M.R.O. 1—20,002—12-8-65.

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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No. 1121	Press
~~B.P. No.~~	Mis.
Dated 1-9-1874 ~~196~~.	

Not to be folded or roughly handled

1121
1

Proceedings of the Madras Government, Revenue Department,
1st September 1874.

No. 33. Read the following Proceedings of the Board of Revenue, dated 4th August 1874, No. 2,080 :—

Read the following letters :—

From J. H. GARSTIN, Esq., Collector of South Arcot, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Cuddalore, 1st June 1874, No. 265.

I HAVE the honor to report on the Board's petition, No. 529, of 1874.

2. The petitioner is the widow of Balakrishnama Naick, the late Mittahdar of Chinna Naicken Poliyam, and has been, since May 1866, in possession of the Mittah, and she prays that, being without any male relative at all to look after her affairs, the Board of Revenue, in their capacity of Court of Wards, will recommend Government to resume the proprietary right in the Mittah, and give her for her maintenance a reasonable allowance suitable to her position out of the net income of the estate, and further to continue this grant to those whom she may think fit and proper to be her heirs "until such time as Government is accustomed to grant in cases of this description."

3. In order to be able to deal with the petitioner's request, it is necessary to determine what her position really is with respect to the estate, and for this purpose a brief history of it is given below :—

The two villages of Chinna Naicken Poliyam and Naiduput, in the Cuddalore Taluq, which compose the Mittah of Chinna Naicken Poliyam, passed into the East-India Company's possession in 1762, and on the 12th July 1797 were leased out for a term of ten years to one Veerasami Mudali, at an annual rental of 950 Star Pagodas; and on his death in 1800, the lease was continued in the name of his father, Appu Mudali. In 1807, after the termination of the lease, the two villages were, with the consent of Appu Mudali, made over to him in proprietary right on condition of his paying an annual permanent jumma of 1,150 Star Pagodas.* The consent of Government to this arrangement was given on the 1st August, and a Sanad was ordered to be prepared for him; and on the 3rd November 1807 Mr. Fallofield, the Collector, wrote to Appu Mudali in the following terms:—

* *Vide* extracts A, B, and C.

"To Appu Mudali, Proprietor of the Estate of Chinna Naicken Poliyam and Naiduput.

"The Honorable the Governor in Council has been pleased to direct that a Sanad shall be prepared for you, whereby the proprietary tenure of the village of Chinna Naicken Poliyam and Naiduput will be vested on you, on your paying the sum of one thousand one hundred and fifty (1,150) Pagodas annually to the Honorable Company.

"You are in consequence hereby authorized to take charge of the aforesaid villages and to consider yourself as the proprietor thereof from the commencement of the present Fasli year 1217, or the 12th July last, from which day you will be held responsible for the permanent jumma with which the lands composing of this estate have been assessed.

PONDICHERRY, 3rd November 1807. (Signed) E. W. FALLOFIELD, Acting Collector."

And in his monthly diary to the Revenue Board for November 1807, there o[illegible]try: "3rd, Appu Mudali having been appointed by the Honorable the Governor in Council to be proprietor of the Estate of Chinna Naicken Poliyam and Naiduput from the commencement of the present Fasli year, a Sanad was this day sent to him to take charge of that estate accordingly." It would thus seem that Mr. Fallofield intended that his letter of the 3rd November 1807 should be considered as the Sanad ordered to be issued by the Governor in Council, but Appu Mudali seems to have thought that a regular Sanad-i-Milkiat Istimrar would follow, because, when he sold the estate in 1809 to Sankara Naick, he stated in the deed of sale that, as soon as he got the Sanad, he would transfer that also to the purchaser. The above transfer of the proprietary right in the Mittah was duly registered in the Collector's (Mr. Ravenshaw's) Office on the 27th April 1809, but no Sanad-i-Milkiat Istimrar seems ever to have been issued from that day to this.

On Sankara Naick's death, the estate passed in succession to his two eldest sons, and finally to Balakrishnama Naick, his third son, the Board's petitioner's husband. In 1849 the estate was under attachment for arrears of peishcush when Balakrishnama died and a dispute as to the succession arose. An alleged adoption by Balakrishnama was advanced and disputed, and the Government in their Order of the 16th October 1849, No. 422, recorded in the Board's Proceedings of the 1st November 1849, directed that the estate should remain under the Collector's management till the disputes, as to the alleged adoption and the right of succession to the estate, had been settled in a Court of Law.

