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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.	45	Press
B.P. No.		~~Mis.~~
Dated	13 th January	1874 1966

Not to be folded or roughly handled

45

*Proceedings of the Madras Government, Revenue Department,
13th January 1874.*

No. 8. Read the following letter from E. BARCLAY, Esq., Acting Government Solicitor, to D. F. CARMICHAEL, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 19th December 1873, No. 1,190:—

I HAVE the honour to acknowledge receipt of the order of Government, dated 27th October 1873, No. 1,190, Revenue Department, referring to the Law Officers of Government for their opinion as to whether the debts due to certain Chuttrums by the late Zemindar of Ramnad are chargeable to the estate.

I submitted the matter for the consideration of the Advocate-General and the Government Pleader, and I now forward, herewith, a copy of their joint opinion.

OPINION.

WE have considered the two letters referred, Mr. Lee-Warner's of 21st July 1873, as to the debts due to the Devastanam funds, and Mr. Boyle's of 15th August 1873, as to those due to the Chuttrums, and we are of opinion that in neither case, with the exception to be immediately noticed, can the debts be treated as legally chargeable on the estate.

2. With regard to the Devastanam debts it appears clear that Rs. 6,294-9-0 were diverted to the Rajah's private purposes, and that, whatever may be the moral aspect of the matter, the Zemindari cannot now be held responsible. As to the Rs. 2,750-1-2 employed in the conduct of the Ramaswarum appeal, we have no information as to the nature of the suit out of which that appeal arose. If the legal proceedings in question were necessary in the interest of the estate, we think that the item may be recognized as a charge now binding upon it. If, on the other hand, the proceedings were taken in the interest of the Pagoda, there would not appear to have been any misapplication of the funds, nor would there be any reason why the money should be now repaid. If, again, proceedings were neither in the interest of the estate nor in that of the Pagoda, the employment of Pagoda funds upon them was no doubt a misapplication of the funds, but the estate cannot now be made liable for such a breach of trust by one who was really in the position of a tenant for life.

3. As to the Rs. 24,398-6-10, stated by Mr. Boyle to be due to the Chuttrums, we think that the circumstances set forth in that gentleman's letter render it impossible to regard the debt as binding on the estate. What we have to consider is not whether the Rajah's successor is bound in honour to make good the funds misappropriated by his father, but whether the law compels him to do so, and whether, consequently, the debt can be treated as one binding on the estate. We are unable to find anything to justify the view that it is so binding. The fund was treated, to use Mr. Boyle's words, as "a separate branch of the Zemindar's income, chargeable indeed with the up-keep of certain buildings and establishments, but which, after the performance of that first obligation, were available for the relief of his own necessities and the supplementing of his private purse." The Zemindar appears to have had recourse to it whenever cash was wanting, and, though it is true that of the total sum taken a large portion was devoted to pay-

*Proceedings of the Madras Government, Revenue Department,
13th January 1874.*

ment of peishcush, this is not enough to render the estate liable. In the first place it would be, we presume, impossible to show that the sum was actually devoted to peishcush. Mr. Boyle himself says that it is not. "possible now so to separate the total amount, item by item, as to discover whether the debt of Rs. 24,000, still due, was incurred for the payment of peishcush only, or for that and other purposes." In the next place, the mere fact of the sum having been paid as peishcush, apart from proof of the payment having been *bona fide*, necessary in the interest of the estate, would not, in our opinion, render the debt one legally chargeable on the estate in the hands of the present Zemindar.

The above is our opinion as to the strictly legal aspect of the case; according to that the Court of Wards cannot discharge any claim but such as could be legally enforced against the minor, however strong the moral consideration for so doing may be. Whether, as suggested by Mr. McQuhae, the Court of Wards shall run the risk, which may be practically small, involved in replacing the misapplied Trust Funds, is a question on which we are hardly competent to advise. If, as is now highly probable, the present Zemindar's title is ultimately upheld, the only risk will be that he or his successor may, on some future occasion, impugn the legality of the payment. This is, no doubt, a somewhat remote contingency, but it is one which it is our duty to point out.

(Signed) H. S. CUNNINGHAM,
Advocate-General.

(") J. W. HANDLEY,
Government Pleader.
18th December 1873.

No. 86. ORDER THEREON, 13th January 1874, No. 45.

Miscellaneous.

COMMUNICATED to the Court of Wards. The risk involved in making these payments would ultimately fall on the State, and the Government must decline to incur it.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

To the Court of Wards,
,, the Government Solicitor.
,, the Government Pleader.

Exd W. H. French.

Opinion.

We have considered the two letters referred to, Mr. Lee Warner's of 21st July 1873, as to the debts due to the Devasthanam funds and Mr. Boyle's of 15th August 1873 as to those due to the Chuttrams, and we are of opinion that in neither case, with the exception to be immediately noticed, can the debts be treated as legally chargeable on the Estate.

2. With regard to the Devasthanam debts it appears clear that Rs 6294-9-0 were diverted to the Rajah's private purposes, and that, whatever maybe the moral aspect of the matter, the Zemindars cannot now be held responsible. As to the Rs 2750-1-2 employed in the conduct of the Ramaswaram appeal, we have no information as to the nature of the Suit out of which that appeal arose. If the legal proceedings in question were necessary in the interest of the Estate we think that the item may be recognized as a charge now binding upon it. If on the other hand the proceedings were taken in the interest of the Pagoda, there would not appear to have been any misapplication of the Funds, nor would there be any reason why the money should be now repaid. If again, proceedings were neither in the interest of the Estate nor in that of the Pagoda, the employment of Pagoda Funds upon them was no doubt a misapplication of the Funds.

Obt. of 1874

REVENUE.

To

THE COURT OF WARDS,

Sec., Sec., Sec.

