment serves no purpose whatever, and it is simply a form gone through, for the Tahsildar knowing that it cannot be brought to sale, goes to the Mutadar's house, where perhaps an old palanquin and perhaps some articles of household furniture are shown as the movable property. An inventory is made, a copy of which is left with the Mutadar. The process prescribed by law for attachment is certainly conformed to, but the fact of the attachment is known to no one but the Tahsildar and his Gumastah perhaps, and the Mutadar does not, of course, feel that his dignity has in any way been compromised by such a procedure. If on the other hand the property were to be sold, the Tahsildar will take care to attach as much property as would be necessary to cover the arrears, and the sale must be publicly notified and carried out in public. The Mutadar would then feel the procedure derogatory to his dignity and would take care to pay up somehow or other the arrears immediately on the issue of the demand notice, and before steps were taken for the attachment of the personal property knowing it would be sold.

5. The system at present observed in this district is to attach the personal property merely, and then to take steps for sub-dividing the muta with a view

to a portion being attached and sold, a most tedious and inconvenient procedure. The preparation of the accounts necessary for such division is a matter of considerable difficulty. The Zemindari Carnams seldom keep their accounts regularly and the provisions of Regulation XXIX. of 1802 are so defective that the

months elapse before the division accounts are ready, and after all the trouble that has been taken in making the division as required by law, and the divided portion advertised for sale, the Mutadar almost invariably pays up the arrears just the day before the sale.

6. On the other hand, both the Government as well as the proprietors would be benefited by the sale of the personal property in the first instance. It would afford means for the punctual collection of the Government revenue; it would save the Mutadar the charges attending the sub-division and sale of his estate; and where a muta is held by a minor proprietor jointly with others, not only would the interest of the minor be protected, but also the Government would be saved from a probable loss. For, as the Board are aware, the muta of a minor cannot be sold during his minority. It can only be placed under Government management, and if, as it frequently happens, the joint proprietors have already collected all that is due from their ryots for the year without paying a penny of the *peishush*, the estate must continue under Government until the minor is of age, to the prejudice alike of the interests of the Government as well as the minor. But by the sale of the personal property, the joint proprietors could not escape, and knowing this, directly the demand appeared the arrears would be promptly paid in.

7. It is of the utmost importance that the question as to whether the personal property of a Mutadar holding under a *Milkia-i-Sanad Istimrar* can be sold or not, should be decided, and if it can, when is it to be sold, before or after the landed property? Taking paragraphs 5 and 6 of the Sanad together it certainly seems to me that the personal property of the proprietor can be sold prior to proceeding against the landed estate itself. Paragraph 5 of the Sanad makes both the Zemindari as well as the personal property answerable for the arrears, and paragraph 6 lays down simply, I take it, as to which should be proceeded against first, and this view is supported by the context of paragraph 6 which renders the sale of the Zemindari an *ultimate* course.

8. Of late several mutas have fallen into arrears, and the sub-dividing of these estates has taken up so much time and caused so much inconvenience that I have been obliged to trouble the Board with this reference, and beg to be favoured with the Board's view on the matter. The present practice of merely attaching personal property seriously retards the punctual collection of the Government revenue.

The Board resolve to submit this letter for the orders of Government.

2. It is pointed out that when Zemindars fall into arrears, the only coercive process allowed by the orders in force is the sale of the estate or part of it, that this nearly always involves great delay, and that a sale of personal property

would in most cases be a readier and simpler means of realizing the Government demand.

3. Under Section 6, Act II. of 1864, the mode of recovering the arrear is to be in accordance with the terms of the Sanad. The Sanads provide that the personal property being liable to attachment in the first instance, it seems to follow that it may be also sold in the first instance, for otherwise the attachment is a meaningless ceremony, but it was held in 1865 that the personal property should not be sold, and in 1868 that it could not be sold unless the Zemindar preferred that it should be sold instead of the land.

G. O., 22nd February 1865, No. 383.

G. O., 18th June 1868, No. 1,715.

4. These rulings seem to the Board to have arisen rather from a desire to save the dignity of Zemindars from the disgrace supposed to attend a sale of personal property than from a strict interpretation of the law.

5. Although great caution is advisable in dealing with the prejudices of large landed proprietors, the Board are disposed to think that it has been pushed too far in this matter, and that it is at all events unnecessary in the case of the petty Mootahdars who abound in Salem.

6. They accordingly recommend that the law officers of Government be requested to decide whether, when a Zemindar falls into arrears, the Collector is at liberty not only to attach but also to sell the personal property in the first instance, i.e., before he proceeds against the land.

No. 41.

ORDER THEREON, 6th February 1873, No. 153.

Miscellaneous.

THESE Proceedings, with copy of the papers mentioned by the Board of Revenue, will be forwarded to the

Advocate-General, as requested, for his opinion on the question raised.

