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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

REVENUE DEPARTMENT

G.O. No.	205	Press.
B.P. No.		Mis.
Dated	11-2-1878	-197-

Not to be folded or roughly handled

Archives 1-5,806-24-2-78.

205

GOVERNMENT OF MADRAS.
REVENUE DEPARTMENT.

11th February 1878, o. 205.

Read the following papers:—

No. 101. Proceedings of the Board of Revenue, dated 16th January 1878,
No. 124.

Read the following letter from J. W. HANDLEY Esq., Government Pleader, Madras,
to C. A. GALTON, Esq., Sub-Secretary to the Board of Revenue, dated
Madras, 22nd December 1877, No. 15.

I HAVE the honor to acknowledge receipt of your letter of the 29th November 1877, No. 5,111, in which you request my opinion as to the propriety of taking a choultry at Kottayam in the Tanjore District under Government management.

2. As far as I can judge from the deed, the endowment being a religious one and difficulty can arise in the case on the score of the subjects of the charity appear to be therefore falling under Act XX of 1863. The objects of the deed has any thing to do purely secular, unless "the sacred grove" spoken of in the deed has any thing to do with religion.

3. I have always considered that Regulation VII of 1817, while throwing upon the Board of Revenue the responsibility of seeing that charitable endowments are not misapplied, left them without any means of enforcing their authority except in the appointment of Trustees or Managers in cases falling under Section 12. Section 5 makes it incumbent on the Board to prevent misapplication, but the Regulation nowhere says how this is to be done, and I doubt whether a duty by Statute implies all necessary powers. It can be said that the imposition of a duty by Statute implies all necessary powers. Certainly, in the present case where the property is in the hands of persons claiming to hold it, discharged from the charitable trust, I do not think any power can be implied from the Regulation for the Board to seize the property summarily.

4. I think therefore the only way to obtain the restoration of the property to the charity is for the Collector, as ex-officio Agent to the Board under the Regulation, to file a suit against the purchasers of the property asking for a declaration that it is subject to the charitable trust and for recovery of possession and for appointment of a proper Trustee or Manager either from among the relatives of the founder or otherwise. The founder's heirs should also, I think, be named as defendants.

5. I return the translation of the endowment deed.

THE Collector of Tanjore having reported the alienation of the endowment of a choultry in the village of Kottayam, Negapattinam, and the discontinuance of the charities connected therewith, the lands attached and sold by decree of Court in satisfaction of debts due by a descendant of the founder, the Board directed that the purchaser should be called upon to keep the building in repair and maintain the charities. The Collector reported that notice had

11 FEBRUARY 1878, No. 205.

been served on the purchasers, but no action had been taken, and request was made under Government management to the action to be taken, and he was against the purchasers and found that a suit should be filed; if such in dealing with similar cases; if The sanction of Government is requested.

(A)

and Extract.)

(Signed) C. A. GALTON,
Sub-Secretary.

No. 102. Proceedings of
No. 312.

Read the following letter from
H. E. STOKES, Esq.,
31st January 1878, No.

I HAVE the honor to enclose
No. 259 of 1877 on file of the D.

2. This is a suit brought by
of the endowment referred to
No. 1,327, from which the history
seek to cancel the notice issued in
by which they were informed that
in conformity to the intention of
up under Government management.

3. The nature of the defence
question referred to the Government
No. 5,111, dated 29th November
statement to be filed in the case.

4. The hearing of the suit is

5. I beg to add that the
any order I may issue to place
Government management, and a
28th February next, why the inj

ENCLOSURE

Translation of Plaint.

COMMUNICATED, with reference
No. 124, to the Government Pleader.
His opinion is also requested as to
suggested in the Government Pleader's
paragraph 4, or await the result of.

(A)

and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

Board of Revenue, dated 5th February 1878.

THOMAS, Esq., Collector of Tanjore, to
by to the Board of Revenue, dated Vallam,

orders translation of plaint in Original Suit
unsif of Tiruvaroor.

Arayanasamy Naick and another, purchasers
of Proceedings, dated 23rd March 1877,
suit will, also be seen. Now the plaintiffs
to the above-quoted Proceedings of Board
did not undertake to conduct the charity
founder, the endowment would be taken

set up depends upon the solution of the
Pleader's opinion in Board's Proceedings.
I have therefore not proposed the written

or the 26th February next.

have applied also for an injunction against
&c., belonging to the endowment under
been received by me to show cause, on the
could not issue.

d's Proceedings, dated 16th January 1878,
is requested to prepare a draft answer.
the Collector should now file the suit
er, dated 22nd December 1877, No. 150,
ent suit.

and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

No. 103.

