1303/67

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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue. DEPARTMENT

G.O. No. 1303 Press
~~B.J. No.~~ Mis.

Dated 10-10-1874 ~~196~~ .

Not to be folded or roughly handled

Read the follow papers:—

. 112. From J. GROSE, Esq., Secretary to Board of Revenue, to C. G. MASTER, Esq., Acting Secretary to Government, Reven Department, dated Madras, 4th June 1874, No. 1,347.

I AM directed to call the attention of Govern t to certain points connected with the procedure under Act II. of 1864 (Madras) in sellin d for arrears, and more especially with regard to Form No. 7 (Sale Notice of Lands) as in Board's Standing Order No. 275 and modified in Standing Order No. 17 of 1871.

2. In G. O., 13th September 1871, Petition partment, Government, in connection with a certain petition case, stated that there is nothin Sections 36 *et seq.* of Madras Act II. of 1864 which warrants the withholding possession fr a purchaser at a sale of land for arrears of revenue after he has paid the deposit of 15 per ce n the amount of his bid; that in certain circumstances the delay in giving possession mi cause serious damage to a *bonâ fide* purchaser; that Clause 2, Section 36, provides for ins ns of conditions of sale in the Sale Notice, but that these must be in conformity with the Act at the delay is not intended to provide for appeal against irregularity, because a purchaser m bar appeal by completing the payment of the purchase-money, which cannot have been ir ed. They, in conclusion, suggested the amendment of the Sale Notice.

3. The Board thereupon issued Standing O No. 17 of 1871, in which provision was made for delivery of possession immediately on ut of the 15 per cent. deposit, *i.e.*, immediately on the sale taking place. The condition the sale requiring the confirmation of the Collector was abrogated; but apparently by over Clause 9 of the old form, which provided for an appeal to the Collector in case of irregula d for the sale being conditional on the order on such appeal, was allowed to remain in th .

4. In G. O., 29th February 1872, No. 359 nment suggest that this clause should be cancelled. The Board, in reply, bserved that uisite alterations had been made in the Sale Notice. They referred to St nding Order of 1871, but again failed to observe the force of Clause 9 which had been lowed to rema

5. It follows that, if the instr tions of G nt are to be arried into effect, Clause 9 must now be rescinded; but before doi so the I direct me to su mit the following obser- vations:—I st, as to delivery of possess n, it i entio Act II. 1864 till Section 40; and fr a the terms of that section it clea he grant of a certificate is a condition precedent nd the old as well as the new form Notice provide that a certificate shall not be grante the registry changed until the f purchase-money is completed. It does not appear how the Collector is to put a purchas session otherwise than as provided in Section 40; and if he is to be put in possession ays the 15 per cent., it follows that he must then get the sale certificate, and the regist e changed.

6. It is evident that it cannot be intended t that the certificate of sale and change of registry should follow immediately on the pa the 15 per cent. deposit. Suppose this done, and the balance not paid up, the land resold, but the defaulting purchaser, armed with his certificate, could procure possess y competent Court merely by produc- ing his certificate (Section 40). No damage the purchaser by refusing to give the certificate till he completes his payments, if ho this will be done before he makes his bid.

7. Next as to the legality of allowing a the Collector, the Board are of opinion that Government are competent to prescribe s of sale not merely such condtions as are "in conformity with the Act" as stated by nt, *i.e.*, as laid down therein, but such as are not opposed to it.

8. Now that sales have increased to suc t that it is impossible for Tahsildars to supervise them closely; irregularities often occ Board are satisfied, from papers which have come before them, that the appeal to the C ovided inadvertently by allowing clause

9 to remain in Form 7, is often used, and has prevented much hardship and injustice. The Board think that the clause may remain, but if Government consider this impossible under the existing law, the Board think the law should be alter. If the clause is abrogated, the sole remedy left to the injured man will be costly litigation, or the harm thus done will be far greater than any which can arise from the purchaser's knowin that his purchase may possibly be cancelled. If the law is altered at all, the Board think an a eal within thirty days should be allowed to the Collector in *every* case, including that in whi the purchaser pays down the purchase-money in full directly the sale has taken place.

No. 113. Proceedings of the Board of Revenue, dated 6th July 1874, No. 1,704.

Read the following letter from R. W. BARLOW, Esq., Collector of the Chingleput District, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Sydapet, 25th June 1874, No. 290.

REFERRING to my letter, dated 17th August last, No. 347, and the Board's Miscellaneous Proceedings thereon, dated 2nd instant, N 3,639, I have the honor to request a reply to my paragraph 5, in which I have asked for an authoritative opinion as to whether revenue sales involving patent irregularities, such as sellingmore lands than necessary, or those not entered in the defaulter's putta, *etc.*, can be cancelledwhen no appeal has been preferred. There are several Arzees pending disposal, in which irrelarities of the kind referred to have been brought to my notice by Tahsildars, and I am unable dispose of them, pending the receipt of Board's orders.

THE Board resolve to submit this letter Government, with the request that Government will take it into consideration at the same time as the Board's letter to Government, dated the 4th June 1874, No. 1,347.

2. In that letter, the Board have expressed a strong pinion in favor of allowing an appeal to the Collector when land is sol or arrears of revenue. The fact stated by the Collector of Chingleput, that he has rec eports befor him requesting that sales may be cancelled in cases where no appeal has be referred. bec se of patent irregularities, such as the sale of more land than was necessa (which is, or rather may be, illegal) and the sale of land not in the defaulter's putta mistake which drives the injured man to seek a remedy in harassing legal proceedings), c ce the oard that the Collector shou be allowed to interfere even when there is no appeal, ded in the Board's original Ci dar Order on the subject.

3. It may be doubted whether in th case abovementioned the injured man would not be certain to appeal; but many instan ve come to the notice of the Board in which the injured man was absent at the time, and not know of the injury until after the period allowed for appealing had expired.

4. The arguments for giving the C the power to remedy hardship and injustice in sales of this kind within a month from ate of sale are as applicable when no appeal is made as when an appeal is made.

No. 114. MINUTE BY HIS ENCY THE GOVERNOR.

IT would seem clear that we are bou ng our Orders and Notices issued under the Act of 1864 into conformity with its provisio is to say, that the Board of Revenue ought to issue no Orders or Notices which can be inconsistent with the provisions of the Act.

2. Whether the Regulation or N h I understand now to be in force, and under which there is an appeal to the Collector inadvertently," is or is not inconsistent with the Act, I cannot say. If it is not, I wo ertainly retain it. If it is, I would alter the law. I was myself under the impression t as a legal, *i.e.*, statutory appeal to the Collector, but it would appear that the appeal is obt y under an "inadvertent" order of the Board

of Revenue. I agree with the Board that there our ryots, whose property is sold up to an extent u excluded from such an appeal? Practically, I pres "Clause 9" where it is. If so, I would certainly a matters as they are.

27th June 1874.

No. 115. MINUTE BY THE HON. J

ON further consideration I think possession money has been paid. The deposit of 15 per cent chaser. The Collector cannot give the purchaser a

2. As to whether possession shall be given wh whether time shall be allowed for appeal to the sale can take place without *at least* a clear month defaulter to challenge the arrear or object to the ought never to occur. I fear the appeals to the C be so numerous that delivery will be delayed indefi Collector.

24th June 1874.

No. 116. MINUTE BY THE HON. W.

I HAVE no objection to a reference to the to the letter and spirit of the la in the matter. Board of Revenue or Governm ent to make any purchase, which shall have th force of law eit provisions. These last are, I think, quite clear.

2. The sale of land at pu lic auction, under and without reserve of any kind so far as the behalf is concerned; and this condi on was, I b grave evil which prevailed under the old pra tice tor's tardy ratification of each sale. The provisi

3. The 15 per cent. is the earnest mo ey of t Section 3 protects the auctioneer as respects the reject bids at discretion; while the penalty imp part of the purchaser.

