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MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No.	697	Press / Mis.
Dated	5-6-1874	

Not to be folded or roughly handled

No. 59. Read the following despatch from the Right Honourable the Secretary of State for India:—

INDIA OFFICE, LONDON,
30th April 1874.

Revenue,
No. 7.

MY LORD,—With reference to the despatch of your Excellency in Council, dated 12th November, No. 38 of 1873, on the subject of the appeal of the Zemindar of Ramnad regarding the trusteeship of the Rameswarem pagoda, I now forward herewith, for the information of your Excellency in Council and for communication to the present Zemindar, a copy of the judgment of the Judicial Committee of Her Majesty's most Honourable Privy Council, confirming the decision of the High Court.

Judgment of 18th March 1874.

I have, etc.,
SALISBURY.

His Excellency the Right Honourable
The Governor in Council, Fort St. George.

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Muttu Ramalinga Setupati and others v. *Perianayagum Pillai, Guardian, etc., from the High Court of Judicature at Madras; delivered* 18*th March* 1874.

Present:
SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.

THE question raised in this appeal relates to the right of the Zemindars of the large and important Zemindari of Ramnad in the Madura District either to appoint or to confirm the election of the pandaram or head of the celebrated and richly-endowed pagoda of Rameswarem.

The possessions of this temple are estimated by the Appellant to be of the value of 200,000*l.*

The plaint of the Ranee Zemindar (now represented by the Appellant, the present Zemindar), filed so long ago as the year 1857, sought to oust the original Defendant, Ambalavana Pillai, from the office of pandaram which he *de facto* held.

It alleged that the Zemindar was the dharmakharta or trustee of the pagoda, and had the right to conduct the management of it. It indirectly also asserted her right to appoint the pandarams, and concluded with a prayer for a decree to the effect that the Zemindar should conduct the management of the pagoda, and that the Defendant pandaram should be removed from the management, and pay over the money in his hands to the Zemindar.

The Plaintiff also charged the pandaram with misappropriation of the property, and the prayer for his removal was based on this charge, and also, though vaguely,

on the ground of his not having been appointed to, or confirmed in, the office by the Zemindar.

The charges of misappropriation were not sustained by the evidence, and have been abandoned; so also has the claim of the Zemindar to be placed in the direct management of the pagoda and to have its funds placed in his hands. And the single question argued at their Lordships' Bar, and to which issue the cause was brought by consent in the High Court, is whether the Zemindar has established the right to appoint or to confirm the election of the pandarams of this great pagoda, and was entitled to a decree for the removal of the Defendant from the office of pandaram because he was not so appointed or confirmed.

The early history of the pagoda is obscured by time, and its foundation cannot be shown. But it is evidently an ancient temple of great renown, which has long attracted pilgrims from all parts of India. It is situate on an island in the extreme south of India, connected with the lands of the Zemindari by a causeway. The Rajahs of Ramnad were the guardians of this causeway, and had thence acquired the title of Setupati or Lord of the causeway.

It is asserted on the part of the pandaram that the pagoda of Rameswarem was an independent endowment, in which the Rajahs Setupati had no rights of patronage or control other than the general authority they assumed as the rightful or *de facto* rulers of the district, to prevent abuses in the management of its affairs, and to see that its laws and usages were properly observed.

The first records in the evidence are some inscriptions on stones found in the walls of the pagoda. The earliest inscription is on a mandapam, and states that the mandapam was erected by Munerama Nathan "as a place to halt for the god Ramesar, who was attached to this pagoda, founded by Mall or Vishnu." Its date is in the Salivahana era 1520, which corresponds with the Christian year 1588. It is evident from this and other inscriptions that the pagoda was an ancient temple at this time.

Subsequently, in the year of the Salivahana era 1607, the Rajah of Ramnad made a gift of five villages, and in 1609 another gift of eight villages to the pagoda. These grants, as the dates show, formed no part of the original endowment of the pagoda, and no condition is found in them creating or reserving any rights of patronage or interference in the affairs of the temple. There is evidence of similar gifts of villages from other Rajahs, among them the Rajah of Sivagunga, showing that the pagoda had been endowed by other donors than the Lord of Ramnad. Indeed, of the seventy villages belonging to the pagoda, thirteen only are proved to have been given to it by that Rajah. The right, therefore, now claimed by the Zemindar of Ramnad is not shown to have an origin in the foundation or subsequent endowment of the pagoda.

It may be observed, before further considering the evidence, that the case on both sides is singularly deficient in materials to elucidate the constitution of the community or brotherhood attached to this pagoda, the duties of the pandarams, and whether they are selected from a particular family or class. The claims of the Zemindars also have been put forward in the most uncertain way. They at one time asserted a right to be chief managers, and directly to appoint the pandarams as sub-managers, but that claim was not strongly urged by Mr. Mackeson

at their Lordships' Bar. He mainly contended, in his elaborate argument, for the right to have the pandarams presented to the Zemindars for confirmation when nominated or elected by others. It is obvious, however, that there is a great distinction between a right to appoint and one to confirm; and if the latter only is insisted on, it still might be expected that some definite information would be given as to the manner of electing the candidate to be presented for confirmation. The absence of such evidence may perhaps be accounted for by the fact that the claim it was at first attempted to sustain was the right of direct appointment.

It is not, however, unimportant to observe that it appears to be the common practice in the Madras Presidency for pandarams to appoint their successors. (See Mr. Norton's Leading Cases, p. 592-3).

But the constitution and rules of religious brotherhoods attached to Hindoo temples are by no means uniform in their character, and the important principle to be observed by the Courts is to ascertain, if that be possible, the special laws and usages governing the particular community whose affairs become the subject of litigation, and to be guided by them.

That principle was laid down by this Committee in an appeal involving the succession to the office of mohunt of a richly-endowed Mutt in Rajgunge in these terms: "It is to be observed that the only law as to these mohunts and their office, functions, and duties, is to be found in custom and practice which are to be proved by testimony." (See 11 Moore, I. A., 428.)

In this case the burden of proving that the right he claims is supported by usage lies upon the Zemindar, and the question to be decided is whether he has sustained it.

It was contended on his behalf that the Zemindar of Ramnad is dharmakharta of the pagoda, and that it must be inferred from this title he had the power he claims. But the right to bear this title and the functions belonging to its holder are among the disputed questions involved in the general controversy between the parties. The title "Dharmakharta" may have a definite signification, but their Lordships observe, in the proceedings of this record, it is used in different senses, sometimes to denote a trustee who appoints the pandaram or head manager, and sometimes the manager himself. In the long contention which took place between the Zemindar and the pandaram in the Collectorate as to the titles by which each was to address the other, the Collectors refused to allow either to assume this title. Their Lordships, upon the imperfect information disclosed by the record, will therefore abstain from using this appellation, and will not attempt to define what the title as regards this pagoda indicates, or to whom it belongs, but will proceed to consider the substantial issue they have to determine, viz., whether the Zemindar has established the right, under whatever name, to make or confirm the appointment of pandarams.

It has been already stated that he has failed to show that such a right is derived either from the original foundation or any subsequent endowments of the pagoda by his predecessors.