ORDER THEREON, 11th FEBRUARY 1878, No. 205.

Miscellaneous.

2. The Collector should be instructed
if necessary.

3. The Government have no objection
in the Board's Proceedings of 16th January
if necessary in his reply to the more recent

(True Ex)

C. G. MASTER,
Secretary to Government.

To the Board of Revenue, with one enclosure.

Exd. W. H. French.

in favor of these charities; that these lands and choultry were mortgaged in 1871 by Ponnusawmi Chetty and Subramania Chetty to one Kristna Chetty for Rupees 11,500; and that on the latter obtaining a decree for the amount they paid it to him together with interest and obtained receipt.

5. Ponnusawmi Chetty, however, died in Karikal, wither he fled in conjunction with Subramania Chetty for fear of their creditors. These were consequently not examined, but the former during his life-time sent in a petition to the effect that although the deed was executed by him, the subsequent circumstances of the family did not permit him to act up to its terms, and that charity was never conducted in the choultry. The other individual, who is still living at Karikal, has however sent in a petition to the contrary, saying that the charities were all conducted out of the property in dispute, and that besides this there was considerable property left which could be made answerable for the debts which besides were not ancestral or incurred for family purposes, and that Ponnusawmi Chetty himself has in several offices admitted that this was charitable property, and that it was simply in collusion with his creditors that he got this charitable property attached and sold.

6. There were several witnesses examined, who all testify to the fact that the charities were conducted from the proceeds of the garden attached to the choultry. Among these witnesses are the present and the former Curnams of Nagore, the Village Munsif, and the Brahmins who were employed in the choultry.

7. In the Pymash accounts the choultry is entered as Plot No. 248, and as the choultry of Subramania Chetty and the deed of endowment distinctly states that the charities were conducted there for a long time. Even if it were a fact that the choultry was once used by the late Munsif it is only an admitted instance of the violation of the terms of the endowment deed. Again, under the terms of that deed the executant had right only to manage the charities out of the proceeds of the property specified, and not to alienate it on any account; and when the Court sold the choultry and the property to Narayanasawmi Naik and Subroyalu Naik it is clear they got only the right, title, and interest possessed by Ponnusawmi Chetty to the choultry, &c.

8. Under these circumstances it seems to me that Narayanasawmi Naik and Subroyalu Naik should be called upon to keep up the charity, and if they will not do it the endowment should be taken under Government management.

ENCLOSURE No. 1.—Translation of Endowment Deed.

THE Board concur in thinking that the purchasers should be called upon to keep the building in repair and to maintain the charities in accordance with the intentions of the founder, failing which steps must be taken to obtain possession and place the endowment under Government remanagement.

(A true Copy and Extract.)

(Signed)

C. A. GALTON,
Sub-Secretary.

To the Collector of Tanjore.

Esd. J. Tulloch.

205
2/5

No. 5,111.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 29th November 1877.

Read the following letter from H. S. THOMAS, Esq., Collector of Tanjore, to H. E. STOKES, Esq., Secretary to the Board of Revenue, dated Vallam, 2nd October 1877, No. 3,744:—

I HAVE the honor to report that in pursuance of the Board's Proceedings, dated the 23rd March last No.—, I had notices issued and served on (1) Narayanasami Naik and (2) Subbaroyalu Naik, the purchasers of the endowment founded by one Ponnusawmy Chetty, calling upon them to maintain the charities according to the intentions of the founder. In his letter of the 4th October, the Sub-Collector informs me that the purchasers have done nothing towards the proper keeping up of the charity, and I have the honor therefore to request that sanction be accorded to attach the endowment and place it under Government management.

COMMUNICATED to the Government Pleader with copy of Board's Proceedings, dated 23rd March 1877, No. 1,327, with the request that he will advise as to the action to be taken.