2. The Board have not noticed paragraph 6 of the Collector's letter; but the doctrine he has enunciated that, where there are joint proprietors of a Muttu and one of them is a minor, the Muttu cannot be sold during the minority is clearly erroneous. The Board will refer him to the late Advocate-General's opinion in the case of the "Samudram" Muttu, in the Trichengode Taluq. of his own district—Proceedings of Government, 30th June and 10th July 1871, Nos. 1,133 and 1,252.

(True Extract.)

(Signed)

D. F. CARMICHAEL,

Secretary to Government.

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

Edw. J. Tulloch.

1870-1-78

The Govt do not consider it necessary to make the desired reference to their Law Officers. The Sanad granted to Landholders under the Zamindari system, after providing that the estate a personality shall be "answerable" for any default in the payment of the assessment fixed on the Estate, goes on to say that the "personal property" will be liable to attachment in the first instance. This phrase must be with the view of making the attached property "answerable" by sale. In 1865 the Govt gave their opinion that the personality in such cases should always be attached, before the lands. They did not mean to convey that no other step but attachment should be taken against the personality, for this would be trifling with the security of the public revenue. Indeed in 1868, they reversed their previous instruction, observing that there was nothing in the terms of the Sanad to deter the Govt from attaching the land of a Zamindar in case of default in the payment of his personal property.

2. It is clear that the declaration of the "liability to attachment" will be for

G.O. 21st Feb No 283

G.O. 18th June No 1715
H.M.G.

"distinction of the personality" announced
in the Sanad, renders it
optional with the collector to proceed
either against that, or the land. The
difference presumed in favor of the
Zamindar is that the collector cannot
proceed against both movable and
immovable property together, but
only against the second (whichever
he takes first) when the arrears have
not been realized by the sale of the
first.

3. The collector of Salem, therefore, should
proceed to sell the personal property of
the Zamindar of his district
immediately on being defaulting. Their
want of punctuality in discharging
the public demands appears to involve
his officials in much unnecessary
trouble under the present system;
and, unlike the ancient Zamindars,
the defaulters have no special claim
to consideration.

4. The Act has not which Para 6 of
the collector's letter, but the doctrine he has
enunciated that, when there are joint
proprietors of a Muttia and one of them
is a minor, the Muttia cannot be sold
during the minority - is clearly erroneous.

I am a point
the Court will
not up till this -
which is the same
like view of the
question. Reg. X & V of
1802 requires the
return of Zamindars
personally - and says
the personal property
shall be first attached
ultimately their
land sold. The
lands follow the
same in the
time of default or
default. Reg. X & V of
1802 the first of these
locally how we are
breaches are errors
and said it should
be at the option of the

defaulted to pick
up his personal
property - in view
reference to the sale
of his land - I
fear the Courts would
maintain that a

decided difference was entertained
between the treatment of the two kinds
of property - and it would be well
worth if they did so. The collector can
charge all expenses incurred in the
process. He should first for-
mally attach the personal property
of a defaulting Zamindar & if the
sum due is not paid, attach
the estate, bring it to auction, add
the necessary cost & take the necessary
steps for realizing it - selling the
whole if the Zamindar "unreasonably
delay" to pay the arrears. The requisite accounts
to be submitted.

The Act will refer him to the late
advocate General's opinion in the case
of the "Samudram" Muttia, in the Tri-
chenpode taluk, of his own district.
Proc. of Govt., 30th June 1871 & July 1871
Nos 1133 & 1252.

28/7/71

Revenue Dept.

No 153 -

Proceedings of the Madras Government.
Read the following Proceedings
of the Board of Revenue

Submitting, with certain
recommendation, letter from
Coll^r of Salem regarding revenue
due by Zemindars holding Idim-
-var lands.

H.E. 20 Jan'y 1873. No 76.

Order thereon, 5 February 1873. No 153.

These Proceedings, with copy of
the papers mentioned by the Board of Revenue,
will be forwarded to the Advocate General,
as requested, for his opinion on the question
raised.

2. The Board have not noticed
Para 6 of the Collector's letter, but the doctrine
he has enunciated that, where there are
joint proprietors of a Muttu and one of them
is a minor, the Muttu cannot be sold during
the minority, is clearly erroneous. The Board
will refer him to the late Advocate General's
opinion in the case of the "Tirumudram" Muttu.

My view of the case is
that where there is both
personal & real property
available - & where the
former is sufficient, that
only should be attached &
sold - leaving the land
ultimately to be sold if
the demand is not satisfied.
It seems not of the question
only to attach personal
property.

I do not think that
it was contemplated, that
the Govt agency could choose
which kind of property they
would proceed against first
though both are in sum
liable for satisfaction of
Mufat demand. M

These Progs. with copy
of the papers mentioned
by the Bd. of Rev., will be
forwarded to the Adv.

Genl. as requested, for his
opinion on the question
raised.

Para 2. [Have
sent Para 4
of Draft.]

2-2-73

in the Trichengode taluk, of his own district.
Proc of Govt., 30 June and 19 July 1871. No. 1133
4/1252.

(True Extract)

Id. / D. F. Carmichael
Secretary to Govt.

4. To The Government Selection Secy Feb
14. The Board of Revs.