The Counsel for the Zemindar strongly relied on statements found in certain depositions as affording proof of the direct appointment and removal of pandarams

by the Rajahs of Ramnad prior to the Christian year 1793; and if these statements were admissible and trustworthy, they would afford strong support to the Zemindar's case. The depositions were taken in 1815 on the death of pandaram Ramanada, who had held the office from 1793. On his death Venkatachellum claimed to be his successor, alleging that he had been appointed by his predecessor according to custom. Objections were made to Mr. Peter, the Collector of Madura, against his appointment, upon the ground that he had not been nominated by the dying pandaram, but had been put forward after his death by certain persons attached to the pagoda. The Collector required the head Tahsildar to make inquiries as to the fact and time of Venkatachellum's appointment, and several depositions, the authenticity of which is not questioned, were taken by him, bearing on this matter. The statements in question appear to have been made at this time, but there is no satisfactory evidence to show they were obtained by any competent or independent authority. It is suggested that they were taken by the Tahsildar, but there is no proof of this, and the Tahsildar's report is not forthcoming. On the other hand, the form of the documents leads to the inference that they were not so taken. They are addressed "to the Company's Circar," signed by the deponents and attested by two native witnesses, from which it may be inferred that they were written statements obtained on behalf of the Zemindar, and sent to the Tahsildar to be forwarded to the Collector. Their Lordships think that such statements ought not to be received as proof of an important right, and that they were properly rejected as inadmissible by the High Court.

The first appointment of which there is trustworthy evidence occurred in 1793. In that year Muttu Ramalinga, then Setupati of Ramnad, appointed Ramanada to be pandaram.

Mr. Nelson's "Manual of the Madura country," compiled by order of the Madras Government, describes the disturbed state of Ramnad and the rest of Madura at this time and for some years previously. A British force had been employed against the Setupati to enforce the rights of the Nabob of the Carnatic, and the district had afterwards passed under the direct authority of the British Government. This appointment of Ramanada was near the period of the transition of the sovereign power from the Nabob to the British Government. It appears from the authority above cited that in 1792 Muttu Ramalinga showed symptoms of rebellion against that Government, and in 1795 he was deposed, and his sister, the Ranee, installed in the possession of the Raj. It was with this Ranee the permanent settlement was made in 1803. (See Part IV., p. 154.)

The pandaram appointed by Muttu Ramalinga in 1793 was only five years old, and he took from this child a kararnamah which is much relied on by the Appellant.

It commences thus: "As you have been pleased to appoint me for the management of the affairs of the pagoda at Rameswarem, I will cause puja to be duly performed in the pagoda," etc.

The instrument also contains the following passages:—

"In case of my dealing friendly with the enemies of the Zemindari you may remove me, and appoint another person in my room. . . If I act improperly in these affairs, I shall submit myself tothe orders of the Zemindar."

Proceedings of the Madras Government, Revenue Department,
5th June 1874.

This appointment and the kararnamah which followed it would, under ordinary conditions, be entitled to great weight, but when the disturbed state of the district and the age of the pandaram are regarded, the transaction loses much, if not all, of its force as evidence of the right claimed.

Ramanada filled the office of pandaram until his death in 1815. After this date much valuable evidence is afforded by the proceedings of the Collectors.

The permanent settlement, as already stated, was made with the Ranee in 1803; but this settlement did not include the villages belonging to the pagoda, which had long been held free from tribute. Some years before 1815, both the Zemindari and the pagoda had been under attachment. It was contended that the pagoda had been attached as part of the Zemindari; but, although the orders of attachment are not set out, enough appears on the record to negative this suggestion. It was not until after the Zemindari had been attached in consequence of a disputed succession that the pagoda was placed under attachment on account of the alleged mismanagement of the pandaram. (See Plaint, paragraph 3, Petition of Appeal, p. 66, and the Collector's letter, 20th September 1832, p. 348.)

Such was the state of things in 1815 when Venkatachellum claimed to be pandaram on the nomination of his predecessor. Two documents appear on the record, both dated 19th July 1815, and addressed to the Collector; one from the dying pandaram Ramanada, stating that he had appointed Setu Ramanada, (Vencatachellum), whom he describes as "a relation of mine by blood and a descendant of our family," to be his successor (p. 392); and another from Venkatachellum announcing his appointment, praying for instructions for his guidance, and that the attachment of the pagoda might be removed.

The Ranee Setupati disputed this appointment. In a letter of the 3rd August 1815, she prays the Collector to prevent his being invested with the parivattom cloth and the other emblems of office. An inquiry was thereupon directed to ascertain whether Venkatachellum had been appointed by the dying pandaram; and before receiving any report from the Tahsildar the Collector, on the 9th August, directed that officer to inhibit the installation of Venkatachellum as pandaram "until further orders" (p. 90).

This temporary injunction was, however, removed by the same Collector by an order of the 27th July 1816 (p. 347), directing the Tahsildar that Venkatachellum should be installed as pandaram with all usual ceremonies according to custom, and he was installed accordingly.

It was contended for the Appellant that the order suspending the installation was made by the Collector as the representative of the Zemindar, whilst the Zemindari was under attachment, and that the order authorizing it was a new appointment of Venkatachellum in the same right.

Their Lordships are unable to concur in this view of the acts of the Collector. They think the proper construction to be placed on his action in the matter is that the orders first suspending and then directing the installation were made by him as a public officer on the part of the Government, and not in virtue of any right derived from the Zemindar. It also appears to them that the last order did not profess to be, and was not an original appointment, but was an act of the

Collector to give effect to the title derived from the nomination of the former pandaram. They are consequently of opinion that Venkatachellum's title to the office must be considered to rest upon the nomination of his predecessor, and not upon any appointment or confirmatory act proceeding from the Zemindar.

It will be convenient to consider what powers the Board of Revenue and the Collectors possessed, or *de facto* exercised in relation to religious houses.

The proceedings upon the accession of Venkatachellum above described took place before Regulation VII. of 1817 was passed. But it is evident that before that Regulation the British Government, by virtue of its sovereign power, asserted, as the former rulers of the country had done, the right to visit endowments of this kind and to prevent and redress abuses in their management.

There can be little doubt that this superintending authority was exercised by the old rulers. Mr. Nelson in the Madura Manual says: "The principal pagodas, with their enormous establishments, their officiating priests, etc., were managed by a dharmakharta or trustee and manager for life, who, as stated above, was usually a monk and guru." He had said just before—"The manager of the great pagoda at Madura seems to have been always a pandaram or saiva monk." Mr. Nelson evidently designates the manager, and not the person appointing him, as dharmakharta, who might be a monk or pandaram, in which case he would probably be known by the latter title. He then describes the duties of the manager: "He collected and disbursed the revenues derived from the lands granted to the pagoda by the king and others, and from fees and offerings; appointed the officiating Brahmans and servants," etc.

He then says: "The dharmakhartas held but little communication one with another, and recognized no earthly superiors except the king himself. Each was independent of all control, and acted altogether as he pleased. This freedom led naturally to gross abuses, and the king was compelled occasionally to interfere in the management of some of the churches." (Part III., Chap. 7, p. 162.)

The king here spoken of was the ruler of Madura; but there is little doubt that the Setupatis of Ramnad, although the vassals of the Pandya of Madura, exercised sovereign power within their own territories. Mr. Nelson says:

"There is, therefore, a considerable amount of evidence which goes to support the claim to high antiquity put forward by the Ramnad royal family. And seeing that Rameswarem has been resorted to annually by large bodies of pilgrims, and that this would have been simply impossible unless some strong-handed prince or princes were ruling over the country in the neighbourhood, I think it may be pretty safely concluded that the principality of Ramnad had been in existence for many centuries before Sadeika Sevan (who seems to have lived in the sixteenth century) was made Setupati." (Manual, p. 111.)

It appears, therefore, to be highly probable that the Setupatis in the days of their power exercised control over the pagoda, not, however, in virtue of any proprietary right of patronage, but as the rightful or *de facto* rulers of the district. The powers they enjoyed as sovereigns, whatever they may have been, have now passed to the British Government, and the present Zemindars can have no rights with respect to the pagoda other than those of a private and proprietary nature, which they can establish by evidence to belong to them.

Proceedings of the Madras Government, Revenue Department,
5th June 1874.

That the new rulers at an early date exercised a controlling supervision and authority over the temples very clearly appears from a letter written in 1803 by the Board of Revenue to Mr. Hurdis, the Collector of Madura, of which the following extracts are printed in the Manual (Part IV., Chap. 5, p. 130):—

"The subject of devastanum lands is of great importance to the happiness of the people, and the attention paid to the interests of the pagodas by the immediate officers of the Government has been attended with the most beneficial consequences to the people in different parts of the peninsula."