4. The only remedy provided by law in purchase-money after a lapse of thirty days, is res

5. The registration and certificate under Sec the balance. Nor can the fulfilment of this pro actionable tort, because these steps—not the rec completion of the contract by the Government auction-purchaser seeking to set aside a resale to been fulfilled. A resale before the expiry of thi

6. I have no doubt, therefore, that Clause variance with the provisions of the law and rig paragraph 7 is not, I think, in accordance with t clause which they defend is not only not in con

7. As to the alteration of the law so as to sale, this should be brought forward by itself the hardship, *etc.* We cannot deal with this

ght to be" such an appeal. Why should own in the rest of India, be exceptionally that no difficulty will arise from leaving esce in the view of the Board and leave

(Signed) HOBART.

SIM, C.S.I.

d not be given until the full purchase- merely to prove the *bonâ fides* of the pur- till he has paid the full purchase money. he purchase-money has been fully paid or ector, I prefer the former course. No otice; this is quite enough to enable a

As to irregularities in the sale they tor, if his confirmation be essential, will y. The Act provides no appeal to the

(Signed) J. D. SIM.

BINSON, C.S.I.

officers, though I entertain no doubt as re is no provision in the Act enabling the e-laws, forms of notice, or conditions of by way of enlarging or restraining its

rovisions of Act II. of 1864, is outright r or the auctioneer authorised in that deliberately induced to remove the herwise) awaiting the Collec- ot be too firmly insisted on.

ract of sale and purchase. Clause 5 of des of the bidder, and enables him to urity against subsequent breach on the

nonpayment of the balance of the Clause 4 of Section 36.

are not contingent on the payment of the law be delayed without incurring he balance—are indispensable to the k that it would be a good plea by an the provisions of Section 38 had not would be illegal I conceive.

7 must be expunged; for they are at purchaser. The Board's reasoning in interpretation of Statute Law, and the h, but in opposition to the law.

ppeal to the Collector in every case of gument *pro* and *con* and instances of n on an incidental opinion in the last

paragraph of the Proceedings which are directed to other considerations. I am opposed to any reagitation of the subject.

26th June 1874. (Signed) W. ROBINSON.

No. 117. MINUTE BY THE HON. J. D. SIM, C.S.I.

THERE are two questions involved in the correspondence, *viz.*, first, whether in the case of lands sold for arrears of revenue possession must be given to the purchaser immediately on payment by him of the prescribed deposit of 5 per cent. of the purchase-money, or may and should be deferred until the full amount of purchase-money shall have been paid; second, whether an appeal to the Collector against such sales should be allowed.

2. On the first question I entirely agree with the Board of Revenue. There is nothing in the law (Act II. of 1864, Madras) requiring possession to be given on payment of the deposit alone, nor prior to the passing of that Act was it customary to do so. Section 36 prescribes the rules under which sales of immovable property shall be conducted. Its second clause requires the Collector to issue a notice specifying, *inter alia*, "the time, place, and *conditions* of sale;" its third clause requires the purchaser to deposit 5 per cent. of the purchase-money, which payment is liable to forfeiture if the remainder of the purchase-money be not paid within thirty days; its fourth clause prescribes that the land shall be resold at the expense and risk of the purchaser if he does not make the deposit, having made it, he does not pay the balance of the purchase-money within thirty days. Nothing is said here of possession being given before full completion of the purchase, and considering how minutely the Act details everything connected with these sales, it is unlikely, if the extreme, that such an important matter would have been omitted, had it been intended that immediate possession should be given. Section 38 is general in its terms and merely prescribes that "lands purchased at a public sale shall be registered in the name of the actual purchaser," and sealed by the Collector, which shall be shall receive certificate of sale signed and Courts." Now how can it be said that a fact of the purchase in all a Collector certify that the land sold be give evidence of requisite to make it his own, before it is paid for, and how can money has been paid in because the person has done all that is and so obtain possession, which in the case of land sold for arrears of revenue possession should not be given until the whole purchase-money has been paid, because the purchaser in the interval may injure the property, make away with standing crops, *etc.* The principals in these transactions are Government on one side and the defaulting ryot on the other; the purchaser can only buy what the mutual interests of the principals, permits the creditor to sell, and he must make his the terms and conditions of the principals, provided, of course, these are not opposed to the Act; and I would, therefore, instruct the plaint a purchaser can have if, being informed completion of the purchase, he bids for on the land. This seems to me a perfectly proper and reasonable arrangement and in no grant to anything expressed or implied in the Act; and I would, therefore, instruct the have it inserted in the Sale Notice as one of the "conditions of sale" permissible under Section 36 of Act II. of 1864.

3. On the second question I differ the Board. The law (Section 59) provides a distinct tribunal for the decision of appeals against illegal sales, and the Government cannot create another tribunal for the same purpose condition of the sale. Such a course would be repugnant to the manifest intent of the grievances should be redressed by the ordinary civil tribunals of the country, and any order passed by a Collector could be challenged in the Courts by either defaulter or purchaser.

4. But even if the law were should strongly deprecate the measure as unnecessary for the protection of the inexpedient on general grounds. The Collector is bound by law (Section 25, *before* of a landed estate, to serve a written demand

on the defaulter, "specifying the amount due, the
the name of the party in arrear * * *
amount due be not paid accordingly or satisfa
attach or to manage the property, of both of wh
be given to the defaulter; and, finally, before the
has to be given (Section 36, Clause 2) for "one mo
notice of the demand against him and ample tim
postpone the sale by giving security under Section
his protection, or what is to prevent a Collector in
posing of appeals or staying the sale until they ar
the extreme to allow a defaulter to remain quie
being attached and put up to sale, and then wher
an appeal.

5. Independent of this, everything that ham
reduces its value and so injures the defaulter. I
aside by the Courts on application made within six
further subjected to the delays and uncertainties
will buy land, and the Government and the defau
ation of its value. I need hardly say that such
appeal to the Collector is inexpensive, can do t
right of appeal to the Courts. In appealing to Co
to lose, and we may be sure the privilege will be n

6. We cannot have two tribunals,—the Coll
and of the two I infinitely prefer the Court to the
the principle adopted in this Presidency since
as much as possible to the Civil Courts, to be the
not only of very careful deliberation, but th
showed that the appellate jurisdiction of the
generally a useless and often a mischievous form
in 1864, and Revenue officers were left to take th
time being secured to the defaulter. I believe
powers to Collectors after sale will be decidedly in

7. I attach very little weight to the cases
in favor of the Board's proposal. It is impo
and even cases absolutely impossible. But
properly kept up, and that the plain and simp
by his subordinates, and makes an example of
tions, such cases will be of very rare occurrence.
be the case, we place the village establishment o
the collection of the revenue to them instead
ledge of the village-officials of all connected wi
lands which do not belong to the defaulter or even
design.

8th September 1874.

No. 118. MINUTE BY THE HON. W

THERE are, as Mr. Sim observes, two points a
of a revenue sale in passing immediate possession
can lie to the Collector in respect to such a revenue
of his subordinates and confirm or otherwise the s

espect of which it is claimed,
lowed for payment." If the
e Collector then proceeds to
tions 27 and 29) notice must
notice of the intended sale
The defaulter has thus ample
it is erroneous, and even to
see what more is needful for
tween demand and sale dis-
t seems to me unreasonable in
six weeks while his property is
s been sold to come forward with

ody and effective transfer of land
ough now when a sale may be set
the sale; if the purchaser is to be
ediate appeal to the Collector, few
h suffer by the consequent depreci-
ll soon be very numerous; for an
no harm, and does not void his
ters have all to gain and nothing
d.

Court,—to try the same matter;
ases of this nature, believing that
ing the administration of justice
s. The present law was the result
st lengthened experience, which
Board in cases of this nature was
s, therefore, designedly abandoned
s of their own acts; due notice and
consequent of restoring appellate
I therefore deprecate the measure.
Collector of Chingleput as arguments
frame a law as to render mistakes
ctor sees that the Land Register is
s prescribed by the law are observed
disregard or disobey its clear injunc-
he still rarer when, as I trust will soon
t in an efficient condition, and entrust
dars as is the case now. The know-
illage is so intimate that the sale of
an absentee will be impossible save by

(Signed) J. D. SIM.