Dated January 18th.

Recd.

Encl.

G. O., 13th January 1874, No. 45.

JANUARY.

Nos. 85-86

Debts due to Devasthanam funds and to certain Chuttrams by the late Zemindar of Ramnad.—Communicating to the Court of Wards opinion of the Advocate-General and Government Pleader that the — are not chargeable to the estate, and declining to incur the risk involved in making these payments.

7/8/74

but the Estate cannot now be made liable for such a breach of Trust by one who was really in the position of a Tenant for life.

3. As to the Rs. 24,398 - 6 - 10 stated by Mr. Boyle to be due to the Chuttrams we think that the circumstances set forth in that Gentleman's letter render it impossible to regard the debt as binding on the Estate. What we have to consider is not whether the Rajah's successor is bound in honor to make good the funds misappropriated by his father, but whether the law compels him to do so, and whether consequently, the debt can be treated as one binding on the Estate. We are unable to find any thing to justify the view that it is so binding. The fund was treated, to use Mr. Boyle's words as "a separate branch of the Zemindar's income; chargeable indeed with the up-keep of certain buildings and establishments but which, after the performance of that first obligation, were available for the relief of his own necessities and the supplementing of his private purse." The Zemindar appears to have had recourse to it whenever Cash was wanting, and, though it is true that of the total sum taken a large portion was devoted to payment of peishush, this is not enough to render the Estate liable. In the first place it would be, we presume, impossible to show that the sum was actually devoted to peishush. Mr. Boyle himself says that it is not "possible now so to separate the total amount, stems by stem, as to discover whether the debt of Rs. 24,000, still due, was incurred for the payment of peishush only, or for that and other purposes." In the next place, the

mere fact of the sum having been paid as peishush apart from proof of the payment having been, bona fide, necessary in the interest of the Estate, would not, in our opinion, render the debt one legally chargeable on the Estate in the hands of the present Zemindar.

The above is our opinion as to the strictly legal aspect of the case; according to that the Court of Wards cannot claim but such as could be legally enforced against the minor, however strong the moral consideration for so doing may be. Whether as suggested by Mr. McQuhae, the Court of Wards shall run the risk, which may be practically small, involved in replacing the misapplied Trust funds, is a question on which we are hardly competent to advise. If, as is now highly probable, the present Zemindar's title is ultimately upheld, the only risk will be that he or his successor may on some future occasion impugn the legality of the payment. This is, no doubt, a somewhat remote contingency, but it is one which it is our duty to point out.

/ Signed / H. S. Cunningham
Adv. Genl.

/ " / J. W. Handley
Govt. Pleader.

18th Dec^r 1873. -

/ True Copy /

Lucas Wadley

Actg. Government Solicitor.

N^o 699.-

Madras 19th December 1873

From Ernest Barclay,
Acting Government Solicitor, Madras.
To D. H. Carmichael Esq^r,
Secretary to Government, Revenue
Department - Fort Saint George.

Sir,
I have the honor to acknowledge receipt
of the Order of Government dated 27th October 1873,
N^o 1190 Revenue Department referring to the
Law Officers of Government for their opinion as to
whether the debts due to certain Chuttrams by the
late Zemindar of Ramnad, are chargeable to the
Estate.

I submitted the matter for the consideration
of the Advocate General and the Government
Pleader and I now forward herewith a copy of
their joint opinion.

I have the honor to be,

Sir,

Your most obedient servant
Ernest Barclay
Acting Government Solicitor.

Enclosure in letter from
the Acting Government
Solicitor, Madras, to
the Secretary to Govern-
ment Revenue Depart-
ment dated 19th Decem-
ber 1873. N^o 699.-

No 4056/73

Ms. 2713 Jan 1/74
L. 13. 1. 85

Recd 13th

Eccl^l Dept.
No 172

To
The Right Reverend the Lord Bishop
of Madras.

My Lord,

I am directed to
acknowledge the receipt
of your Lordship's letter
dated the 3rd Instant
No 245, withdrawing
your recommendation
of the Reverend W^m
Whitford to fill the
temporary vacancy in
the Vesp^l Chaplaincy,
and to inform you, that
the most noble the Governor
in Council had been
pleased, prior to the
receipt of your letter,

Y^{rs}

SS

14

1873 Nov 27-28

Dec 1873. D 41.

From
The Office of the Secretary

to the Secretary to the
Revenue Department

at the College

Letter 14th December

Recd 15th December

Letter of 10th Dec 1873.

Enclosure 1.

Statement copy of the

joint opinion of the advo-

cate General and the

Government of Madras

regarding the duty to

assign the duties by the

late Government of Madras

1873 Dec 1874 53 19

14 Court of Ward } des. 4/Jan/74
4 Govt. Officer
3 Govt. Officer

85581
1873 Dec 1874 53 19

and under the peculiar
circumstances of the case,
to appoint the Reverend
A. M. Meacham A.B.
to officiate as Chaplain
of Vepery until the arrival
of the Reverend F. J. Ligon
or until further orders.
For the ground, of this
appointment, I am
instructed to refer your
Lordship, to the papers
noted in the margin.

A.H.

Chief Secy.

Minute by the most Honble the Governor
10th May, 1845
Memo. by Secy 10th May
Minute by Secy 5th June

Fort George
13th June 1845.

Letter to by land 15
August 17th of 1845
20 10
to head to town
30th of 1845 11th of 1846

9

July to Cont 19th of 1845

Dec 1st 1845 - Dec 1st 1846

Nov 1st 1846

to the rights of the
the Lord Bishop
of the same

Dec 1st 1846 - Dec 1st 1847
Dec 1st 1847 - Dec 1st 1848

that the ground
upon which the
the A. S. Black
was appointed to
officials of the
with the arrival
of the Rev. J. H. Rogers