2. It is possible that the endowment might be regarded as being of a religious rather than a charitable nature, in which case the jurisdiction of the Board of Revenue would be excluded by Act XX of 1863; and even if such a plea is not likely to be put forward with success, it seems doubtful whether the Board have the power to summarily attach and place the endowment under Government management; Section 13, Regulation VII of 1817, which is the only provision enabling the Board to take such measures in respect to neglected trusts, seems to refer exclusively to the cases mentioned in the previous section; and in the present instance it does not appear that the nomination of the trustees has ever rested with the Government or a public officer, or that there is no private person competent and entitled to make provision for management.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Sub-Secretary.

To the Government Pleader, with one enclosure in No. 2,297 of 1877, to be returned, and copy of Board's Proceedings, dated 23rd March 1877, No. 1,327.

Copy to the Collector of Tanjore.

Exd. W. H. French.

Board of Revenue,
MADRAS.

1877.

Rec 2/10/78

PROCEEDINGS, 23RD MARCH 1877, No. 1,327.

End.

Received

MARCH.
No. 1,327.

Charity at Kottagam village in Nagapattinam Taluk, Tanjore District, and lands assigned thereto for maintenance. — Concerning with Collector in thinking that purchasers of — should be called upon to maintain charities in accordance with founder's intentions; and that, if they will not do it, steps should be taken to place the endowment under Government management.

205
6

No. 124.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 16th January 1878.

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, Madras, to C. A. GALTON, Esq., Sub-Secretary to the Board of Revenue, dated Madras, 22nd December 1877, No. 150 :—

I HAVE the honor to acknowledge receipt of the Board's Proceedings noted in the margin, requesting my opinion as to the proposal to take a choultry at Kottayam in the Tanjore District under Government management.

2. As far as I can judge from the deed of endowment, I do not think any difficulty can arise in the case on the score of the endowment being a religious one and therefore falling under Act XX of 1863. The objects of the charity appear to be purely secular, unless "the sacred grove" spoken of in the deed has any thing to do with religion.

3. I have always considered that Regulation VII of 1817, while throwing upon the Board of Revenue the responsibility of seeing that charitable endowments are not misapplied, left them without any means of exercising their authority except in the appointment of Trustees or Managers in cases falling under Section 12. Section 5 makes it incumbent on the Board to prevent misappropriation, but the Regulation nowhere says how this is to be done, and I doubt whether it can be said that the imposition of a duty by Statute implies all necessary powers for carrying out that duty. Certainly, in the present case where the property is in the hands of persons claiming to hold it, discharged from the charitable trust, I do not think any power can be implied from the Regulation for the Board to seize the property summarily.

4. I think therefore the only way to obtain the restoration of the property to the charity is for the Collector, as ex-officio Agent to the Board under the Regulation, to file a suit against the purchasers of the property, asking for a declaration that it is subject to the charitable trust and for recovery of possession and for appointment of a proper Trustee or Manager either from among the relatives of the founder or otherwise. The founder's heirs should also, I think, be made defendants.

5. I return the translation of the endowment deed.

THE Collector of Tanjore having reported the alienation of the endowment of a choultry in the village of Kottayam, Negapatam Taluq, and the discontinuance of the charities connected therewith, the lands assigned for maintenance having been attached and sold by decree of Court in satisfaction of debts due by a descendant of the founder, the Board directed that the purchasers should be called upon to keep the building in repair and maintain the charities. The Collector reported that notice had been served on the purchasers, but that no steps towards compliance with the requisition had been taken, and requested authority to attach the endowment and place it under Government management. The Board consulted the Government Pleader as to the action to be taken, and he points out that the only course open is to file a suit against the purchasers and founder's heirs. The Board concur in thinking it desirable that a suit should be filed; if successful, the Board's hands will be greatly strengthened in dealing with similar cases; if not, the need for legislation will be clearly shown. The sanction of Government is accordingly requested.

(A true Copy and Extract.)

C. A. Galton
Sub-Secretary.

To the Secretary to Government, Revenue Department,
with one enclosure in No. 2,297 of 1877 to be returned,
and copies of Board's Proceedings, dated 23rd March 1877, No. 1,327,
and 29th November 1877, No. 5,111.

Copy to the Collector of Tanjore.
" " Government Pleader.

Exd. T. O'Connor.

Nov 5
4/11/78
1877.
Board of Revenue,
MADRAS.

PROCEEDINGS, 29TH NOV. 1877, No. 5,111.

Encl.

Received

NOVEMBER
No. 5,111.

