

1879

Gono 560

6.5. 1879

6.5 1874

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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.	560	Press
B.P. No.		Mis.
Dated	6-5-	1874 196

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
6th May 1874.*

Not only may this happen in the consideration, whose tenement, in Zemindari, so as to cease to become remains as it is.

9. While, however, alienation recognized by the Collector, it may revenue sale, owing to the neglect through motives of pride, indifference, or ancestors, but which he can never either party can show that the then and in that case the Zemindar and the alienee, security against done by repealing Regulation I. so far as it provides "for prevention of assessment."

10. *Third.*—Whatever difficulty Government finds no hindrance to permanently settled estate. The commission on the amount, to collect their taluqs; and a similar arrangement on the minutely separated portions would pay to the Deputy-Tahsildar

No. 87.

ORDER THE

Miscellaneous.

cate-General) to prepare and issue Regulation I. of 1819 (so far as it provides "for prevention of the public assessment."

2. The object of the Bill is to enable Zemindars by enabling them to resume alienated lands, the same being of less extent than one entire village of Limitations; (2) to secure arrears due by the Zemindar parties join in applying for it, the Collector of the district, except under

To the Hon. D. F. Carmichael, Acting
" the Advocate-General.
" the Legislative Department.
" the Board of Revenue.

Ed. F. R. Bantleman.

of a gratuitous alienation, but in that of a holder for a valuable interest less than an entire village, cannot be separated from the answerable for the Zemindar's *peishcush* so long as the law

under an entire village in extent can never, at present, be happen that alienees of larger portions are ruined by a the Zemindar to separate such portions from his estate, in spite even to depreciate the value of property once his. What, therefore, the Board recommend is, that, when on (whether large or small) is *absolutely* unassailable, be able to get the proportionate relief from his *peishcush*; and sale for arrears due on the Zemindari. This may be (so as not to revive any enactments it rescinds) except fraud, corruption, or error, in the distribution of the public

were anticipated in 1819, experience has proved that the to the collection of the petty items of revenue in a ar are very willing, on payment to them of a moderate *peishcush* recently imposed on Inam lands situated within could readily be made for realizing the land-tax payable states, while the holders of more considerable portions

6th May 1874, No. 560.

The Government resolve to request the Acting Chief Secretary (after communication with the Advocate-General) to prepare and issue a Bill in the Legislative Council for repeal of any enactment it rescinds, except fraud, corruption, or error, in the distribu-

tion is, it will be seen, (1) to give relief to the holder of a proportionate deduction from their to resume alienated lands,—the same being of less extent than one entire village of Limitations; (2) to secure arrears due by the Zemindar parties join in applying for it, the Collector of the district, except under

(Extract.)

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

Secretary to Government.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 9th November 1871.

THE Board of Revenue resolve to propose to Government the removal, by legislation, of the restrictions imposed by the present state of the law, to the free sub-divisions of Zemindary property: a subject which frequently comes under their notice in their capacity of Court of Wards.

2. In the Regulation (XXV. of 1802) constituting the Permanent Settlement, Zemindars, acting in conformity with Hindu Law, are at liberty (Section VIII.) to transfer in perpetuity their proprietary right in the whole or in any part of their estates; such sale, gift or other transfer being first registered, and the land separately assessed by the Collector. However, in Section IX. Regulation XXVI. of the same year, which was passed on the same day as Regulation XXV., the proviso is inserted that, "where estates may be divided into portions, charged with a less proportion of the permanent land-tax than the sum of 500 Pagodas (Rupees 1,750) per annum, such separation of lands shall not be valid in the Udlawlat," but "the proprietor of the estate before such division shall continue to be liable for the entire amount of the permanent land-tax, in the same manner as if the separation had not been made."

3. This proviso (to which there is nothing similar in the Bengal Regulations, so far as the Board have been able to discover) came, in course of time, to be considered "impolitic and inexpedient"; and it was resolved to modify it. The object of its enactment is expressly stated to have been "to facilitate the realization of the land revenue"; and the modification made consisted in allowing Zemindaries to be sub-divided into portions not less than one village or dependant hamlet in extent, though the amount of the sub-assessment of the permanent land-tax might be under 500 Pagodas. This concession, it was hoped, would "not seriously impede or obstruct the collection of the Public Revenue," Regulation I. of 1819.