A law suit then commenced, and lasted for seventeen years, till on the 3rd February 1866, the Privy Council overruled the decision of the Courts in India which had decreed in favor of the adoption, and decreed the estate to the widow, the present petitioner; and on her producing the Privy Council's Decree before Mr. Reade, he issued a takeed, dated the 30th May 1866, No. 125, recognizing the petitioner as proprietrix of the estate, put her in possession of it, and disbursed to her the accumulated mesne profits which had been held in deposit during the currency of the suit. There is nothing on the records of this office, however, to show that he acted under the orders of the Board or Government, or that he reported his proceedings in the matter.

4. The petitioner in her petition alleges that the Mittah is capable of yielding an annual beriz of Rupees 5,775 if the tenants pay their rents punctually, that the peishcush is Rs. 4,025, and that her net income is, or should be, Rupees 1,750. I enclose two Statements (D and E), the former showing the financial condition of the estate during the ten years it was under Government management previous to being handed over to the present proprietrix, and the latter its condition for the seven years after it was handed over to her management. From the former, the Board will perceive that the gross average income of the estate was Rupees 5,842 after deducting remissions, the peishcush Rupees 3,991, the average collections Rupees 1,545, the average arrears Rupees 305, and the cost of management Rupees 408, thus giving a net income, including arrears outstanding, of Rupees 1,443; while from the latter it will be seen that the average gross income was Rupees 5,997 after deducting remissions and inclusive of half road-cess, the peishcush including road-cess Rupees 4,170, the average collections Rupees 1,315, the average arrears Rs. 511, and the cost of management Rupees 330, thus giving a net income, inclusive of outstanding arrears, of Rupees 1,496 per annum.

5. Now in disposing of the petitioner's prayer, it is necessary to consider and determine, (bearing in mind that no regular Sanad-i-Milkiat Istimrar was ever issued with respect to the Mittah). *First*, whether the jumma of the estate was permanently assessed within the meaning of Regulation XXV. of 1802; *second*, whether petitioner has a "permanent property" in the estate.

6. If both points are given in her favor, then her petition can be disposed of on its merits; but, if both are given against her, then it would seem that she has only a life-interest in the property, and that on her death the jumma can be raised, or the estate resumed.

7. Section 2, Regulation XXV. of 1802, declares that an assessment was to be fixed on all lands, "and, in consequence of such assessment, the proprietary right of the soil shall become vested in the Zemindars or other proprietors of land and in their heirs and lawful successors for ever," and Section 3 sets forth that, "where the conditions of the permanent assessment of the revenue [illegible] adjusted, a Sanad-i-Milkiat Istimrar or deed of permanent property shall be granted on the part of the British Government to," etc., and further on, "The said Sanads and Cabooleats shall contain the conditions and articles of tenure by which the lands shall be held." So that, in my opinion under the above Regulation, the permanent assessment of all estates was made obligatory on the Government, and after that arrangement was adjusted in each case it became obligatory on them to issue a Sanad-i-Milkiat Istimrar or deed of permanent property, in which the terms and conditions of tenure were, for the sake of settlement of all future disputes and for future reference, to be set forth. In other words, the permanent assessment was first to be arranged, and, as a consequence of it, the title-deed was to issue, and holding this view, I cannot conceive how the assessment once arranged as permanent could ever afterwards be called in question, even if the Government neglected to obey the law as laid down in Section 3. Therefore, as

Proceedings of the Madras Government, Revenue Department,
1*st September* 1874.

1121
2

it seems to me indisputable that the permanent assessment of this particular estate was arranged between the Government and Appu Mudali to be 1,150 Pagodas per annum, a Sanad ought, in my opinion, to have been given him as a title-deed, setting forth the fact and the condition of his tenure, and the failure to do so cannot affect either the permanency of the jumma, or the proprietary right in the soil, and any of the persons to whom the property has since lawfully descended could at any moment have sued for such a Sanad and compelled its issue.