NSON, C.S.I.

the matter before us, *viz.*, (1) the effect
urchaser; and (2) whether an appeal
he has any power to review the action

Proceedings

On the second point th
change would be prejudicial
the Government are not pr
omit the last paragraph of
As to the first point t
Board of Revenue and my
by "conditions of sale," an
down; for I fail to see in wh
ment in full, if not equitabl
by the law. It has passed t
or owner, and the thing sold
However, this is a pur
General." I would do so with
in the draft.

10th *September* 1874.

No. 119. Orde

Land Revenue. No.

sold for arrears of revenue pos
payment by him of the prescri
be deferred until the full amou
this a "condition of sale" und
(2.) Whether an appeal t
2. His Excellency the
the Advocate-General on b
th t

To the Government Solicitor, with

Ex. F. R. Bartleman

ernment, Revenue Department,
er 1874.

olicy-sound; and I agree with Mr. Sim that any
would, therefore, inform the Board finally that
question under any circumstances, and I would

so explicit. I do not take the same view as the
, viz., that the effect of the sale can be suspended
incomplete until the full purchase-money is paid
the land is in the interval between sale and pay-
urchaser who has fulfilled all conditions stipulated
and the Government has not become the occupant
risk of the purchaser.
, and should be referred at once to the Advocate-
ing as to the merits of the questions as appears

(Signed) W. ROBINSON.

0th October 1874, No. 1,803.

THERE are two questions involved
in this correspondence, *viz*:—
(1.) Whether in the case of lands
be given to the purchaser immediately on
15 per cent. of the purchase-money, or can
se-money shall have been paid, by making
6 of the Act VII. of 1864, Madras).
ctor against such sales shall be allowed.
n Council reserves to request the opinion of

xtract.)

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

Members of Government.

C. No 4050 of 1872

Govt. of 1874 Madras

REVENUE.

To

THE GOVERNMENT SOLICITOR.

Dated October 1874.

Sent

Encl.

G. O., 10th October 1874, No. 1,347.

Nos 113—115.

Advocate-General's opinion as to whether in the case of sales held for arrears of revenue under the provisions hereof the purchaser can be prevented by an order passed on the application of the defaulter from obtaining possession on payment of the full amount of the purchase-money, and whether an appeal to the Collector against such sale should be allowed.

No. 1,347.

From J. GROSE, Esq., Secretary to the Board of Revenue,
To C. G. MASTER, Esq., Acting Secretary to Government, R. D.

SIR,

I AM directed to call the attention of Government to certain points connected with the Procedure under Act II. of 1864 (Madras) in selling land for arrears, and more especially with regard to Form No. 7 (Sale Notice of Lands) as given in Board's Standing Order No. 275, and modified in Standing Order No. 17 of 1871.

2. In G. O., 13th September 1871, Petition Department, Government, in connection with a certain petition case, stated that there is nothing in Sections 36 *et seq.* of Madras Act II. of 1864 which warrants the withholding possession from a purchaser at a sale of land for arrears of revenue after he has paid the deposit of 15 per cent. on the amount of his bid; that in certain circumstances the delay in giving possession might cause serious damage to a *bonâ fide* purchaser; that Clause 2, Section 36, provides for insertions of conditions of sale in the sale notice, but that these must be in conformity with the Act; that the delay is not intended to provide for appeal against irregularity, because a purchaser might bar appeal by completing the payment of the purchase-money, which cannot have been intended. They, in conclusion, suggested the amendment of the Sale Notice.

3. The Board thereupon issued Standing Order No. 17 of 1871, in which provision was made for delivery of possession immediately on payment of the 15 per cent. deposit, *i.e.*, immediately on the sale taking place. The condition as to the sale requiring the confirmation of the Collector was abrogated; but apparently by oversight Clause 9 of the old form, which provided for an appeal to the Collector in cases of irregularity, and for the sale being conditional on the order on such appeal, was allowed to remain in the form.

4. In G. O., 29th February 1872, No. 359, Government suggest that this clause should be cancelled. The Board, in reply, observed that the requisite alterations had been made in the Sale Notices. They referred to Standing Order No. 17 of 1871, but again failed to observe the force of Clause 9 which had been allowed to remain.

5. It follows that, if the instructions of Government are to be carried into effect, Clause 9 must now be rescinded; but before doing so the Board direct me to submit the following observations:—First, as to delivery of possession, it is not mentioned in Act II. of 1864 till Section 40; and from the terms of that Section it is clear that the grant of a certificate is a condition precedent, and the old as well as the new forms of Sale Notice provide that a certificate shall not be granted nor the registry changed until the payment of purchase-money is completed. It does not appear how the Collector is to put a purchaser in possession otherwise than as provided in Section 40; and if he is to be put in possession when he pays the 15 per cent., it follows that he must then get the sale certificate, and the registry must be changed.

6. It is evident that it cannot be intended by the Act that the certificate of sale and change of registry should follow immediately on the payment of the 15 per cent. deposit. Suppose this done, and the balance not paid up, the land might be re-sold, but the defaulting purchaser, armed with his certificate, could procure possession from any competent Court merely by producing his certificate (Section 40). No damage is done to the purchaser by refusing to give the certificate till he completes his payments, if he knows that this will be done before he makes his bid.

7. Next as to the legality of allowing an appeal to the Collector. The Board are of opinion that Government are competent to prescribe as conditions of sale not merely such conditions as are "in conformity with the Act" as stated by Government, *i.e.*, as laid down therein, but such as are not opposed to it.

8. Now that sales have increased to such an extent that it is impossible for Tahsildars to supervise them closely; irregularities often occur; and the Board are satisfied, from papers which have come before them, that the appeal to the Collector, provided inadvertently by allowing Clause 9 to remain in Form 7, is often used, and has prevented much hardship and injustice. The Board

think that the clause may remain, but if Government consider this impossible under the existing law, the Board think the law should be altered. If the clause is abrogated, the sole remedy left to the injured man will be costly litigation, and the harm thus done will be far greater than any which can arise from the purchaser's knowing that his purchase may possibly be cancelled. If the law is altered at all, the Board think an appeal within thirty days should be allowed to the Collector in *every* case, including that in which the purchaser pays down the purchase-money in full directly the sale has taken place.

I have the honour to be,
Sir,
Your most obedient servant.

J Grose
Secretary.

Revenue Board Office,
Madras,
4th June 1874.

To the Acting Secretary to Government, Revenue Department.

Exd. F. R. Bantleman.

From the Secretary to the Board of Revenue,
To the Acting Secretary to Government, R.D.

Dated 4th June 1874.
Received 11 June 74.

Board of Revenue
MADRAS.

Encl.

Oct 1309 - 10 October 1874

JUNE
No. 1,347.

Arrears of Revenue Recovery Act II. of 1864 (Madras).—Attention of Government called to certain points connected with procedure under — in selling land for arrears of revenue, and more especially with form of Sale Notice of lands as given in Board's Standing Order No. 275, and modified in Standing Order No. 17 of 1871.

No. 1,704.

Proceedings of the Board of Revenue, dated 6th July 1874.

Read the following letter from R. W. BARLOW, Esq., Collector of the Chingleput District, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Sydapet, 25th June 1874, No. 290:—

Referring to my letter, dated 17th August last, No. 347, and the Board's Miscellaneous Proceedings thereon, dated 2nd instant, No. 3,639, I have the honor to request a reply to my paragraph 5, in which I have asked for an authoritative opinion, as to whether revenue sales involving patent irregularities, such as selling more lands than necessary, or those not entered in the defaulter's putta, etc., can be cancelled when no appeal has been preferred. There are several arzees pending disposal, in which irregularities of the kind referred to have been brought to my notice by Tahsildars, and I am unable to dispose of them, pending the receipt of Board's orders.

The Board resolve to submit this letter to Government with the request that Government will take it into consideration at the same time as the Board's letter to Government, dated the 4th June 1874, No. 1,347.

2. In that letter, the Board have expressed a strong opinion in favor of allowing an appeal to the Collector when land is sold for arrears of revenue. The fact stated by the Collector of Chingleput, that he has several reports before him, requesting that sales may be cancelled in cases where no appeal has been preferred, because of patent irregularities, such as the sale of more land than was necessary (which is, or rather may be, illegal,) and the sale of land not in the defaulter's putta (a mistake which drives the injured man to seek a remedy in harassing legal proceedings), convince the Board that the Collector should be allowed to interfere even when there is no appeal, as was provided in the Board's Original Circular Order on the subject.