4. No changes in the law have been made since 1819: and the Board proceed to show that it is unjust, as it stands, both to Zemindars and to transferees, and that a complete removal of restriction in the matter could be effected without detriment to the perpetual realization of the revenue.

5. First, as to Zemindars. Under the old Law of Limitation, it appears to have been held that a grant by a Zemindar of land as *Lakhiraj*, i.e., either absolutely free from rent, or on a favourable rent, held good only during the life-time of the grantor: that every succeeding Zemindar might impeach it, provided he did so within twelve years of his succession. But under the present law, when once the Statute begins to run at the death of the grantor, it never stops, and a Zemindar, whose claim is barred by the *laches* of his predecessor, is moreover compelled to go on paying the public demand upon the alienated lands, except where they consist of entire villages, in which case he can require the Collector to register and sub-assess them as separate estates under the above cited Regulation.

Sudder Decree No. 6 of 1821.
No. 444 of 1860.

6. The hardship and inequality of the Law may be illustrated thus:—A. and B. are minor Zemindars under the Court of Wards. A's grandfather gave five villages in *inam* to a favourite dancing girl. His son and successor held the Zemindary twelve years, when he died without bringing any suit for resumption. A., his son, is barred by his father's neglect from recovering the villages, but under Regulation I. of 1819 the Court of Wards can secure him a very considerable measure of relief, by saddling the dancing girl or her heirs with the land tax assessable on the property.

See Advocate-General's opinion, Government Order, dated 2nd July 1872, No. 1,150.

7. A. therefore has nothing to complain of: but with B. it is different. The circumstances of both cases are identical, except that instead of five villages to one dancing girl, his grandfather made ten endowments to as many dancing girls out of the lands of twenty villages. In the aggregate, these assignments are quite as valuable as the single one made by A's ancestor; but, because they none of them happen to consist of an entire village or dependant hamlet, B. must be content not only to lose the lands, but to pay the Government *peshkush*, as originally fixed upon the whole Zemindary.

G. O. No. 104, May 1871, No. 508.

Printed May 1871.

THE HON. D. F. CANNING, CHIEF SECRETARY.

REVENUE.

GOVT. OF INDIA, 1871, 20th Nov.

Revenue Dept.

Memo. for Orders

REVENUE DEPARTMENT,

No. 3718

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From

Dated 9th November 1871.

FOR ORDERS.

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such separate estate
should be created with
a less jumma than 500
Star Pagodas.

8. *Second*—The hardship that may arise to the grantees of a portion only of a village is obvious. A revenue sale may at any moment destroy a title which has otherwise become perfect. Not only may this happen in the case of a gratuitous alienation, but in that of a holder for a valuable consideration, whose tenement, if it forms less than an entire village, cannot be separated from the Zemindary, so as to cease to become answerable for the Zemindar's peshkush, so long as the law remains as it is.

9. While, however, alienations under an entire village in extent can never, at present, be recognized by the Collector, it may often happen that alienations of larger portions are ruined by a Revenue sale, owing to the neglect of the Zemindar to separate such portions from his estate, through motives of pride, indifference, or spite even—to depreciate the value of property once his ancestors' but which he can never re-gain. What therefore the Board recommend is, that, when either party can show that the alienation (whether large or small) is absolutely unassailable, then and in that case the Zemindar shall be able to get the proportionate relief from his peshkush; and the alienee, security against a revenue sale for arrears due on the Zemindary. This may be done by repealing Regulation I. of 1819 (so as not to revive any enactments it rescinds) except so far as it provides "for preventing fraud, corruption or error, in the distribution of the public assessment."

10. *Third*—Whatever difficulties were anticipated in 1819, experience has proved that the Government finds no hindrance whatever to the collection of the petty items of revenue in a permanently settled estate. The Zemindars are very willing, on payment to them of a moderate commission on the amount, to collect the quit-rents recently imposed on Inam lands situated within their taluqs; and a similar arrangement could readily be made for realizing the land-tax payable on the minuter separated portions of their estates; while the holders of more considerable portions would pay to the Deputy-Tahsildar direct.

(A true Extract.)

J. H. Cunningham
Acting Secretary.

To the Secretary to Government, Revenue Department.

Sub-divisions of Zemindary property, by the
Collector, by legislation, of restrictions
imposed by present state of law, recommend
to Government.

NOVEMBER.
No. 4,657.