8. In select decisions of the Sadr Adálat, No. 11, of 1816, (volume I., page 141,) it was ruled that the Sanad-i-Milkiat Istimrar is necessary to constitute a Zemindari hereditary property, and in Proceedings of the Sadr Adálat of the 24th April 1837, it was laid down that the Sanad-i-Milkiat Istimrar was a most important document in claims to succession to Zemindaries having been declared in Sadr Adálat Proceedings of the 14th December 1820 to be essential to constitute these tenures hereditary property, but both these rulings appear to have been overruled by the judgment of the High Court in Regular Appeal, No. 129, of 1869, when Scotland, C. J., held that "the Regulation does not operate to exclude or disfavor the maintenance of a claim against the Government to a hereditary or other estate in land which has not been secured the benefits of a settled title under the regulation, because, for political reasons, the Government has thought it inexpedient to give full effect to its enactments; but that claims of title to such estates are merely left without the conclusive proof of hereditary title afforded by an Istimrari Sanad. It could never, we think, have been intended that the Government by delaying to do in regard to some estates what the regulation enacts should be done in regard to all lands for the purpose of setting at rest all uncertainty as to titles should secure the power to treat all such estates as held by no permanent title whatever." It seems, therefore, definitely ruled that a Sanad-i-Milkiat Istimrar is not indispensable to prove a permanent property in an estate where, as in this case, other evidence exists to prove the fact. In the last paragraph, however, of the same judgment, the Chief Justice remarked that the grant of a Sanad under Regulation XXV. of 1802 was not made by law indispensable, "except to render the revenue assessment permanent," but almost immediately afterwards added: "We wish it to be distinctly understood that it is not intended by any thing said in this judgment to indicate any opinion as to the right of the Government to alter the assessments of peishcush on this or other poliyams not held under an Istimrari Sanad if they think it equitable to do so, and have not bound themselves not to do so—an obligation which it seems" * * * "does, in some instances, exist."

Upon the whole, therefore, although the learned Judge appears to have committed himself to some extent to an opinion that an Istimrari Sanad is indispensable to render the jumma permanent, he seems to have receded from that position on recognizing that there might be cases where the Government had bound themselves to treat the assessments of estates as permanent even in the absence of Sanads.

9. I am decidedly of opinion that the present case is one falling within the scope of the exception contemplated by the learned Chief Justice, as there is a distinct official assertion on record that the Governor in Council had ordered a Sanad to issue for this estate; but that, owing to the neglect or misconception of the nature of the Sanad on the part of the Collector, no formal Sanad was issued. Had the facts been reported when the Privy Council's judgment was received, in all probability a Sanad would even then have been issued to the petitioner.

10. In conclusion, I can only say, I think she is entitled to have one issued in her name, and that I see no objection to the estate being managed by the Collector on her account, and an allowance of Rupees 100 a month made to her out of the rental, but without any recognition of a right on her part to bequeath the estate, as she has no issue. I have, however, received a petition, of which I enclose a copy,* from one Sankara Naick, claiming to be her heir; but, as he has an elder brother, who, he says, has been leading a vagabond life for many years, still living, this brother would have a better claim than himself to succeed to the estate on the petitioner's death, supposing him to have any right at all, he being descended, according to his own statement, from one Comarappa Naick, who divided himself from the rest of the family many years ago.

* Enclosure F.

H. I sent this man's petition for report along with the Board's petitioner's to Mr. Thomson, the Assistant Collector, who considered that the absence of a Sanad was fatal to the permanency of the title and of the jumma, and, therefore, sent in no special report on this second petition. I will, however, have this second petitioner's claims fully investigated, and report further to the Board.

Enclosure A.—Extract (paragraphs 8 and 9) of G. O., 31st December 1806.

Enclosure B.—Extract (paragraph 18) of Board's letter to Government, dated 27th July 1807.

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Enclosures D and E.—Statements.

Enclosure F.—Copy of petition from Sankara Naidoo to Collector of South Arcot.

Enclosure No. 7.—Petition, No. 529, of 1874, from Thayammal.

From the same officer, dated Cuddalore, 11th June 1874, No. 281.

In continuation of my report* on Thayammal's petition, I have the honor to submit a copy of a genealogical tree, showing the relationship of petitioner Sankara Naick to Thayammal, and to state that Sankara Naick appears to be the great-grandson of the man who originally purchased the Mittah from Appu Mudali, the original grantee, but that a division of the family property occurred in the life-time of the petitioner's father, Comarappa Naick. Thus, although a member of a divided family, Sankara Naick appears to be a cousin of Thayammal's late husband. His petition, No. 870, of the 15th April last, is enclosed for reference.

* No 265, dated 1st instant.

Enclosure No. 1.—Genealogical Tree.

Enclosure No. 2.—Petition, No. 870, from Sankara Naick to Collector.

Submitted for the orders of Government.

2. The above letters relate to a petition presented by Thayammal, widow of one Balakrishna Naick, late Mittahdar of Chinna Naicken Poliyam, requesting that the proprietary right in her Mittah may be resumed by Government, she having no male relative to look after her affairs, and that a maintenance allowance suitable to her position may be granted to her from the income of her estate, and may be continued at her death to such person as she may nominate as her heir. A petition has also been presented by one Sankara Naick, a cousin of the proprietrix, objecting to the proposed measure.

3. The Board see no reason to refuse compliance with Thayammla's request, and recommend that the management of the estate should be assumed by the Court of Wards. The proprietrix must be warned that she has no power to will away or alienate the estate. On her death, it will be for the counter-petitioner, Sankara Naick, or any other member of the family, to establish a claim to succeed, failing which, the estate will lapse to Government.