After saying that the Governor-General had directed that the Collector should proclaim the restoration of the lands resumed from the pagodas by the late Government, the letter proceeds thus:

"The administration of these lands forms a distinct question. The extensive abuses found to prevail with respect to these lands, with which the pagodas of Dindigul were endowed, render it expedient that the lands and affairs of the pagodas of Madura be conducted in the same manner as those of Dindigul, *under the immediate care of the Collector*."

It is abundantly clear from this letter that long before Regulation VII., 1817, the British Government not only assumed the power to superintend the management of the property and affairs of the pagodas throughout the peninsula, but exercised its authority through the agency of the Collectors.

The preamble of the Regulation of 1817, after stating that large endowments had been granted by former Governments as well as by the British Government and individuals for the support of temples, and that the produce of such endowments were, in many instances, misappropriated, declares it to be "the duty of the Government to provide that all such endowments be applied according to the real intent and will of the grantor." It then enacts that the general superintendence of all endowments should be vested in the Board of Revenue, and prescribes the duties to be performed by them to prevent misappropriation of the funds. It also authorizes the Board to appoint local agents, and declares that the Collector of the district shall be *ex officio* one of such agents. (Sections 7 and 8.)

The Counsel for the Appellant, whilst admitting that the proceedings of the Collectors subsequent to this Regulation might be equivocal with regard to the character in which they acted, strongly insisted that the acts of those officers prior to it could only have proceeded from, and must therefore be referred to, the rights of the Zemindar vested in them under the attachment. This contention is, however, entirely disposed of, when it is established that at an early date the power of superintendence was entrusted by the Government to the Board of Revenue and the Collectors. The Regulation, in fact, merely defined the manner in which that power was thenceforth to be exercised.

The general authority of the Collectors as agents of the Government being thus shown, the ground is cleared for considering the question which was so much discussed on the argument, whether the Collectors in the various proceedings found in the record were acting under such general authority, or as the Appellant asserts in virtue of the rights of the Zemindar.

From 1815 until 1828, during the whole of which time both the Zemindari and the pagoda were under attachment, there is no doubt that the pagoda was

managed by the pandaram under the control of the Collectors, even in minute details, but the Counsel for the Appellant did not establish to their Lordships' satisfaction the inference he sought to draw from this evidence, that the Collector's interference arose from his representing the Zemindar's interest. On the contrary, considering that the pagoda had been attached for the alleged misconduct of the pandaram, and having regard to the powers of superintendence entrusted to the Collectors as agents of the Government, both before and under the Regulation of 1817, they think that their interference ought to be referred to the exercise of these powers. This view is supported by the reports of the Collectors made during a subsequent attachment to be presently adverted to.

The long litigation respecting the succession to the Zemindari ended in 1828, when a judgment of His Majesty in Council established the title of Ramaswami Setupati to the Zemindari of Ramnad.

The attachment which had so long existed was thereupon removed. It appears from an order of the Collector, dated 21st April 1829, addressed to Ramaswami Setupati, that on this removal the pagoda was ordered to be delivered over with the Zemindari to the Setupati, and for some time he appears to have assumed to control the management of it as the Collectors had done. The Appellant's Counsel urged that this delivery of possession to the Zemindar, besides being in itself strong evidence in his favour, threw light on the proceedings of the Collectors throughout the time of the attachment. If the orders relied on had not been corrected, they might have been rightly so regarded, but they were, after full inquiry, superseded by subsequent orders hereafter referred to.

On 21st April 1830, Ramaswami Setupati died, having devised the Zemindari to his two daughters. Both being minors, the management of the estate became vested in the Board of Revenue, acting as the Court of Wards, and so remained until 1846, when, on the deaths of the minors, the Zemindari was restored to their mother Ranee Setupati, who was the original Plaintiff in the present suit.

Whilst the estate was under the care of the Court of Wards, a manager was appointed on behalf of the minor Zemindars. Disputes appear to have arisen between this manager and the pandaram in consequence of the latter being kept out of possession of the pagoda and the manager assuming the control of it.

The then Collector, Mr. Vivash, being appealed to by both, investigated their complaints, and on the 20th September 1832 made a report to the Board of Revenue, which is well worthy of attention.

In that report, paragraph 2, Mr. Vivash says:

"2. The devastanum and chuttrums of Rameswarem were assumed by Mr. Peter with the sanction of your Board, in consequence of mismanagement by the pandaram, and entrusted to the superintendence of the head Tahsildar of Ramnad, and subsequently to the control of the Sub-Collector, who continued to manage the devastanum affairs until the Ramnad Zemindari was made over to Ramaswami Setupati, the Zemindar, in the year 1829; the Rameswarem devastanum was entrusted to the Zemindar's management at the same time as a temporary measure in consequence of the Sub-Collector having been appointed to another part of the district, and the Zemindar was the only responsible person to whom I could with propriety and safety entrust the management, pending the determination of your Board as to provisions for the future devastanum management."

This statement confirms the view their Lordships derived from the evidence, hat, under the attachment, the Collectors acted as the agents of the Government n superintending the pagoda. It also shows that when, on the discharge of the ttachment in 1839, the pagoda was entrusted by Mr. Vivash to the Zemindar's are, it was not so done because of any right belonging to him as Zemindar, as he Appellant alleges, but as "a temporary measure" in the absence of the Sub-Collector; the Zemindar being a responsible person selected by the Collector to have the care of it, until the Board had decided upon the future management.

This view is confirmed by the statements of fact contained in other parts of he Report. Paragraph 3 states that the pandaram appointed in 1815 was not allowed as his predecessor exclusive control, but "was ordered jointly with the Circar servants to conduct the devastanum affairs".

Again, paragraph 4 says: "The Ramnad Zemindar, or rather the manager on the (minor) Zemindar's behalf, urges his right to the management. . . . It appears to me unnecessary to dwell upon this claim, as the Rameswarem devastanum has never been managed by the Zemindar since the date of the permanent Sanad; and before that period it is universally admitted that the pandarams in succession conducted exclusively the devastanum affairs."

It may be allowed that this latter statement ought not to be relied on as proof of the fact said to be admitted, but what the Collector says of the practice since the permanent Sanad would be derived from official records and experience.

Mr. Vivash further reports that, in his opinion, the supervision of the Zemindars would be useful to check abuses, and his recommendations are contained in paragraphs Nos. 5 and 6.

"5. I think, therefore, that the pandaram might, without objection, be placed in immediate management of the devastanum of Rameswarem and its revenues, that the expenditure and the sibbundy be arranged agreeably to a list fixed with reference to the usual disbursements, and that the Zemindar be appointed supervisor with authority to interfere in controlling expenditure and checking abuses, and that periodical accounts of receipts and disbursements may be rendered to the Huzur for the purpose of preparing which a Huzur Gumastah may be employed at Rameswarem.

"6. Concurring with my predecessor that control over the devastanum expenditure and the devastanum affairs is necessary to preserve its revenues from spoliation, and to enforce a due performance of the necessary and usual ceremonies, as the country of Ramnad is under the management of the Zemindar's family, I would recommend that the Zemindar be nominated to this duty, because they are people of integrity and responsibility, and would, I have no doubt, discharge the duty of supervision with advantage to the interest of the devastanum and their own credit."

It appears that this Report was laid before the Governor in Council, and a letter was thereupon written and transmitted, through the Board of Revenue, to the Collector, approving of his proposed measures and directing them to be carried into effect.