3. It may be doubted whether in the second case above mentioned, the injured man would not be certain to appeal, but many instances have come to the notice of the Board in which the injured man was absent at the time, and did not know of the injury until after the period allowed for appealing had expired.

4. The arguments for giving the Collector the power to remedy hardship and injustice in sales of this kind, within a month from the date of sale, are as applicable when no appeal is made, as when an appeal is made.

(A true Copy and Extract.)

(Signed) J. GROSE,
Secretary.

To the Acting Secretary to Government, Revenue Department.

Copy to Collector of the Chingleput.

Exd. A. Grubert.

1874.

Board of Revenue

MADRAS.

PROCEEDINGS, 6TH JULY 1874, No. 1,704.

Encl.

Received

JULY.

No. 1,704.

Sales of land for arrears of revenue.—Letter from Collector of Chingleput requesting an authoritative opinion as to whether sales involving patent irregularities, such as selling more lands than necessary, or those not entered in defaulter's putta, etc., can be cancelled when no appeal has been preferred, submitted to Government for consideration with Board's letter, dated 4th June 1874, No. 1,347.

Proof corrected

7

No. 114. MINUTE BY HIS EXCELLENCY THE GOVERNOR.

IT would seem clear that we are bound to bring our Orders and Notices issued under the Act of 1864 into conformity with its provisions; that is to say, that the Board of Revenue ought to issue no Orders or Notices which can be said to be inconsistent with the provisions of the Act.

2. Whether the Regulation or Notice which I understand now to be in force, and under which there is an appeal to the Collector "provided inadvertently," is or is not inconsistent with the Act, I cannot say. If it is not, I would most certainly retain it. If it is, I would alter the law. I was myself under the impression that there was a *legal*, *i.e.*, statutory appeal to the Collector, but it would appear that the appeal is obtained only under an "inadvertent" order of the Board of Revenue. I agree with the Board that there "ought to be" such an appeal. Why should our ryots, whose property is sold up to an extent unknown in the rest of India, be exceptionally excluded from such an appeal? Practically, I presume that no difficulty will arise from leaving "Clause 9" where it is. If so, I would certainly acquiesce in the view of the Board and leave matters as they are.

27th June 1874.

(Signed) HOBART.

Proof

No. 115. MINUTE BY THE HON. J. D. SIM, C.S.I.

ON further consideration I think possession should not be given until the full purchase-money has been paid. The deposit of 15 per cent. is merely to prove the *bonâ fides* of the purchaser. The Collector cannot give the purchaser a title till ~~them~~ he has paid the full purchase-money.

2. As to whether possession shall be given when the purchase-money has been fully paid or whether time shall be allowed for appeal to the Collector, I prefer the former course. No sale can take place without *at least* a clear month's notice; this is quite enough to enable a defaulter to challenge the arrear or object to the sale. As to irregularities in the sale they ought never to occur. I fear the appeals to the Collector, if his confirmation be essential, will be so numerous that delivery will be delayed indefinitely. The Act provides no appeal to the Collector.

24th June 1874. (Signed) J. D. SIM.

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27.10

G. G. N°1303 8/10 Col. 74

Thumboo Reddy.

Proof

9

No. 116. MINUTE BY THE HON. W. ROBINSON, C.S.I.

I HAVE no objection to a reference to the law-officers, though I entertain no doubt as to the letter and spirit of the law in the matter. There is no provision in the Act enabling the Board of Revenue or Government to make any bye-laws, forms of notice, or conditions of purchase, which shall have the force of law either by way of enlarging or restraining its provisions. These last are quite clear. I think,

2. The sale of land at public auction, under the provisions of Act II. of 1864, is outright and without reserve of any kind so far as the Collector or the auctioneer authorised in that behalf is concerned; and this condition was, I believe, deliberately introduced to remove the grave evils which prevailed under the old practice (lawful or otherwise) of awaiting the Collector's tardy ratification of each sale. The provision cannot be too firmly insisted on.

3. The 15 per cent. is the earnest money of the contract of sale and purchase. Clause 5 of Section 36 protects the auctioneer as respects the *bonâ fides* of the bidder, and enables him to reject bids at discretion while the penalty/security against subsequent breach on the part of the purchaser.

4. The only remedy provided by law in event of nonpayment of the balance of the purchase-money after a lapse of thirty days is resale under Clause 4 of Section 36.

5. The registration and certificate under Section 38 are not contingent on the payment of the balance. Nor can the fulfilment of this provision of the law be delayed without incurring actionable tort, because these steps—not the receipt of the balance—are indispensable to the completion of the contract by the Government. I think that it would be a good plea by an auction-purchaser seeking to set aside a resale to show that the provisions of Section 38 had not been fulfilled. A resale before the expiry of thirty days would be illegal I conceive.

6. I have no doubt, therefore, that Clause 9 of Form 7 must be expunged; for they are

7. ~~This~~ at variance with the provisions of the law and rights of the purchaser. The Board's reasoning in paragraph 7 is not in accordance with the rules of interpretation of Statute Law, and the clause which they defend is not only not in conformity with but in opposition to the law.

I think,

8. As to the alteration of the law so as to allow an appeal to the Collector in every case of sale, this should be brought forward by itself with the argument *pro* and *con* and instances of the hardship, *etc.* We cannot deal with this great subject on an incidental opinion in the last paragraph of the Proceedings which are directed to other considerations. I am disposed to recommend agitation of the subject

26th *June* 1874. (Signed) W. ROBINSON.

G.C. No. 1303 & 10 Oct. 74

Proof

Nos 27/10

10

Minute by the Hon. J. D. SIM, C.S.I.

There are two questions involved in this correspondence, *viz.*, first, whether in the case of lands sold for arrears of revenue possession must be given to the purchaser immediately on payment by him of the prescribed deposit of 15 per cent. of the purchase-money, or may and should be deferred until the full amount of purchase-money shall have been paid; second, whether an appeal to the Collector against such sales ~~shall~~ be allowed.

2. On the first question I entirely agree with the Board of Revenue. There is nothing in the law (Act II. of 1864, Madras) requiring possession to be given on payment of the deposit alone, nor prior to the passing of that Act was it customary to do so. Section 36 prescribes the rules under which sales of immovable property shall be conducted. Its second clause requires the Collector to issue a notice specifying, *inter alia*, "the time, place, and *conditions* of sale;" its third clause requires the purchaser to deposit 15 per cent. of the purchase-money, which payment is liable to forfeiture if the remainder of the purchase-money be not paid within thirty days; its fourth clause prescribes that the land shall be resold at the expense and risk of the purchaser if he does not make the deposit, or if, having made it, he does not pay the balance of the purchase-money within thirty days. Nothing is said here of possession being given before full completion of the purchase, and, considering how minutely the Act details everything connected with these sales, it is unlikely, in the extreme, that such an important matter would have been omitted, had it been intended that immediate possession should be given. Section 38 is general in its terms and merely prescribes that "lands purchased at a public sale shall be registered in the name of the actual purchaser, who shall receive a certificate of sale signed and sealed by the Collector, which shall be conclusive evidence of the fact of the purchase in all Courts." Now how can it be said that a property is purchased before it is paid for, and how can a Collector certify that the lands sold belong to a person before that person has done all that is requisite to make it his own. I can see no hardship in withholding possession until the purchase-money has been paid in full, because the purchaser can pay the full amount whenever he pleases and so obtain possession; while, in the interest of the defaulter, I think it desirable that possession should not be given until the whole of the purchase-money has been paid, because the purchaser in the interval may injure the land or make away with standing crops, *etc.* The principals in these transactions are Government on the one side and the defaulting ryot on the other; the purchaser can only buy what the law, in the mutual interests of the principals, permits the creditor to sell, and he must make his purchase on the terms and conditions of the principals, provided, of course, these are not opposed to law. I cannot conceive what possible cause of complaint a purchaser can have if, being informed before a sale that possession will only be given on completion of the purchase, he bids for and buys the land. This seems to me a perfectly proper and reasonable arrangement and in no way repugnant to anything expressed or implied in the Act; and I would, therefore, instruct the Board to have it inserted in the Sale Notice as one of the "conditions of sale" permissible under Clause 2, Section 36 of Act II. of 1864.