Received. 21st

Encl.

PROCEEDINGS, 9TH NOVEMBER 1871, No. 4,657.

MADRAS. 7.3718

Board of Revenue,

Nov 1871. Date

Revenue Dept.

Memo. for Orders

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Received from the...
1802

No. 4656 - 6 May 1792

to divisions of Zemindari property, by pro-
cess, Removal, by legislation, of restrictions
imposed by present laws of law, recommended
Government.

NOVEMBER
No. 4,657.

21st
21st

1802, 9TH NOVEMBER 1871, No. 4,657.

MADRAS. 1737/8

170 of Bebhennu,

1871.

Memo. for Orders
on No 3718.

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FOR ORDERS.

I should like
first to lay the
adverse points
primarily or by co
decision on both
points by that in
the circumstances
stated the decision
cannot be in
favor of the
cessors and that
register with those
for whom the cess
is levied.

I should like to see
the other matter
over in
A.P.

Section 8, Regn 25 of
1802 empowered Zemindars
to alienate their proprietary
right in any part of their
estates in manner not
inconsistent with law
and by registration and
apportionment of Peshkash
to relieve themselves from
liability for peshkash
in respect of such alien-
ated lands.

Section 9, Regn 26 of
1802 provided that no
such separate estate
should be created with
a less jumma than 500
Star Pagodas.

C 25th Nov R. 1st Dec 1871 R.C. H. 11th Dec 1871 R.C. H. 11th Dec 1871

NOVEMBER.
No. 4,657.

MADRAS. 1871. No. 3718.

1871, NOVEMBER 1871, No. 4,657.

24th

Encl.

Decisions of Zemindary property, by pro-
prietors, by legislation, of territorial
dispossession by present state of law, recommended
Government.

No. 2554 - 6. May 1871

But Regⁿ 1 of 1859
rescinded this last pro-
vision, and provided
in lieu of it. that with
the consent of the Board
of Revenue alienations
may be made of not
less than one entire village
or dependant hamlet with
defined boundaries with-
out limitation as to the
amount of the permanent
land tax chargeable there-
on.

The Board now propose
that this last limitation
in regard to area shall
also be abolished by re-
pealing Regⁿ 1 of 1859
except in so far as it
rescinds any previous
enactment or provides for

preventing fraud, corruption
or error in the apportion-
ment of the Peshkush
on the whole State.

The effect will be to
enable Zemindars to
alienate their rights in
any portion of their Estates
however small, provided
they do not thereby violate
the law, and by registra-
tion and apportionment
of peshkush to relieve
themselves from any future
liability on account of
such alienated portion.

To obviate difficulties
in collecting the petty frag-
ments of Peshkush, they
contemplate entrusting
the collection
to the Zemindars as
in the case of Nam^o Ghat.
rents

8
parents & giving them a
small commission to com-
pensate for their trouble.

I think the step pro-
posed is in the right
direction.

Orders are requested.

L.B.

Memorandum
Sub divisions
of Zamindari
property.

(9)

+
Ganjam
Vijayapuram.

Are

Amended



830
Bd's Prop - 9th Nov 1871

No 4.657.

Proposing the removal, by legislation,
of the restrictions imposed by the
present state of the law — on
subdivisions of Zamindari property.

The inconveniences & hardships
here pointed out constantly came under
my notice as Collector in the two last
est. 'Zamindari' districts of the Prov.,
& when a member of the Bd. of Rev. I
drafted these Props in consequence.

2. With the exception of the Gentle
I think the necessity for granting Mr. Sin, the Council does not include
the chief is very clearly put in any who were members when the
the Board's proceedings (drafted 19th Nov. 71) Props came up from the Bd. at the
by Mr. Michael) and that their end of '71.
recommendation should be
accepted. A Resn. 1 of 1879
be repeated to Mr. & sent
prepared by the Board.

M

3. The Gentle Mr. Sin has commented on
the proposal — but there are no remarks
by other former members of Council.
I therefore accumulate the Papers
for final orders.

17/3/73

I understand Mr. Sin to intend that
the prevalence of an Act part of Revenue

(3)
 Subscribed
 Transferred
 Pending for sale by W. L. C.
 Rev.