The Collector afterwards sent an order to the manager of the Zemindari, under the Court of Wards, directing him to put the pandaram in possession of

the pagoda. The manager having hesitated to obey it, the Collector issued the following peremptory order :—

"*To the Guardian of Ramnad.*

"I have received and perused the Urzi No. 14, addressed by you on the 23rd instant, to the effect that the pagoda of Rameswarem and the villages attached to it should not be put in the possession of the pandaram, and that your man and the pandaram's man should jointly hold the management. Having examined the documents, etc., connected with the above matter for several days, I wrote to the Board the circumstances under which the said pandaram held the said pagoda and the villages attached thereto for a long time prior to the attachment by the Circar. In accordance with the orders issued in this matter by the Government and the Board, you were ordered to allow the pandaram to hold the said pagoda, etc. You should do so immediately. The delay is unfair. You wrote that your servants also should be employed together. This will create a great disturbance. Therefore, the custom must be followed up. Nothing can be done contrary to the custom. However, if the said pandaram misbehave for the future, it will be then taken into consideration. If you do not give him possession immediately, the Circar officers shall be sent to put him in possession."

Nothing can be more decisive than this action of the Collector on the question of the character in which he was acting. So far from relying on the right of the Zemindar, he acted in direct opposition to the claims of his guardian.

The pandaram (Venkatachellum) having been thus restored to full possession of the pagoda, the manager for the Zemindar again put forward his claim to the management, and on this occasion he impeached the validity of the title under which the pandaram had held the office since 1815, asserting the Zemindar's right to appoint the pandarams as well as to manage the pagoda.

This new dispute was referred to the then Collector Mr. Wroughton. His Report upon it is dated the 7th January 1834. It appears that he examined the depositions sent to the Collectorate in 1815 and other documents, and he records the facts which, in his opinion, are adverse to the claims made on the part of the Zemindar. He also reported in favour of the title of the pandaram Venkatachellum to the office.

The Board of Revenue upon this Report made a Minute on the 30th July 1835, that there existed no ground for questioning the validity of the appointment of the pandaram.

One of the objections urged by Mr. Mackeson to the judgment of the High Court was that the Judges had given too much weight to the Reports of the Collectors, which they described as "quasi judicial proceedings." It is to be observed, however, that it is the duty of the Collectors, under Section 10 of the Regulation of 1817, to ascertain and report to the Board the names of the present trustees, managers, and superintendents of the temples, and by whom and under what authority they have been appointed or elected, and whether in conformity to the special provisions of the original endowment by the founder, or under any general rules. They are also under Section 11 to report all vacancies, with full information to enable the Board to judge of the pretensions of claimants, and whether the succession has been by descent, or by election, and if so, by whom. The Report, therefore, of Mr. Wroughton was entirely within his province and the line of his duty.

Proceedings of the Madras Government, Revenue Department,
5th June 1874.

Their Lordships think it must be conceded that when these Reports express opinions on the private rights of parties, such opinions are not to be regarded as having judicial authority or force. But being the reports of public officers made in the course of duty and under statutable authority, they are entitled to great consideration so far as they supply information of official proceedings and historical facts, and also in so far as they are relevant to explain the conduct and acts of the parties in relation to them, and the proceedings of the Government founded upon them.

Whilst protesting against the weight given by the High Court to Mr. Wroughton's Report, Mr. Mackeson invoked the authority of the Collector's opinion contained in the last paragraph of it, in aid of his contention that the appointment was invalid without the Zemindar's confirmation.

The paragraph is as follows:—

"Paragraph 13. It appears generally from the documents and witnesses produced on both sides, that it has been the established custom that the dying pandaram nominates one of his disciples, and that the election is reported for the Zemindar's sanction and approbation, who, therefore, issues orders to the stalathars of the pagoda to show him the usual respect and to obey his orders. At the time the present pandaram was nominated the Zemindari was in dispute, and held under attachment by the Collector, so that the orders which would have, under other circumstances, emanated from the Zemindar, were passed by the Collector. The orders were dated 23rd July 1816, to the late head Tahsildar."

The opinion of Mr. Wroughton is clearly against the claim of the Zemindars to nominate to the office, and it may be doubtful whether he intends to support their pretension to a right of confirmation in the sense of a power entitling the Zemindar to reject the person elected, and to treat the pandaram who enters upon the office without his confirmation as an usurper.

But however that may be, their Lordships have already said that the opinions of the Collectors are not to be treated as having judicial authority. They also think that if the opinion of Mr. Wroughton really is to the effect contended for, it is not well founded. They have already commented on the effect of the orders passed by the Collector in 1816.

It is very probable that the pandarams, on their election, were presented to the Setupati not for the confirmation of their title, but to obtain from him, as the great chieftain of the district, a recognition of it, and to secure his protection and support.

In consequence of the recommendations contained in the Reports of the Collectors (1832 and 1834) rules were drawn up for the superintendence of the pagoda. They were to the effect that the pandaram was to be the manager, but an officer of the Zemindar was to superintend the management, reporting to the Zemindar who was to send in the Reports to the Collector. It was expressly declared that this officer should treat the pandaram with great respect.

This state of things again led to frequent disputes. Mr. Blackburne, the Collector, writes to the Board that he had received no less than forty-two recriminatory complaints in eleven months from the manager of the Zemindari and the pandaram. In consequence the pagoda was again placed under attachment; and the Collector, on the 17th September 1836, addressed orders to the pandaram and the manager stating that, as they gave vain trouble and did not act up to the

Board's orders, the management would be kept under attachment on behalf of the Circar until they came to an amicable settlement.

In April 1837, the disputants came to a formal compromise, and the pandaram promised to submit to the superintendence of the manager, and do certain things in conjunction with him. The razeenamah drawn up on this occasion was strongly relied upon by the Appellant's Counsel. Taken by itself, this agreement would certainly appear to recognize the manager as superintendent in right of the Zemindar; but, having regard to the recommendations in Mr. Vivash's Report, paragraph 5, that the Zemindar should be appointed supervisor, with authority to interfere in controlling expenditure and checking abuses, their Lordships think that the acknowledgment must be referred to the power entrusted to the Zemindar as the nominee of the Government. Even if it had been shown that some power of superintendence resided in the owners of the Zemindari, it would not at all follow that the right to interfere in the appointment of pandarams belonged to them.

Pandaram Venkatachellum continued in office until his death in November 1854, having filled it since 1815.

Before his death he appointed as his successor Chockalingam Pillai, who continued in office until his death in February 1857. He appointed Chidambara Pillai to succeed him, who died shortly afterwards, having first nominated Ambalavana Pillai, the original Defendant in this suit, to be his successor.

It results from a review of the whole mass of evidence in this case that there is no instance of the appointment of a pandaram by the Zemindars satisfactorily proved, except that of the child by Muttu Ramalinga in 1793, nor of any pandaram having been kept out of his office or ejected from it, because the Zemindar had not confirmed his appointment.

In the absence of proof of the actual exercise of either of the rights claimed, the rest of the evidence, for the reasons already given, is, in their Lordships' opinion, wholly insufficient to maintain them. They are, therefore, of opinion that the Appellant has failed to establish his pretension to oust the pandaram from his office, because he was not appointed to, or confirmed in it by him or his predecessors.

In the result they will humbly advise Her Majesty to affirm the decree of the High Court and to dismiss this Appeal with costs.

No. 60. ORDER THEREON, 5th June 1874, No. 697.

Miscellaneous.

COMMUNICATED to the Court of Wards.

(True Extract.)

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

To the Court of Wards.
" Govt. Solicitor.

Exd. F. R. Bantleman.

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Encl. to 94 1874

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Govt. of Madras.

REVENUE.

To

THE COURT OF WARDS.

Dated June 5th.

Recd.

Encl. to June 1874, No. 697.

UN

Nos. 59—60.

To *trusteeship of the Rameswarem Pagoda, Madura District*—Communicates to Court of Wards Secretary of State's despatch forwarding copy of judgment of the Privy Council in the case of the appeal of the Zemindar of Ramnad regarding the —.