3. On the second question I differ from the Board. The law (Section 59) provides a distinct tribunal for the decision of appeals against illegal sales, and the Government cannot create another tribunal for the same purpose as a condition of the sale. Such a course would be repugnant to the manifest intent of the law that grievances should be redressed by the ordinary civil tribunals of the country, and any decision or order passed by a Collector could be challenged in the Courts by either defaulter or disappointed purchaser.

4. But even if the law were otherwise, I should strongly deprecate the measure as unnecessary for the protection of the defaulter and inexpedient on general grounds. The Collector is bound by law (Section 25), *before* attaching a landed estate, to serve a written demand on the defaulter, "specifying the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear * * * and the time allowed for payment." If the amount due be not paid accordingly or satisfactorily assured, the Collector then proceeds to attach or to manage the property, of both of which measures (Sections 27 and 29) notice must be given to the defaulter; and, finally, before the lands can be sold, notice of the intended sale

has to be given (Section 36, Clause 2) for "one month at least". The defaulter has thus ample notice of the demand against him and ample time to dispute it if it is erroneous, and even to postpone the sale by giving security under Section 26. I do not see what more is needful for his protection, or what is to prevent a Collector in the interval between demand and sale disposing of appeals or staying the sale until they are disposed of. It seems to me unreasonable in the extreme to allow a defaulter to remain quiescent for some six weeks while his property is being attached and put up to sale, and then when it actually has been sold to come forward with an appeal.

5. Independent of this, everything that hampers the speedy and effective transfer of land reduces its value and so injures the defaulter. It is bad enough now when a sale may be set aside by the Courts on application made within six months of the sale; if the purchaser is to be further subjected to the delays and uncertainties of an appeal to the Collector, few will buy land, and the Government and the defaulter will both suffer by the depreciation of its value. I need hardly say that such appeals will soon be very numerous; for an appeal to the Collector is inexpensive, can do the appellants no harm, and does not void his right of appeal to the Courts. In appealing to Collectors defaulters have all to gain and nothing to lose, and we may be sure the privilege will be freely exercised.

6. We cannot have two tribunals,—the Collector and the Court,—to try the same matter; and of the two I infinitely prefer the Court to the Collector in cases of this nature, believing that the principle adopted in this Presidency since 1802, of confining the administration of justice as much as possible to the Civil Courts, to be the only sound one. The present law was the result not only of very careful deliberation, but the fruit of past lengthened experience, which showed that the appellate jurisdiction of the Collector and Board in cases of this nature was generally a useless and often a mischievous formality. It was, therefore, designedly abandoned in 1864, and Revenue officers were left to take the consequences of their own acts; due notice and time being secured to the defaulter. I believe the general consequences of restoring appellate powers to Collectors after sale will be decidedly injurious, and therefore deprecate the measure.

7. I attach very little weight to the cases cited by the Collector of Chingleput as arguments in favor of the Board's proposal. It is impossible so to frame a law as to render mistakes and even abuses absolutely impossible. But if the Collector sees that the Land Register is properly kept up, and that the plain and simple formalities prescribed by the law are observed by his subordinates, and makes an example of those who disregard or disobey its clear injunctions, such cases will be of very rare occurrence. They will be still rarer when, as I trust will soon be the case, we place the village establishment of the district in an efficient condition, and entrust the collection of the revenue to them instead of to Zillaldars as is the case now. The knowledge of the village-officials of all connected with their village is so intimate that the sale of lands which do not belong to the defaulter or even those of an absentee will be impossible save by design.

8th September 1874.

(Signed) J. D. SIM.

Proof

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No. 118. **MINUTE BY THE HON. W. ROBINSON, C.S.I.**

THERE are, as Mr. Sim observes, two points at issue in the matter before us, *viz.*, (1) the effect of a revenue sale in passing immediate possession to the purchaser; and (2) whether an appeal can lie to the Collector in respect to such a revenue sale, or he has any power to review the action of his subordinates and confirm or otherwise the sale. and

On the second point the law is clear, and its policy sound; and I agree with Mr. Sim that any change would be prejudicial to every interest. I would, therefore, ~~on further consideration~~, inform the Board finally that the Government are not prepared to reopen this question under any circumstances, and I would omit the last paragraph of the draft.

Perhaps,

As to the first point the law is not so explicit. I do not take the same view as the Board of Revenue and my Honorable Colleague, *viz.*, that the effect of the sale can be suspended by "conditions of sale," and that the contract is incomplete until the full purchase-money is paid down; for I fail to see in whose legal possession the land is in the interval between sale and payment in full, if not equitably in that of the purchaser who has fulfilled all conditions stipulated by the law. It has passed from the defaulter, and the Government has not become the occupant or owner, and the thing sold is standing at the risk of the purchaser.

However, this is a purely legal question, and should be referred at once to the Advocate-General. I would do so without any such reasoning as to the merits of the questions as appears in the draft.

10*th September* 1874. (Signed) W. ROBINSON.

G. C. Ltr 1363 of 10 Oct 74

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 6th July 1874:

Read the following:—

No. 290.

From R. W. Barlow Esqre
Collector of the
Chingleput District.

To J. Grove Esqre
Secretary to the Board of Revenue
Madras.

Sir,

Referring to my letter dated 17th August last No. 347, and the Board's Miscellaneous Proceedings thereon dated 2nd instant No. 3639, I have the honor to request a reply to my para 5 in which I have asked for an authoritative opinion as to whether revenue sales impeaching patent irregularities, such as selling more lands than necessary for those not entered in the defaulter's

pattah

puttah &c.ª can be cancelled whenever
appeal has been preferred. There are
several arzees pending disposal in
which irregularities of the kind referred to
have been brought to my notice by
Tahsildars and I am unable to dispose
of them pending the receipt of Board's
orders.

Chingleput District
Collector's Office
Saidapet 25th June 1874.

I have &c.
Signed R. M. Barlow
Collector.

The Board resolve to submit
this letter to Government with the request
that Government will take it into con-
-sideration at the same time as the Board's
letter to Government dated the 4th June 1874
No. 1347.

In that letter the Board have
expressed a strong opinion in favour
of allowing an appeal to the Collector
when land is sold for arrears of Revenue

The

the facts stated by the Collector of Ching
-put that he has several reports before
him requesting that sales may be cancelled
in cases where no appeal has been pre
-ferred because of patent irregularities
such as the sale of more land than was
necessary (which is or ought to be illeg
and the sale of land not in the Defaul
-er's puttah (a mistake which drives the
injured man to seek a remedy in
harassing legal proceedings) communi
the Board that the Collector should be
allowed to interfere even when there
no appeal as was provided in the
Board's original Circular Order
on the subject.

It may be doubted whether in the
second case alone mentioned, the injured
man would not be certain to appeal
but many instances have come to the not
of

of the Board in which the injured person was present at the time and did not know of the injury until after the period allowed for appealing had expired.

The arguments for giving the Collector the power to remedy hardship and injustice in sales of this kind within 12 months from the date of Sale are, as applicable where no appeal is made as where an appeal is made.

(True Copy & Extract)

J Grole
Secretary.

To
The Ag. Secretary to Government
Revenue Department.

C Murphy
C of S Ka Buchta

No 2274.

Revenue 1874 Department
Proceedings of the
Board of Revenue

Dated 6th
Despd 6th } July 1874.
Recd 7th

SO No 1303 – 10 October 1874

Sales of Land for arrears of Revenue — Letter from Collector of Chingleput requesting authoritative opinion regarding cancellation of — on appeal — submitted to Government with request that it may be taken into consideration along with Board's letter No 1347 of 4th June 1874.

113.

RG 28th Sept 74 RP 5/10/74
C 13th July 74 Rep 4th

I would assume clear that we are bound to bring our orders and Notices issued under the Act of 1864 into conformity with its provisions, that is to say, that the Board is to have right to cancel no orders or notices issued can be laid to the incon= =sistent with the provisions of the Act.