No 3718

Consent on the
 N. A. S.
 but tell
 McFarland
 when
 20/5/73

Majority of the High Court
 Justice Hall as a dissenting
 decided that the alienations
 from India are null & void
 have not been registered &
 not been assessed (R.A. No 23 of 1885)
 It has also been laid down
 in the case in S.O. 3 July 71 No 1150 / that
 India has only a life-estate
 in the property.
 And by Law (Section 111 Reg
 1802) he cannot exempt any
 of his estate from the share of the

view; and, under the
 action of the Law of
 Limitations, are
 causing serious injustice
 to

(3)
Substantive
Farrington
Permanent Adversity.

It seems hard to believe that the Legislature by the new Statute of Limitations, intended that any length of possession should render indefeasible and perpetual a tenure which was absolutely null at initiation - which was in excess of the donor's power - and directly opposed to the law.

Surely the common-sense view of the case is that such a tenure can only be permissive - and that the right of terminating it rests in each successive possessor. How can

860
a possessor pre-hire than the
himself processes - how can any
successor of his - continue such
a gift to the prejudice of his
successors - being that each has
but a life - Estate?

It is also hard that the new Law should have retrospective effect - in the way now given - by the decisions of the judges that alienations were voidable by real possession to the estate - and it would be only reasonable that this State of the Law should be copied to as far as to make the cause of action of

view; and, under the action of the Law of Limitations, are causing serious injustice to

from the common law and of
 the Act - whereas, if the intention be
 to give to it - every provision for
 whose predecessor - or whose benefit
 relying on the accepted interpretation
 of the law, has slept in this right
 for 12 yrs. in for ever excluded from
 asserting them - what his free will
 & he can do at these points of
 peace & liberty are as com-
 plete estates as they would be, if
 created in accordance with,
 instead of in clear opposition
 to the law of the land. Are there

May not only be wanting ⁸⁶⁰/₁₃
 the minor conditions of registration
 & assessment - It may also be the
 "defect" in payment to the Man-
 aged down to the kind of law or to
 to the regulations of the British
 put" and yet & their validation
 & legislation!

It seems to me worthy
 of consideration whether we should
 not bring the effect of the law
 under the consideration of the
 Supreme Court.

I believe in one of the
 cases before us, the present position of

view; and, under the
 action of the Law of
 Limitations, are
 causing serious injustice to

Cult & a betterment the assessment
 are the best holding of a few acres
 here & there. The assessment on these
 must be the same proportion to
 their value as the whole has been
 to the value of the whole estate &
 the calculation must be based on
 the average of several years!

On the whole I do not
 think the proposal expedient. Our
 revenue is safe under all circum-
 stances, and we must trust that
 Zamindars being aware of the law will
 not move the law after their own interests.

I question Mr. Mayne's dictum that
 in the case of an unregistered alienation, the
 time runs from the date of grant. L. G. S.

Return
 30/10/73

I think that the
 proposals of the Board
 should be put into
 the form of Law at
 once. The condition
 of the local Zamindari
 Law, which they
 draw attention, imposes
 restrictions on a
 recognized right of
 alienation &c, which
 are no longer needed
 or convenient from
 a fiscal point of
 view; and, under the
 action of the Law of
 Limitations, are
 causing serious injustice
 to

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 action of the Law of
 Limitations, are
 causing serious injustice
 to

to zamindars and
their aliases.

The permanent
Settlement was not
designed to alter or
curtail any of the
ordinary legal incidents
of permanently settled
property—legal alienation
subdivisions &c. are
distinctly authorized
by the law—subject,
however, to some
restrictions and
protective procedure,
which were considered
advisable for fiscal
convenience—viz
Registration and
Subassessment by
the Mector and limitation
as regards Sateent to
500 Pagodas and later
to

to one village or entire
hamlet (Reg: I of 1819).
The motive of these
provisos was clearly
fiscal and they
should not be
maintained against
the development of the
Law of property unless
insuperable difficulties
stand in the way. I
see no such insuperable
difficulty.

I greatly doubt
the soundness of the
construction put by
the Old Sudder on the
latter clause of
Section 8 of Reg: XXV of
1802. I think that
the proviso was intended
to prevent an unregistered
alienation being set up
to

to defeat a revenue
claim and not to
annul the transaction
as between the parties
to it. Be this as it
may; the Law of
Limitations has
come in to mitigate
the Evil of that ruling,
and now an old
alienation cannot be
disturbed on quasi-fiscal
grounds. I hold that
this is in no way
repugnant to the Law
of the permanent
Settlement. Lawful
zamindari alienations
are properly affirmed
and no longer avoidable
- if the Statute has
run against them
a condition, which
is clearly in conformity
with the spirit of

legislation and
sound policy, as now
recognized on all
hands, and no
reserves or restrictions,
are recognized as
valid against the
Effect of the Statute.