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Muttu Ramalinga Setupati and others v. *Perianayagum Pillai, Guardian, &c., from the High Court of Judicature at Madras; delivered* 18*th March*, 1874.

Present:

SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.

THE question raised in this Appeal relates to the right of the zemindars of the large and important zemindary of Ramnad in the Madura district either to appoint, or to confirm the election of, the Pandaram or Head of the celebrated and richly endowed pagoda of Rameswarem.

The possessions of this temple are estimated by the Appellant to be of the value of 200,000*l.*

The plaint of the Ranee zemindar (now represented by the Appellant, the present zemindar), filed so long ago as the year 1857, sought to oust the original Defendant, Ambalavana Pillai, from the office of pandaram which he *de facto* held.

It alleged that the zemindar was the Dhamarkharta or trustee of the pagoda, and had the right to conduct the management of it. It indirectly also asserted her right to appoint the Pandarams, and concluded with a prayer for a decree to the effect that the zemindar should conduct the management of the pagoda, and that the Defendant pandaram should be removed from the management, and pay over the money in his hands to the zemindar.

The Plaintiff also charged the Pandaram with

misappropriation of the property, and the prayer for his removal was based on this charge, and also, though vaguely, on the ground of his not having been appointed to, or confirmed in, the office by the zemindar.

The charges of misappropriation were not sustained by the evidence and have been abandoned; so also has the claim of the zemindar to be placed in the direct management of the pagoda, and to have its funds placed in his hands. And the single question argued at their Lordship's Bar, and to which issue the cause was brought by consent in the High Court is, whether the zemindar has established the right to appoint or to confirm the election of the Pandarams of this great Pagoda, and was entitled to a decree for the removal of the Defendant from the office of Pandaram because he was not so appointed or confirmed.

The early history of the pagoda is obscured by time, and its foundation cannot be shown. But it is evidently an ancient temple of great renown, which has long attracted pilgrims from all parts of India. It is situate on an island in the extreme south of India, connected with the lands of the zemindary by a causeway. The Rajahs of Ramnad were the guardians of this causeway, and had thence acquired the title of Setupati, or Lord of the Causeway.

It is asserted on the part of the Pandaram that the pagoda of Rameswarem was an independent endowment, in which the Rajahs Setupati had no rights of patronage, or control, other than the general authority they assumed as the rightful or *de facto* rulers of the district, to prevent abuses in the management of its affairs, and to see that its laws and usages were properly observed.

The first records in the evidence are some inscriptions on stones found in the walls of the pagoda. The earliest inscription is on a mandapam, and states that the mandapam was erected by Munerama Nathan "as a place to halt for the god Ramesar, who was attached to this pagoda, founded by Mall or Vishnu." Its date is in the Salivahana era 1520, which corresponds with the Christian year 1588. It is evident from this and other inscriptions that the pagoda was an ancient temple at this time.

Subsequently, in the year of the Salivahana era 1607, the Rajah of Ramnad made a gift of five villages, and in 1609 another gift of eight villages to the pagoda. These grants, as the dates show, formed no part of the original endowment of the pagoda, and no condition is found in them creating or reserving any rights of patronage or interference in the affairs of the temple. There is evidence of similar gifts of villages from other Rajahs, among them the Rajah of Sivagunga, showing that the pagoda had been endowed by other donors than the Lord of Ramnad. Indeed, of the seventy villages belonging to the pagoda, thirteen only are proved to have been given to it by that Rajah. The right, therefore, now claimed by the zemindar of Ramnad is not shown to have an origin in the foundation or subsequent endowment of the Pagoda.

It may be observed, before further considering the evidence, that the case on both sides is singularly deficient in materials to elucidate the constitution of the community or brotherhood attached to this pagoda, the duties of the Pandarams, and whether they are selected from a particular family or class. The claims of the zemindars also have been put forward in the most uncertain way. They at one time asserted a right to be chief managers, and directly to appoint the Pandarams as sub-managers, but that claim was not strongly urged by Mr. Mackeson at their Lordships' bar. He mainly contended, in his elaborate argument, for the right to have the Pandarams presented to the zemindars for confirmation when nominated or elected by others. It is obvious, however, that there is a great distinction between a right to appoint and one to confirm; and if the latter only is insisted on, it still might be expected that some definite information would be given as to the manner of electing the candidate to be presented for confirmation. The absence of such evidence may perhaps be accounted for by the fact that the claim it was at first attempted to sustain was the right of direct appointment.

It is not, however, unimportant to observe that it appears to be the common practice in the Madras Presidency for Pandarams to appoint their successors. (See Mr. Norton's Leading Cases, p. 592-3.)

But the constitution and rules of religious brotherhoods attached to Hindoo temples are by no means uniform in their character, and the important principle to be observed by the Courts is to ascertain, if that be possible, the special laws and usages governing the particular community whose affairs become the subject of litigation, and to be guided by them.

That principle was laid down by this Committee in an appeal involving the succession to the office of Mohunt of a richly-endowed Mutt in Rajgunge in these terms:—"It is to be observed that the only law as to these mohunts and their office, functions, and duties, is to be found in custom and practice, which are to be proved by testimony." (See 11 Moore, I. A., 428.)

In this case the burden of proving that the right he claims is supported by usage lies upon the zemindar, and the question to be decided is, whether he has sustained it.

It was contended on his behalf that the zemindar of Ramnad is Dhamarkhata of the pagoda, and that it must be inferred from this title he had the power he claims. But the right to bear this title, and the functions belonging to its holder, are among the disputed questions involved in the general controversy between the parties. The title "Dhamarkhata" may have a definite signification, but their Lordships observe, in the proceedings of this record, it is used in different senses, sometimes to denote a trustee who appoints the Pandaram, or head manager, and sometimes the manager himself. In the long contention which took place between the zemindar and the Pandaram in the collectorate, as to the titles by which each was to address the other, the Collectors refused to allow either to assume this title. Their Lordships, upon the imperfect information disclosed by the record, will therefore abstain from using this appellation, and will not attempt to define what the title as regards this pagoda indicates, or to whom it belongs; but will proceed to consider the substantial issue they have to determine, viz., whether the zemindar has established the right, under whatever name, to make or confirm the appointment of Pandarams.

It has been already stated that he has failed to show that such a right is derived either from the

original foundation or any subsequent endowments of the pagoda by his predecessors.

The Counsel for the zemindar strongly relied on statements found in certain depositions as affording proof of the direct appointment and removal of Pandarams by the Rajahs of Ramnad prior to the Christian year 1793; and if these statements were admissible and trustworthy, they would afford strong support to the zemindar's case. The depositions were taken in 1815, on the death of Pandaram Ramanada, who had held the office from 1793. On his death Venkatachellum claimed to be his successor, alleging that he had been appointed by his predecessor according to custom. Objections were made to Mr. Peter, the Collector of Madura, against his appointment, upon the ground that he had not been nominated by the dying pandaram, but had been put forward after his death by certain persons attached to the pagoda. The Collector required the head tahsildar to make inquiries as to the fact and time of Venkatachellum's appointment, and several depositions, the authenticity of which is not questioned, were taken by him, bearing on this matter. The statements in question appear to have been made at this time, but there is no satisfactory evidence to show they were obtained by any competent or independent authority. It is suggested that they were taken by the tahsildar, but there is no proof of this, and the tahsildar's report is not forthcoming. On the other hand, the form of the documents leads to the inference that they were not so taken. They are addressed "to the Company's Circar," signed by the deponents, and attested by two native witnesses, from which it may be inferred that they were written statements obtained on behalf of the zemindar, and sent to the tahsildar to be forwarded to the Collector. Their Lordships think that such statements ought not to be received as proof of an important right, and that they were properly rejected as inadmissible by the High Court.