Collection Revenue Board's Proceedings

Letter from the Collector of Chingleput

Letter No 1347 of 4th June 1874 from the Board of Revenue

Letter from the Collector of Chingleput No 1303 dated 10th October 1874

Sales of Land for arrears of Revenue — Letter from Collector of Chingleput requesting authoritative opinion regarding cancellation of — on appeal — submitted to Government with request that it may be taken into consideration along with Board's letter No 1347 of 4th June 1874.

The

the Collecta "provided inadvertently," is or is not inconsistent with the Act I cannot say. If it is not, I would most certainly retain it. If it is, I would alter the law. I was myself under the impression that there was a legal i.e. Statutory appeal to the Collecta: but it would appear that the appeal is obtained only under an "inadvertent" order of the Board of Revenue. I agree with the Board that there "ought to be" such an appeal. Why should

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should our Ryots, whose property is sold up to an extent unknown in the rest of India, be exceptionally excluded from such an appeal? Practically I presume that no difficulty will arise from leaving "Clause 9" where it is. If so, I would certainly acquiesce in the view of the Board, and leave matters as they are.

S.J. Pfc

27th June 1874.

No 3567
Revenue 1874 Dept

Minute by
H.E. the Governor.

Dated 27 June 1874

Ld 10th October 1874 — No 1303

Sale of Land for arrears of Revenue

114.

C.O., 10th October 1874, No 1303

On further consideration I think possession should not be given until the full purchase money has been paid. The deposit of 15 per cent is merely to prove the bonâ fides of the purchaser. The Collector cannot give the purchaser a title till then.

As to whether postponement shall be given when the purchase money has been fully paid or whether time shall be allowed for appeal to the Collector

I

I prefer the former course.
No sale can take place,
without at least, a clear
months notice, this is
quite enough to enable a
defaulter to challenge the
arrear or object to the sale.
As to irregularities in the
sale they ought never to
occur. I fear the appeals
to the Collector, if his con-
firmation be essential,
will be so numerous that
delivery will be delayed
indefinitely. The Act
provides no appeal to the
Collector.

Sd/ J. D. S.

24 June 1874

No 3565
Revenue 1874 Dept
Minute by the
Hon: J. D. Sim. C.S.I.

Dated 24 January 74

G.O 10th October 74 No 1303.

Sale of land for
arrears of revenue

115.

G. O., 10th October 1874, No 1308

26

No 46

I have no objection
to a reference to the Land
Revenue Manual Instructions
no doubt as to the letter
and spirit of the Law
in the matter. There is
no provision in the Act
enabling the Board of
Revenue or Government
to make any bye laws,
forms of notice or Certificates
of purchase, which
shall have the force
of Law either by way of
Enlarging or restraining
its provisions. These
however are quite clear.

The sale of land
at public Auction is under

The

The provisions of Sect. II of 864 is outright - and without reserve of any kind so far as the Clerk or the Auctioneer authorized in that behalf is concerned - and this condition was I believe, deliberately introduced to remove the grave evils which prevailed under the old practice (lawful or otherwise) of awaiting the Clerk's certificate of such sale. The provision cannot be too strictly insisted on

The 15 per cent on the Earnest money of the Contract of sale and purchase - Clause 37 Section 36 protects the Auctioneer in respect to the bona fides of the bidder & enables him to

to reject bids at discretion - & the penalty stands against subsequent breach on the part of the purchaser.

The enforcement provided by Law in event of non-payment of the balance of the purchase money after a lapse of 30 days is recoverable under Clause 42 Section 36

The registration and Certificate under Sect. 38 are not contingent on the payment of the balance however the fulfilment of this provision of the Law be delayed - without incurring actionable tort - because these - not the receipt - of the balance steps are indispensable to the completion of the Contract by the Purchaser

I think that it would be

there a good plea by Jennie
unless purchasers
seeking to set aside
a resale, to show that
the provisions of Section 88
had not been fulfilled
2 resale before the
Expiry of 60 days would
be illegal I think

I have no doubt
Mr Justice that Clause 9
of Form 7 must be struck.
It is at variance with
the provisions of the Land
and right of the purchaser.
The Board's reasoning
in Form 7 is not in
accordance with the
rules of interpretation
of Statutes Law and the
clause which they defend
is not only not in Conformity
with but in opposition
to the Law.

As to the alterations
of the Lands Clauses Bill as

an Appeal to the Minister
in Every case of sale,
this should be brought
forward by itself
with the argument pro
& con & instances of the
hardship &c. We cannot
deal with this great
subject in an incidental
opinion in the heart
hurry of the Proceedings
which are directed
to other Considerations.

26/6 74 D'A Robinson

No. 3566

Revenue 1874 Dept

Minute by the
Hon. W. Robinson. C.S.I.

Dated 26 June 1874.

G.O. 10th October 1874 No 1303

Sale of Land for arrears
of Revenue —

116

G. O. 10 October 1874, No 1303

8

There are 2 questions involved
in the correspondence - viz
1. whether in the case of lands
held for arrears of Revenue for
Sale is [illegible] to be given to the
first bidder immediately on pay-
ment by him of the prescribed
deposit of 15 % of the purchase
money - or whether Sale should be
deferred until the full amount

Subordinates and
Confirm or otherwise
the Sale. Be

of purchase money shall have been paid - 2d. to hear & determine an appeal to the Collr. against the same sale shall be allowed.

On the first question I can confidently agree in the opinion of Mr. Chas. There is no thing in the Jam Coast II of 1864. Mr. Andrews / requiring Govt. Lands in to be given on payment of the deposit & clause - nor prior to the passing up that Act was it customary to do so - Sect XXX VII prescribes the rules under which sales

116

L. G. 10th October 1874, No 1303

under of immovable property are to be conducted - Sect. second clause requires the Collr. to issue a notice specifying inter alia "the terms & conditions of sale" - the third clause requires the purchaser to deposit 15% of the purchase money - which payment is liable to forfeiture if the remainder of the purchase money be not paid within 30 days. it further clause prescribes that the Lands shall be resold at the expense & risk of the first purchaser if he does not make

Subordinates and
Confirm or otherwise
&c Sale. by

the Defendant or if having made it he does not keep the Balance of the Purchase money within 30 days. Nothing in said Act of Parliament being given in favor of the Purchaser of the Lands - and considering how minutely the Act details every thing connected with the State Sales it is unlikely in the Extreme that such an omission should have been omitted - had it been intended that immediate Settlers should be given -

2/ in favor of the Purchaser of Lands sold merely by Auction that "Lands purchased at a Public Sale" shall be patented in the name of the Purchaser on his producing a Certificate of Sale signed & sealed by the Auctioneer, which shall be conclusive evidence of the fact of the Purchase in the Courts - how can it be said that a property is purchased before it is paid for - & the Auctioneer's Certificate say that the Lands belong to a person who pays that

Subordinates and Confusion or Thereon to Sale. &c

the Sum allotted at the Expiration of
it Make it their own - I can see
of the Landlord in withholding pos-
session until the Mortgage has been
paid in full - In case the time
of Purchase can keep the pell-
mell - Mark when can be pleaded
it is of Main Importance - while it
the interest of the Landlord
and think it desirable that possession
it shall not be given until the whole
of the Purchase Money has been
paid - In case of the Purchaser in

the in Case of making default,
Land or Tenant any in the Stamp
Act &c. The principals in these
transactions are put on the same
Side - and the defaulting Agent
or the Steward - the Purchaser can
only bring about the Loss in the
Mutual interests of the Land-
Owners Tenants & the Land &
Tillage and the Landlord
Purchaser, on the terms & Conditions
of the Loan Principle Landlord Responsible
& Creditor the Loan not debited to me

Subordinates and
Confusion or Otherwise
&c Sale. the

and I would therefore in
strict the Board to have
it inserted in the Sale Lists
as one of the "Conditions of
Sale" prescribed under cl 2
Sect 36 of Act II of 1864.