1121/3

No. 34. Order thereon, 1st September 1874, No. 1,121.

Miscellaneous.

The management of the estate may, as proposed, be undertaken by the Court of Wards.

(True Extract.)

(Signed) C. G. MASTER,
Acting Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.



REVENUE DEPARTMENT.

1121
4

C No. 2863

From Pro: Bd of Rev.
Dated 4th August 1874.

FOR ORDERS.

I would adopt the Usual
Proposal.

Lds

Encl
2878

FOR ORDERS.

1121

C 26th Augt 1874 pm Rt Supt

No. 2,080.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 4th August 1874.

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(Signed) E. W. FALLOFIELD,
Acting Collector."

PONDICHERRY,
3rd November 1807.

And in his monthly diary to the Revenue Board for November 1807, there occurs the entry: "3rd, Appu Mudali having been appointed by the Honorable the Governor in Council to be proprietor of the Estate of Chinna Naicken Poliyam and Naiduput from the commencement of the present Fasli year, a Sanad was this day sent to him to take charge of that estate accordingly." It would thus seem that Mr. Fallofield intended that his letter of the 3rd November 1807 should

1121/6

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5. Now in disposing of the petitioner's prayer, it is necessary to consider and determine, (bearing in mind that no regular Sanad-i-Milkiat Istimrar was ever issued with respect to the Mittah). *First*, whether the jumma of the estate was permanently assessed within the meaning of Regulation XXV. of 1802; *second*, whether petitioner has a "permanent property" in the estate.

6. If both points are given in her favor, then her petition can be disposed of on its merits; but, if both are given against her, then it would seem that she has only a life-interest in the property, and that on her death the jumma can be raised, or the estate resumed.

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So that, in my opinion under the above Regulation, the permanent assessment of all estates was made obligatory on the Government, and after that arrangement was adjusted in each case it became obligatory on them to issue a Sanad-i-Milkiat Istimrar or deed of permanent property, in which the terms and conditions of tenure were, for the sake of settlement of all future disputes and for future reference, to be set forth. In other words, the permanent assessment was first to be arranged, and, as a consequence of it, the title-deed was to issue, and holding this view, I cannot conceive how the assessment once arranged as permanent could ever afterwards be called in question, even if the Government neglected to obey the law as laid down in Section 3. Therefore, as it seems to me indisputable that the permanent assessment of this particular estate was arranged between the Government and Appu Mudali to be 1,150 Pagodas per annum, a Sanad ought, in my opinion, to have been given him as a title-deed, setting forth the fact and the condition of his tenure, and the failure to do so cannot affect either the permanency of the jumma, or the proprietary right in the soil, and any of the persons to whom the property has since lawfully descended could at any moment have sued for such a Sanad and compelled its issue.

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Submitted for the orders of Government.

2. The above letters relate to a petition presented by Thayammal, widow of one Balakrishnama Naick, late Mittahdar of Chinna Naicken Poliyam, requesting that the proprietary right in her Mittah may be resumed by Government, she having no male relative to look after her affairs, and that a maintenance allowance suitable to her position may be granted to her from the income of her estate, and may be continued at her death to such person as she may nominate as her heir. A petition has also been presented by one Sankara Naick, a cousin of the proprietrix, objecting to the proposed measure.

3. The Board see no reason to refuse compliance with Thayammal's request, and recommend that the management of the estate should be assumed by the Court of Wards. The proprietrix must be warned that she has no power to will away, or alienate the estate. On her death, it will be for the counter-petitioner, Sankara Naick, or any other member of the family, to establish a claim to succeed, failing which, the estate will lapse to Government.

(True Copies and Extract.)

Acting Sub-Secretary.

To the Acting Secretary to Government, Revenue Department,
with nine original enclosures.

„ the Collector of South Arcot.

1121/8

Ext. A. Grubert.

No 2863.
No 1066
Rec 1874. Departt

Board of Revenue,
MADRAS.

PROCEEDINGS, 4TH AUGUST 1874, No. 2,080.

Dept 5 Augt 74.
Encl to
Dist to P-
Received 1/7 — 1121

AUGUST.

No. 2,080.

Chinna Naicken Polyam Mitta—in South Arcot District.—Recommendation made to Government that Court of Wards may be allowed to assume management of — as requested by widow of late Mittahdar, leaving Sankara Naick, a petitioner, who objects to proposed measure, or any other member of the family, to prefer their claims on death of widow. Proprietrix to be warned that she has no power to will away, or alienate the estate.

In Order
To Revo