The first appointment of which there is trustworthy evidence occurred in 1793. In that year Muttu Ramalanga, then Setupati of Ramnad, appointed Ramanada to be Pandaram.

Mr. Nelson's "Manual of the Madura Country," compiled by order of the Madras Government,

describes the disturbed state of Ramnad and the rest of Madura at this time and for some years previously. A British force had been employed against the Setupati to enforce the rights of the Nabob of the Carnatic, and the district had afterwards passed under the direct authority of the British Government. This appointment of Ramanada was near the period of the transition of the Sovereign power from the Nabob to the British Government. It appears from the authority above cited that in 1792, Muttu Ramalunga showed symptoms of rebellion against that Government, and in 1795 he was deposed, and his sister, the Ranee, installed in the possession of the Raj. It was with this Ranee the permanent settlement was made in 1803. (See Part IV, p. 154.)

The Pandaram appointed by Muttu Ramalunga in 1793 was only five years old, and he took from this child a kararnamah, which is much relied on by the Appellant.

It commences thus :—"As you have been pleased to appoint me for the management of the affairs of the pagoda at Rameswarem, I will cause puja to be duly performed in the pagoda," &c.

The instrument also contains the following passages :—

"In case of my dealing friendly with the enemies of the zemindary you may remove me, and appoint another person in my room. . . If I act improperly in these affairs, I shall submit myself to the orders of the zemindar."

This appointment, and the kararnamah which followed it, would, under ordinary conditions, be entitled to great weight, but when the disturbed state of the district and the age of the Pandaram are regarded, the transaction loses much, if not all, of its force as evidence of the right claimed.

Ramanada filled the office of Pandaram until his death in 1815. After this date much valuable evidence is afforded by the proceedings of the Collectors.

The permanent settlement, as already stated, was made with the Ranee in 1803 : but this settlement did not include the villages belonging to the pagoda, which had long been held free from tribute. Some years before 1815, both the zemindary and the pagoda had been under attachment. It was contended that the pagoda had been attached as part of the zemindary; but, although the orders of attachment are not set out, enough appears on the Record to negative this suggestion. It was not until after the zemindary had been attached in consequence of a disputed succession, that the pagoda was placed under attachment on account of the alleged mismanagement of the pandaram. (See Plaint, paragraph 3 ; Petition of Appeal, p. 66, and the Collector's Letter ; 20th September, 1832, p. 348.)

Such was the state of things in 1815, when Venkatachellum claimed to be Pandaram on the nomination of his predecessor. Two documents appear on the Record, both dated 19th July, 1815, and addressed to the Collector ; one from the dying Pandaram Ramanada, stating that he had appointed Setu Ramanada (Venkatachellum), whom he describes as "a relation of mine by blood, and a descendant of our family," to be his successor (p. 392) ; and another from Venkatachellum announcing his appointment, praying for instructions for his guidance, and that the attachment of the pagoda might be removed.

The Ranee Setupati disputed this appointment. In a letter of the 3rd August, 1815, she prays the Collector to prevent his being invested with the parivattom cloth, and the other emblems of office. An inquiry was thereupon directed to ascertain whether Venkatachellum had been appointed by the dying Pandaram ; and before receiving any report from the tahsildar, the Collector, on the 9th August, directed that officer to inhibit the installation of Venkatachellum as Pandaram "until further orders" (p. 90).

This temporary injunction was, however, removed by the same Collector by an order of the 27th July, 1816 (p. 347) directing the tahsildar that Venkatachellum should be installed as pandaram with all usual ceremonies according to custom, and he was installed accordingly.

It was contended for the Appellant that the order suspending the installation was made by the Collector as the representative of the zemindar, whilst the zemindary was under attachment, and that the order authorizing it was a new appointment of Venkatachellum in the same right.

Their Lordships are unable to concur in this view of the acts of the Collector. They think the proper construction to be placed on his action in the matter is, that the orders first suspending, and then directing the installation, were made by him as a public officer on the part of the Government, and not in virtue of any right derived from the Zemindar. It also appears to them that the last order did not profess to be, and was not an original appointment, but was an act of the Collector to give effect to the title derived from the nomination of the former Pandaram. They are consequently of opinion that Venkatachellum's title to the office must be considered to rest upon the nomination of his predecessor, and not upon any appointment or confirmatory act proceeding from the zemindar.

It will be convenient to consider what powers the Board of Revenue and the Collectors possessed, or *de facto* exercised in relation to religious houses.

The proceedings upon the accession of Venkatachellum, above described, took place before Regulation VII of 1817 was passed. But it is evident that before that Regulation the British Government, by virtue of its sovereign power, asserted, as the former Rulers of the country had done, the right to visit endowments of this kind and to prevent and redress abuses in their management.

There can be little doubt that this superintending authority was exercised by the old Rulers. Mr. Nelson in the Madura Manual says: "The principal Pagodas, with their enormous establishments, their officiating priests, &c., were managed by a Dharmakarta, or trustee and manager for life, who, as stated above, was usually a monk and guru." He had said just before—"The manager of the great Pagoda at Madura seems to have been always a Pandaram or saiva monk." Mr. Nelson evidently designates the manager, and not the person appointing him, as Dharmakarta, who might be a monk or Pandaram, in which case he would probably be known by the latter title. He then describes the duties of the manager:—"He collected and disbursed the revenues derived from the lands granted to the pagoda by the King and others, and from fees and offerings; appointed the officiating Brahmans and servants," &c.

He then says:—"The dhamakartas held but little communication one with another, and recognized no earthly superiors except the King himself. Each was independent of all control, and acted altogether as he pleased. This freedom led naturally to gross abuses, and the King was compelled occasionally to interfere in the management of some of the churches." (Part III, chap. 7. p. 162.)

The King here spoken of was the ruler of Madura; but there is little doubt that the Setupatis of Ramnad, although the vassals of the Pandya of Madura, exercised Sovereign power within their own territories. Mr. Nelson says:—"There is, therefore, a considerable amount of evidence which goes to support the claim to high antiquity put forward by the Ramnad Royal family. And, seeing that Rameswarem has been resorted to annually by large bodies of pilgrims, and that this would have been simply impossible unless some strong-handed prince or princes were ruling over the country in the neighbourhood, I think it may be pretty safely concluded that the principality of Ramnad had been in existence for many centuries before Sadeika Sevan (who seems to have lived in the sixteenth century) was made Setupati." (Manual, p. 111.)

It appears, therefore, to be highly probable that the Setupatis in the days of their power exercised control over the pagoda, not, however, in virtue of any proprietary right of patronage, but as the rightful or *de facto* rulers of the district. The powers they enjoyed as Sovereigns, whatever they may have been, have now passed to the British Government, and the present zemindars can have no rights with respect to the pagoda other than those of a private and proprietary nature, which they can establish by evidence to belong to them.

That the new rulers, at an early date, exercised a controlling supervision and authority over the temples very clearly appears from a letter written in 1803, by the Board of Revenue to Mr. Hurdis, the Collector of Madura, of which the following extracts are printed in the Manual (Part IV., chap. 5, p. 130):—

"The subject of devastanum lands is of great importance to the happiness of the people, and the attention paid to the interests of the pagodas by

the immediate officers of the Government has been attended with the most beneficial consequences to the people in different parts of the peninsula."

After saying that the Governor-General had directed that the Collector should proclaim the restoration of the lands resumed from the pagodas by the late Government, the letter proceeds thus :—

"The administration of these lands forms a distinct question. The extensive abuses found to prevail with respect to these lands, with which the pagodas of Dindigal were endowed, render it expedient that the lands and affairs of the pagodas of Madura be conducted in the same manner as those of Dindigal, *under the immediate care of the Collector*."

It is abundantly clear from this letter that long before Regulation VII, 1817, the British Government not only assumed the power to superintend the management of the property and affairs of the pagodas throughout the Peninsula, but exercised its authority through the agency of the Collectors.