On the second question I
differ from the Ld. The law
(Sect 59) provides a distinct
tribunal for the decision of
all claims against illegal Sales

Subordinate and
Conformity or otherwise
to Sale.

and the Court cannot
create another tribunal
for the same purpose, on
the conditions of the sale. Such
a course would be incompatible
with the Law that vests exclusive
jurisdiction in the ordinary
Civil Tribunals of the Country
and any decision arrived
at by a Juror could be
challenged in the Court by the

defaulter or dismissed from
Office.

But even if the Law were
otherwise, I should deny the
prayer of the petition, as incompatible
with the protection of the defaulter
and the interest of the public
generally. The Juror is bound by
(325)
Law - before attending a Sheriff's
Estate - to serve a written de-
mand on the defaulter "specifying
by the amount due, the estate
or land in respect of which it

Subordinates and
Confusion or Thereafter
to Sale. in

is claimed, the name of the
party in arrear ~~&c~~ and the time
allowed for payment, ~~which~~
~~shall first be entered in the~~
~~Assessment Roll~~
the If the money be not paid
accordingly
or duly satisfactorily accounted, the
Collector proceeds to attach
& sell the property of the
party in default - of which
of which the advertisement (Sect 27. & 29)
notice must be given to the de-
faulter - and finally, to sell
the lands - and the
~~Duplicate~~ Assessment Roll
the writer shall have to be given

4/ 29

(Sect 36. cl 2 of for "One month
at least" The defaulter has
then to assemble notice of the
demand & amount due - &
assemble time to dispute it -
if it is erroneous - and then to
post them the sale by giving twenty
days Sect 26 - It is not clear what
time is needful for this protection -
or what is to prevent a sales
in this interval & then demand &

Subordinates and
Confusion or otherwise
to sale. the

of sale during the pendency of a Appeal or
staying the sale until they are
disposed of. It seems to me
reasonable in the Statute to allow
a defendant to ~~demand~~ require for the
security of his debt his land to be
sold - and then when it actually
has been sold to come forward
with an affidavit -

And declare that they
swearing that at the time of
sale transfer of land reduces its
value

30

value and to injure the defendant.
It is but simple justice when a sale
may be set aside by the Court
on an affidavit made within 6
days after the sale of the property
for that objection to the
delay. I would add a fee of
about $5 to cover costs of
buying land - and the fee I allow
defendant will be called by
the depreciation of its value -
the defendant shall pay that fee
should the sale be set aside for

Subordinate and
Confirm or otherwise
of sale. &c

G. O. 10th October 1874, No 1303

for an appeal to the Privy Council is
in question — even by the Colonial
Legislature and does not vest with the
Judicial Committee of the Privy Council
the power of hearing & determining
appeals from the Colonial Courts
which the Legislature of the Colony
is competent to confer upon the Colonial Courts
Such an Act being within the powers
of the Legislature of the Colony
it is valid & binding upon the Privy Council
as well as upon the Courts of the Colony
and the Privy Council will advise Her Majesty
to give effect to it by Order in Council
in the exercise of Her Majesty's
prerogative.

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G. O. 10th October 1874, No 1303

5/ established in this Presidency
since 1802 — by
combining the administration
of justice as much as possible
in the Civil Courts, to the only
one — The present Law
was the result only of long
consideration — but the
Court of Judicature — at the
Presidency Towns — which I have
the honour to preside
that at the same time
Mr. the Chief Justice in cases of
Mr. Justice Phear
Mr. Justice Norman
Mr. Justice Markby
Mr. Justice Morris
Mr. Justice Pontifex

Subordinate and
Confirm or Otherwise
to Sale. The

ality. It was then first decided a hundred in 1864. and But Officers were left to talk the consequences of their own acts. these notices & time being to. caused to the disfranchisement. I believe the general consequences of a strong adherence between Class & this sale: will be decidedly in principle - and the confusion de- -cate the measure.

I attended very little

right to the Court. in Court by the Clerk of the Chief Clerk - an argument in favor of the Writ for Certiorari - It is impossible to frame a law on to Common principles - and even absolutely impossible - But if the Writ - lies that the Court Rejects it for the only Ground that the plain & simple formalities prescribed by the Law are observed by him the Writ does and the Commissioner Examiner of the Court who discharged or Rejects it does

Subordinates and Confusion or Otherwise &c Sale. the

116

G. O. 10th October 1874, No 1303

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Subordinates and Confusion or Otherwise &c Sale. the

116

G. O. 10th October 1874, No 1303

in pinctions such cases while they
may 2 are occurrence. They will
be still 2 cases when, as d'tm to
will soon be the case - the selection
the village establishment of the
District in an efficient condition
and entrust to the selection of the
Pres to them a incident of to selection
as is the case now. The known Capc.
of the village officials of all
connected in the train village is a
in timate [illegible] that the sel
of lands which do not belong to
the defendants or [illegible] A can absentee
will be in better to sam by design. J.D. Sun 8/9

116

G.O. 10 October 1874, No 1303

Subordinates and
Confirm or Thermic
to Sale. to

No 3568.

Revenue Dept

Minute by the
Hon: J. D. Sim. C.S.I.

Dated 8th Sept. 1874.

G.O 10th October 1874
No 1303

Sale of land for
arrears of Revenue

117.

G. O, 10th October 1874, No 1303

116

G. O, 10th October 1874, No 1303

3K

There are a
few fair observations
points at issue in
the matter before us,
viz-(1) the effect of a
Revenue Sale in passing
immediate possession
to the purchaser, and
(2) whether an appeal
can lie to the Collector
in respect to such a
Revenue Sale or he
has any powers to review
the action of his
Subordinates and
confirm or otherwise
the Sale. In

On the 2d point - the Law is clear and its policy sound and I agree with Mr Lewis that any change would be prejudicial to every interest. I would therefore on further Consideration inform the Board finally that the Government are not prepared to reopen this question under any Circumstances and I would omit the last para of the Draft.

On the 1st point the Law is not so explicit & do not take the same view as the Board of Revenue

and my Honorable Colleague - viz - that the effect of the sale cannot be suspended by "Conditions of sale" and that the Contract is incomplete until the full purchase money is paid down, for I fail to see in whose legal occupation the land is in the interval between sale and payment is fully if not Equitably in that of the purchaser, who has fulfilled all Conditions stipulated by the Law. It has passed from the defaulter and the Government has not become the occupant or owner and the

Mining

being sold is standing
at the risk of the purchaser.
However this is a
purely legal question
and should be
referred to one of
the Law Advocate Generals
I would do so, without
any further reasoning
as to the merits of the
questions raised
in the Bd's letter.

1874 [illegible]

No 3564
Revenue Dept

Minute by the
Hon. W. Robinson, C.S.I.

Dated 10th Septr 1874.

Govt 10 October 74 No 1303.

[illegible] Solr to Govt for opinion
[illegible]

118 -
[illegible]

Revenue Dept

Memo for Orders

Letter from Secy. Bd of Revenue

Calling attention of Govt to certain points connected with procedure, under Arrears of Revenue Recovery Act II of 1864 (Madras), in selling lands for arrears of revenue, and more especially with form of Sale Notice of lands as given in Bd's Standing Order No 275, and modified in Standing Order No 17 of 1871

} dt. 9. 4 June 1874 No 347

On further letter.

Declaration I think
Revd Collector should
not be required until
the sale has actually been
finally confirmed - The de-
posit of 15 p.c.
thereby to secure

Bd's Proc. No 4209 dated 23 Oct. 1871
the bona fides of
the purchaser - The

In circulating the
accompanying Proceedings of the
Board, attention is invited to the
following points:-

1. The Board themselves
concurred in the Government or
in 1871, and stated that immedia
possession by the purchaser
"appears to be contemplated by
Act".

2. If the contrary
intended, it would have been
distinctly stated, as in the case
moveable property".

3. The whole of

the Handicketter is, so to speak, a piece of special pleading intended to effect the retention of an appeal to the Collector, and yet that such right of appeal cannot be really secured, unless based on a special provision of the law, seems clear from the following:-

The corresponding Bengal Act makes such provision in the Sections given in the margin, and the Civil Procedure Code provides, in Section 256, that, within 30 days of a sale under a decree, application may be made "to set aside the sale on the ground of any material irregularity in publishing or conducting the sale" and then only to the sale to become absolute and a certificate to be granted to the purchaser.