But it is found
that the old fiscal
restrictions above-
alluded to operate
iniquitately and tend
to defeat or contravene
the ^{rights} ~~Law~~ secured
under the ^{statute} Statute;
and, I think, that
they should therefore
be relaxed & superseded,
so as to bring our
fiscal administration
into conformity with
that Law and so as
to

to enable the utmost
freedom in dealing
with the land of all
kinds.

First - as regards
procedure, I think
that, so soon as under
the Law of Limitations
or otherwise an alienation
of any part of a
permanently settled
estate becomes a
permanent and
separate holding, the
Mortgagee should be
required to revise
the assessment of
the estate, and apportion
the demand accordingly.
Either party's objections
notwithstanding - I
would modify Section 8
of Regⁿ XXV of 1802 to this extent.

Next - as regards
Regⁿ I of 1819, I would
as proposed by the
Board repeal the
restriction as to extent
of the alienation interest -
such restrictions
are I think anachronisms,
they are avoided in
practice - and they
clearly tend to defeat
the intention & spirit
of the Law - both of
permanent settlement
and limitation.

As respects fiscal
inconvenience of
allowing the Law
to take full effect,
I anticipate in general
little difficulty either
as regards apportionment
of demand or collection.
The

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The

The Settlement Accounts
As a rule, Sheriens,
Show the permanent
demand against a
Zamindari Estate
Village-war. When
Entire Villages are
Comprised in the
alienation, the
apportionment will
therefore not be
difficult. Where
a fractional part
of a village constitutes
the alienation, there
may be more trouble
in apportioning the
demand, but I do
not consider that
any such difficulty
will be found as to
justify a practical
denial of right and
interference with the
Law

Law of Limitations.

I would place
the papers in the
hands of those Advocates
General and direct
the preparation of a
draft Law to repeal
Regulation I of 1819 and
modify Regulation XXV
of 1802 to the extent that
may be required to
affirm and Confirm
such alienations

111
~~W. B. B. B.~~
W. B. B.

Notes
 I have been thinking
 of giving his note for his friends' property
 in the hands of the Government
 in the hands of the Government

*I presume I cannot
 get it all the
 paper will be
 sent to the
 printer*

I do not know
 for the reason
 stated in my
 previous note.
J. D. S.

*M. S.
 2/14*

No 560 - 6 May 1874.
 Pres. Prop. No 4659

8/9 5 Nov 74.
 The acting Chief Secy (after consulting with
 the Govt resolve to request the Advocate
 General) to prepare & bring in a Bill
 in the Legislative Council, for repealing
 Reg I of 1819 (so as not to revive any
 enactment its rescinds) except so
 far as it provides "for preventing
 fraud, corruption or error, in the
 distribution of the public apportionment".
 2. The object of the Bill proposed is, it
 will be seen, (1) to give relief to
 Zamindars by enabling them to procure a
 proportionate deduction from their
peschuk, in those cases where their
 claim to resume alienated lands - the
 same being of less extent than one
 entire village or dependant hamlet -
 is barred by the Act of limitations;
 (2) to secure alienees of such lands
 against a Revenue Sale for arrears due
 by the Zamindar. It is understood,
 of course that, unless both parties join in
 applying for it, no such apportionment will
 be made by the collector of the District,
 except under the decree of a competent
 Court. D. H. P. Jan 4/74.

3) Draft B.O.

Submissions of Garrison

To Mr. H. D. F. Fennichell, of Cheshire, Conn. - 18 May 74.
 20 March 74 with copies of S.O. 28 Aug 67, No 1464, 2657, 1150
 30 May 71 No 957, 18 March 71 No 676, 25 May 1862 No 1471 } Dec 18 May 74
 Legation, Legation, Dec 18 May 76
 No 4. Dec 18 May 76

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L. O. By

The Honorable

House of Representatives

Washington

All the papers in
 relation to this subject
 to be sent to the
 various places where they
 are kept, & returned.