The preamble of the Regulation of 1817, after stating that large endowments had been granted by former Governments as well as by the British Government and individuals for the support of temples, and that the produce of such endowments were, in many instances, misappropriated, declares it to be "the duty of the Government to provide that all such endowments be applied according to the real intent and will of the grantor." It then enacts that the general superintendence of all endowments should be vested in the Board of Revenue, and prescribes the duties to be performed by them to prevent misappropriation of the funds. It also authorizes the Board to appoint local agents, and declares that the Collector of the district shall be *ex officio* one of such agents. (Sections 7 and 8.)

The Counsel for the Appellant, whilst admitting that the proceedings of the Collectors subsequent to this Regulation might be equivocal with regard to the character in which they acted, strongly insisted that the acts of those officers prior to it, could only have proceeded from, and must therefore be referred to, the rights of the zemindar vested in them under the attachment. This contention is, however, entirely disposed of, when it is established that at an

early date the power of superintendence was intrusted by the Government to the Board of Revenue, and the Collectors. The Regulation, in fact, merely defined the manner in which that power was thenceforth to be exercised.

The general authority of the Collectors as agents of the Government being thus shown, the ground is cleared for considering the question which was so much discussed on the argument, whether the Collectors in the various proceedings found in the Record were acting under such general authority, or as the Appellant asserts in virtue of the rights of the zemindar.

From 1815 until 1828, during the whole of which time both the zemindary and the pagoda were under attachment, there is no doubt that the pagoda was managed by the Pandaram under the control of the Collectors, even in minute details, but the Counsel for the Appellant did not establish to their Lordships' satisfaction the inference he sought to draw from this evidence, that the Collector's interference arose from his representing the zemindar's interest. On the contrary, considering that the pagoda had been attached for the alleged misconduct of the Pandaram, and having regard to the powers of superintendence entrusted to the Collectors as agents of the Government, both before and under the Regulation of 1817, they think that their interference ought to be referred to the exercise of these powers. This view is supported by the reports of the collectors made during a subsequent attachment to be presently adverted to.

The long litigation respecting the succession to the zemindary ended in 1828, when a judgment of His Majesty in Council established the title of Ramaswami Setupati to the zemindary of Ramnad.

The attachment which had so long existed was thereupon removed. It appears from an order of the Collector, dated 21st April, 1829, addressed to Ramaswami Setupati, that on this removal the pagoda was ordered to be delivered over with the zemindary to the Setupati, and for some time he appears to have assumed to control the management of it, as the collectors had done. The Appellant's Counsel urged that this delivery of possession to the zemindar, besides being in itself strong evidence in his favour, threw light on the

proceedings of the collectors throughout the time of the attachment. If the orders relied on had not been corrected, they might have been rightly so regarded, but they were, after full inquiry, superseded by subsequent orders hereafter referred to.

On 21st April, 1830, Ramaswami Setupati died, having devised the zemindary to his two daughters. Both being minors, the management of the estate became vested in the Board of Revenue, acting as the Court of Wards, and so remained until 1846, when, on the deaths of the minors, the zemindary was restored to their mother Rani Setupati, who was the original Plaintiff in the present suit.

Whilst the estate was under the care of the Court of Wards, a manager was appointed on behalf of the minor zemindars. Disputes appear to have arisen between this manager and the Pandaram, in consequence of the latter being kept out of possession of the pagoda, and the manager assuming the control of it.

The then Collector, Mr. Vivash, being appealed to by both, investigated their complaints, and on the 20th September, 1832, made a report to the Board of Revenue, which is well worthy of attention.

In that report, paragraph 2, Mr. Vivash, says :—

"2. The devastanum and Chuttrums, of Ramswarem, were assumed by Mr. Peter with the sanction of your Board, in consequence of mismanagement by the Pandarum, and entrusted to the superintendence of the head tahsildar of Ramnad, and subsequently to the control of the sub-collector, who continued to manage the devastanum affairs until the ramnad zemindary was made over to Ramasami Saithupathi the zemindar, in the year 1829; the Rameswarem devastanum was entrusted to the zemindar's management at the same time as a temporary measure in consequence of the sub-collector having been appointed to another part of the district, and the zemindar was the only responsible person to whom I could with propriety and safety entrust the management pending the determination of your Board as to provisions for the future devastanum management."

This statement confirms the view their Lordships derived from the evidence, that, under the attachment, the Collectors acted as the agents of the Government in superintending the pagoda. It also shows that when, on the discharge of the attachment in 1839, the pagoda was entrusted by Mr. Vivash to the zemindar's care, it was not so

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27

done because of any right belonging to him as zemindar, as the Appellant alleges, but as "a temporary measure" in the absence of the Sub-Collector: the zemindar being a responsible person selected by the Collector to have the care of it, until the Board had decided upon the future management.

This view is confirmed by the statements of fact contained in other parts of the Report. Paragraph 3 states that, the Pandaram appointed in 1815 was not allowed, as his predecessor, exclusive control, but "was ordered jointly with the Cirkar servants to conduct the devastanum affairs."

Again, paragraph 4, says: "The Ramnad zemindar, or rather the manager on the (minor) zemindar's behalf, urges his right to the management. . . . It appears to me unnecessary to dwell upon this claim as the Rameswarem devastanum has never been managed by the zemindar since the date of the permanent sunnud; and before that period it is universally admitted that the pandarams in succession conducted exclusively the devastanum affairs."

It may be allowed that this latter statement ought not to be relied on as proof of the fact said to be admitted, but what the Collector says of the practice since the permanent sunnud would be derived from official records and experience.

Mr. Vivash further reports that, in his opinion, the supervision of the zemindars would be useful to check abuses, and his recommendations are contained in paragraphs Nos. 5 and 6.

"5. I think, therefore, that the pundarem might, without objection, be placed in immediate management of the devastanum of Rameswarem and its revenues, that the expenditure and the sibbundy be arranged agreeably to a list fixed with reference to the usual disbursements, and that the zemindar be appointed supervisor with authority to interfere in controlling expenditure and checking abuses, and that periodical accounts of receipts and disbursements may be rendered to the huzur for the purpose of preparing which a Huzur Goomastah may be employed at Rameswarem.

"6. Concurring with my predecessor that control over the devastanum expenditure and the devastanum affairs is necessary to preserve its revenues from spoliation, and to enforce a due performance of the necessary and usual ceremonies. As the country of Ramnad is under the management of the zemindar's family, I would recommend that the zemindar be nominated to this duty, because they are people of integrity and responsibility.

and would, I have no doubt, discharge the duty of supervision with advantage, to the interest of the devastanum and their own credit."

It appears that this Report was laid before the Governor in Council, and a letter was thereupon written, and transmitted through the Board of Revenue to the Collector, approving of his proposed measures and directing them to be carried into effect.

The Collector afterwards sent an order to the manager of the zemindary, under the Court of Wards, directing him to put the Pandaram in possession of the pagoda. The manager having hesitated to obey it, the Collector issued the following peremptory order:—

"*To the Guardian of Ramnad.*

"I have received and perused the urzi No. 14, addressed by you on the 23rd instant, to the effect that the pagoda of Rameswarem and the villages attached to it, should not be put in the possession of the pundarum, and that your man and the pundarum's man should jointly hold the management. Having examined the documents, &c., connected with the above matter for several days, I wrote to the board the circumstances under which the said pundarum held the said pagoda and the villages attached thereto for a long time prior to the attachment by the sarkar. In accordance with the orders issued in this matter by the Government and the board, you were ordered to allow the pundarum to hold the said pagoda, &c. You should do so immediately. The delay is unfair. You wrote that your servants also should be employed together. This will create a great disturbance. Therefore the custom must be followed up. Nothing can be done contrary to the custom. However, if the said pundarum misbehave for the future, it will be then taken into consideration. If you do not give him possession immediately the sarkar officers shall be sent to put him in possession."