Surely the framers of these Acts did not unadvisedly add to their labors and the length of the law!

If the Govt desire to have a section or clause added to the Act, providing 30 days for an appeal, then, by that time, surely the purchase must have been paid, and two special provisions in this sense can be required.

If, on the other hand they do not think that appeals necessary, there will be no danger in the immediate issue of a certificate to the purchaser, who can always be ousted by a certificate of a later date.

Coll. cannot give the purchaser a title till there is no appeal to be filed, when the purchase money has been fully paid and the sale confirmed.

No sale can take place, without at least a clear month's notice - during which a party may file a petition of appeal, and the Collr cannot then, or at any subsequent time, shake the title of the purchaser, or refuse to give a certificate

38

I have referred the Petn
with Sales Memorandum of
evidence: but before the
Petition is fixed, referring to
petition an officer of
the Court Queenstown, I think
it might be well to consult
the Advocate General.

JH
6/7
I have not the minutes

— me of great importance
— to be retained in the Law
Manual as there is a difference of
Opinion — Mr. Ellis
here merely as the Joint-
Assessee as the State
of the Levy Law — and
as the Pleadings on
the Records of a Civil Court

Revenue Department.

No.

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the June 1874.

READ the following Letter from the Secretary, Board of Revenue.

Calling attention of Govt. to certain points connected with procedure under Arrears of Revenue Recovery Act II of 1864 (Madras) in selling land for arrears of revenue, and more especially with form of Sale Notice of Lands as given in Board's Standing Order No 275 and modified in Standing Order No 17 of 1874. — H. E. 4th June 1874 No 1347.

Seen
I. O.

27 Subsequent note

+ Deficiency. The notice could be issued after the Land Revenue Act II of 1864 is amended by the Legislature

His Excellency the Governor in Council observes that there is no provision in Act II of 1864 enabling the Board of Revenue or Government to make any bye laws forms of notices or conditions of purchase which shall have the force of law either by way

way of enlarging or restraining its provisions.

2. A sale of land at public auction under the provisions of this Law is outright and without reserve of any kind.

3. The 15 per cent is the earnest-money of the contract of sale and purchase. The only remedy provided by Law in event of non-payment of the balance of purchase money after a lapse of 30 days is sale under Clause 4 of Section 36.

4. The Governor in Council does not consider that the registration and certificate under Section 38 are contingent on the payment of the balance, and he has no doubt that clause 7 of Form 7 would be enforced as being [illegible]

[illegible] Board [illegible] marked [illegible] established [illegible] Homestead [illegible]

[illegible] for [illegible] Hibbert [illegible] [illegible] [illegible]

First Draft

C 30th June/74 R 6th July.

Revenue Department.

No.

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the July 1874.

READ the following Letter from the Secretary, Board of Revenue.

Calling attention of Govt to certain points connected with procedure under Arrears of Revenue Recovery Act II of 1864 (Madras) in selling land for arrears of revenue, and more especially with form of sale notice of lands as given in Board's Standing Order No. 275 and modified in Standing Order No. 69 of 1871.

H. E. 4th June 1874. No. 1317.

S. D. S.
See my minute.

See further minute. I am prepared to support the recommendations of the Board & the Advocate Genl 10/7

His Excellency the Governor in Council observes that there is no provision in Act II of 1864 enabling the Board of Revenue or Government to make any bye-laws forms of notices or conditions of purchase which shall have the force of law either by way of enlarging or

or restraining the provisions

2. A sale of land at public auction under the provisions of this Law, would therefore appear to be absolute, and without power of any kind.

3. The 15 per cent is the earnest money of the contract of sale and purchase. The only remedy apparently provided by Law in event of non-payment of the balance of purchase money after a lapse of 30 days is re-sale under Clause 4 of Section 36.

4. The Governor in Council does not consider that the registration and certificate under Section 38 are contingent on the payment of the balance and under this view of the case Clause 9 of Form J would have to be expunged as being unauthorized by the Law and at variance with the rights of the Purchaser. The Board's reasoning in paragraph 7 of their Proceedings does not seem to be in accordance with the rules of interpretation of Statute Law and the clause which they depend would appear to be not only not in conformity with, but in opposition to the Law.

5. On the legal bearing of this question however, the Governor in Council resolves in the first instance to consult the Advocate General.

6. As to the alteration in the Law, so as to allow of an appeal to the Collector in every case of sale, the Board should bring this question forward with all the arguments for or against it, and adduce instances of hardships which may have occurred.

C.L.L.

Second draft

Revenue Dispatch Record

No.

Proceedings of the Madras Government.

Under date the 5th September 1874

Read the following papers.

Proc. Bd. of Rev: Calling attention of Govt to certain points connected with procedure under Arrears of Revenue Recovery Act II of 1864 (Madras) in selling land for arrears of revenue, and to form of sale notice of lands as given in Board's Standing Order No. 275 and modified in Standing Order No. 17 of 1871	H.C.	4th June 1874 No. 1347
Proc. of the Bd. of Rev: Subj. Letter from Collr of Chingleput requesting an authoritative opinion regarding cancellation of sales of land for arrears of Revenue on appeal - with request that it may be taken into consideration along with Board's letter No. 1347 of 4th June 1874	H.C.	6th July 1874
Minute by the R. Hble Governor	H.C.	27th June 1874
Minutes by the Hon. J. D. Sim. C.S.I.	H.C.	24th June & 8th Sept. 1874
Minutes by the Hon. W. Robinson C.S.I.	H.C.	20th June & 10th Sept. 1874

There are two questions involved in this correspondence

Jol

H.C.O

Separate

correspondence viz

(1) Whether in the case of Lands sold for arrears of Revenue possession must be given to the purchaser immediately on payment by him of the prescribed deposit of 15 per cent of the purchase money or money and should be deferred until the full amount of purchase money shall have been paid,

(2) Whether an appeal to the Collector against such sales shall be allowed.

2. On the first point which involves a purely legal question His Excellency the Governor in Council, resolves to request the opinion of the Advocate General.

3. As to the second the law is clear and after full consideration of the arguments adduced in the papers recorded above the Government resolve to inform the Board that they are not prepared to re-open the question 45

Query. Are the Minutes of Members to be sent to the Advocate General as suggested in the Honble Mr Robinson's note of 10th Sept 1874.

Kind draft

59

Revenue Department

44 No. 1303 44

Proceedings of the Madras Government.

Under date the 10 October 1874.

Read the following papers

Letter from the Secretary to the Bd. of Rev. Calling attention to certain points connected with proceedings under Arrears of Rev. Recovery Act II of 1864 (Madras) in selling land for arrears of Rev.; and to forming sale notice of lands as given in Board's S.O. No. 275 and modified in S.O. No. 1 of 1871	H.C. 4th June 1874 No. 1347
Pro. Bd. of Rev. Subs. letter from Co. Clr. of Chingleput requesting an authoritative opinion regarding cancellation of sales of land for arrears of Rev. on appeal with request that it may be taken into consideration along with Bd's letter No. 1347 of 4/6/74	H.C. 6th July 1874 No. 1703
Minute by the Hon. the Chief Secy.	H.C. 27th June 1874
Minutes by the Hon. J. D. Sim[illegible]	H.C. 24th June & 8th Sept. 1874
Minutes by the Hon. W. Robinson[illegible]	H.C. 25th June & 16th Sept. 1874

There are two questions involved in this correspondence viz.

(1) Whether in the case of lands sold for arrears

of Revenue for person
must be given to the
purchaser immediately
on payment by him
of the prescribed deposit
of 15 per cent of the
purchase money or can
be deferred until the
full amount of purchase
money shall have been
paid, by inserting this
a "condition of sale"
under section 38 of this
Act (II of 1864 Madras)

(2) Whether an appeal
to the Collr against an
order shall be allowed

2. His Excellency the
Governor in Council prays
to request the opinion of
the Advocate General
on both these points.

Sent from Ootacamund
9/10/74.

Folio
14 Govt Select with Minute
to be furnished

Advocate General Dec 11 Octo 1874
Opinion to be furnished