Nothing can be more decisive than this action of the Collector on the question of the character in which he was acting. So far from relying on the right of the zemindar, he acted in direct opposition to the claims of his guardian.

The Pandaram (Venkatuchellum) having been thus restored to full possession of the pagoda, the manager for the zemindar again put forward his claim to the management, and on this occasion he impeached the validity of the title under which the Pandaram had held the office since 1815, asserting the zemindar's right to appoint the Pandarams as well as to manage the pagoda.

29

This new dispute was referred to the then Collector, Mr. Wroughton. His Report upon it is dated the 7th January, 1834. It appears that he examined the depositions sent to the Collectorate in 1815, and other documents, and he records the facts which, in his opinion, are adverse to the claims made on the part of the zemindar. He also reported in favour of the title of the Pandaram Venkatuchellum to the office.

The Board of Revenue upon this Report made a minute on the 30th July, 1835, that there existed no ground for questioning the validity of the appointment of the Pandaram.

One of the objections urged by Mr. Mackeson to the judgment of the High Court was that the Judges had given too much weight to the Reports of the Collectors, which they described as "quasi judicial proceedings." It is to be observed, however, that it is the duty of the Collectors, under Section 10 of the Regulation of 1817 to ascertain and report to the Board the names of the present trustees, managers, and superintendents of the temples, and by whom and under what authority they have been appointed or elected, and whether in conformity to the special provisions of the original endowment by the founder, or under any general rules. They are also under Section 11 to report all vacancies, with full information to enable the Board to judge of the pretensions of claimants, and whether the succession has been by descent, or by election, and if so, by whom. The Report, therefore, of Mr. Wroughton was entirely within his province, and the line of his duty.

Their Lordships think it must be conceded that when these Reports express opinions on the private rights of parties, such opinions are not to be regarded as having judicial authority or force. But being the reports of public officers made in the course of duty, and under statutable authority, they are entitled to great consideration so far as they supply information of official proceedings and historical facts, and also in so far as they are relevant to explain the conduct and acts of the parties in relation to them, and the proceedings of the Government founded upon them.

Whilst protesting against the weight given by the High Court to Mr. Wroughton's Report,

Mr. Mackeson invoked the authority of the Collector's opinion contained in the last paragraph of it, in aid of his contention that the appointment was invalid without the zemindar's confirmation.

The paragraph is as follows:—

"Para. 13. It appears generally from the documents and witnesses produced on both sides, that it has been the established custom that the dying pundarum nominates one of his disciples, and that the election is reported for the zemindar's sanction and approbation, who therefore issues orders to the stalathars of the pagoda to show him the usual respect and to obey his orders. At the time the present pundarum was nominated the zemindary was in dispute, and held nuder attachment by the collector, so that the orders which would have, under other circumstances, emanated from the zemindar, were passed by the collector. The orders were dated 23rd July, 1816, to the late head tahsildar."

The opinion of Mr. Wroughton is clearly against the claim of the zemindars to nominate to the office, and it may be doubtful whether he intends to support their pretension to a right of confirmation in the sense of a power entitling the zemindar to reject the person elected, and to treat the Pandaram who enters upon the office without his confirmation as an usurper.

But however that may be, their Lordships have already said that the opinions of the Collectors are not to be treated as having judicial authority, They also think that if the opinion of Mr. Wroughton really is to the effect contended for, it is not well founded. They have already commented on the effect of the orders passed by the Collector in 1816.

It is very probable that the Pandarams, on their election, were presented to the Septupati, not for the confirmation of their title, but to obtain from him, as the great chieftain of the district, a recognition of it, and to secure his protection and support.

In consequence of the recommendations contained in the Reports of the Collectors (1832 and 1834) rules were drawn up for the superintendence of the pagoda. They were to the effect that the Pandaram was to be the manager, but an officer of the zemindar was to superintend the management, reporting to the zemindar, who was to send in the Reports to the Collector. It was expressly declared that this officer should treat the Pandaram with great respect.

This state of things again led to frequent disputes. Mr. Blackburne, the Collector, writes to

31

the Board that he had received no less than forty-two recriminatory complaints in eleven months from the manager of the zemindary and the Pandaram. In consequence the pagoda was again placed under attachment; and the Collector, on the 17th September, 1836, addressed orders to the Pandaram and the manager stating that, as they gave vain trouble, and did not act up to the Board's orders, the management would be kept under attachment on behalf of the circar until they came to an amicable settlement.

In April 1837, the disputants came to a formal compromise, and the Pandaram promised to submit to the superintendence of the manager, and do certain things in conjunction with him. The Razeenamah drawn up on this occasion was strongly relied upon by the Appellant's Counsel. Taken by itself, this agreement would certainly appear to recognize the manager as superintendent in right of the zemindar; but, having regard to the recommendations in Mr. Vivashs' Report, paragraph 5, that the zemindar should be appointed supervisor, with authority to interfere in controlling expenditure and checking abuses, their Lordships think that the acknowledgment must be referred to the power entrusted to the zemindar as the nominee of the Government. Even if it had been shown that some power of superintendence resided in the owners of the zemindary, it would not at all follow that the right to interfere in the appointment of Pandarams belonged to them.

Pandaram Venkatuchellum continued in office until his death in November 1854, having filled it since 1815.

Before his death he appointed as his successor Chockalingam Pillai, who continued in office until his death in February 1857. He appointed Chidambara Pillai to succeed him, who died shortly afterwards, having first nominated Ambalavana Pillai, the original Defendant in this suit, to be his successor.

It results from a review of the whole mass of evidence in this case that there is no instance of the appointment of a Pandaram by the zemindars satisactorily proved, except that of the child by Muttu Ramalinga in 1793, nor of any Pandaram having been kept out of his office or ejected from it,

because the zemindar had not confirmed his appointment.

In the absence of proof of the actual exercise of either of the rights claimed, the rest of the evidence, for the reasons already given, is in their Lordship's opinion wholly insufficient to maintain them. They are therefore of opinion that the Appellant has failed to establish his pretension to oust the Pandaram from his office, because he was not appointed to, or confirmed in it by him or his predecessors.

In the result they will humbly advise Her Majesty to affirm the decree of the High Court, and to dismiss this Appeal with costs.

PRINTED AT THE FOREIGN OFFICE BY T. HARRISON.—23/3/74.

660

No 11.

Copy Judgment of Judicial Committee of H.M's Privy Council dated 18th March 1874.

P.C. 75 June/74
In B.N. 59

Referred to in Revenue letter to Madras, No 7, dated 30th April 1874

India Office. London.
30th April 1874.

33

Revenue.

No. 7.

My Lord,

With reference to the despatch of your Excellency in Council dated 12th Novemb No. 38 of 1873 on the subject of the appeal of the Zemind of Ramnad regarding the Trusteeship of the Rameswar Pagoda. I now forward herewith for the informatio of your Excellency in Counc and for communication t the present Zemindar a copy of the judgment of the

Judgment of 18 March 1874

His Excellency
The Right Honorable
The Governor in Council
Fort St. George.

the Judicial Committee of
Her Majesty's most Honorable
Privy Council, confirming
the decision of the High
Court.

I have the honor to be.
My Lord,
Your Lordship's most obedient
humble Servant.

No. 10.

Revenue
30th April 1874.

The
Letter to Sir H. St. George
No. 7

Recd. 22 May 1874.

31

Forwarding copy of Judgment of the Judicial Committee of Her Majesty's most Honorable Privy Council, confirming the decision of the High Court regarding the Trusteeship of the Rameswaram Pagoda & the Ramnad Zemindari.

No. 697.

Communicated to the Court of Wards

5 June 74

To Court of Wards
Fort St. George

59-60.