Choultry—at Kottayam in Negapatam Taluq, Tanjore District, founded by Pennuwaray Chetty.—Requesting Government Pleader's opinion on proposal to place the endowment attached to the — under Government management.

C. 29448 R. 11. 28. 1878
C. 29448 R. 11. 28. 1878

For order with
No 522
C. 29448

Settled against the purchases of the endow-
ment of the charitable choultry at Kottayam in
Nagapattinam Taluk, Tanjore District. Request-
ing sanction of Government for the institution
of a —

JANUARY.
No. 124.

Received
S. D. 205-11. 28. 1878

Received
S. D. 205-11. 28. 1878

Dec 22 1878
B. 23

PROCEEDINGS, 10TH JANUARY 1878, No. 124.

BOARD of GOVERNMENT,
MADRAS.

1878.
No 470.

Revenue Department

REVENUE DEPARTMENT

No. 470

205
1

From Pres. Board of Revenue

Dated 16 January 1878.

FOR ORDERS. 5. 56.

Bel 2

It is up that the
time of 2-30 on a
the action of the B. 2
the more
advantages for
situation in the content
Several useful
points of law will
be in issue
7/15/78

I do sanction the suit
if necessary under the
law. a suit against
for having been done
given up by the
opposite parties. I will

No 101

FOR ORDER

Invitation for
against the person
of the Court
Chaitanya Chaitanya
Tangor etc.

c. 6. 7. 1/3 Rs 2. 1/2

To

The Court of District Munciff
of Nagapattinam.

1. Narayanaswamy Naik son of
Sultha Naik
 2. Goshayappa Naik son of
Perappa Naik residing at
Yenagudi Namnilam Talug
Mearaidars —
- } Plaintiffs

1. H. J. Thomas Esq. Colly of Tanjore
& Esq. Agent to the Rd. of Revenue
 2. Vayjilinga Pillai residing at
Nagore, Nagapattinam Talug
- } Defendants

Due to cause the order of the Rd. of Rev.
mentioned below.

Valuation of the suit is Rs 266-1-6

1. The property specified below was sold
in auction in satisfaction of the amount
of Decree to the extent of about Rs 5000 ob-
tained by us in C.S. Nos 1 and 2 respec-
tively of 1873 on file of the Subordinate
Court of Nagapattinam against Ponnusami
Chetty and Subramania Chetty of Nagore
(both unconnected in this suit) defendants
in the said suits respectively. We purchased
the property at the above sale on the 25th

July

... put in possession by the court. We also paid the amount (Rs 158.00 and odd) of a decree passed in O.S. No. 61 of 73 on file of the said sub court in favor of one Christiana Chetty of Nagore on the security of the property in question. We also cleared certain other encumbrances & are in undisputed enjoyment of the property.

2. The 2nd Defendant who has no claim whatever to the property presented a petition to the sub collector stating that the said property was set apart for the maintenance of charity under a document executed by the said Ponnusami Chetty and others in 1861. He also alleged that the charity was kept from the profits of the property and that because the charity has been neglected since the purchase by us, we should be compelled to maintain it. Thereupon the Tahildar of Nagapattinam made a brief enquiry and finally on the report of the talukdar to the P. of Rev. a notice has been served upon us on the 24th April/77 through the Tahildar of Nagapattinam to the effect that

that it is in the order of the P. of Rev. we should keep up the charity in accordance with the intentions of the founder or it would be taken under govt. management.

3. The aforesaid Ponnusami Chetty & others owed a family in the sum of about Rs 2000 and they were debtors to others also in large sums. In order to discharge their creditors and to make provision for their own maintenance they executed a deed in 1861. That deed is not a genuine one and no charity was conducted in pursuance of its terms. The deed is further not valid.

4. Subsequent to the execution of the deed, Ponnusami Chetty and others have more or less engaged the property with & without possession, have held the mortgage of the land and otherwise dealt with the property as if it were their own.

5. We consequently pray for a decree cancelling the aforesaid order - an order which has been improperly passed on insufficient enquiry held in regard to a petition purporting that charity was once

and conducted. We also pray for our
costs being borne by the Defendants.

N.B.

As the order in question has been passed
by the R^d of Rev under Regulation 7 of
1817, the holder as Local Agent has
been made 1st Defendant in the suit.

Though the property here under spe-
-cified has been purchased by us se-
-parately in Court sales; it is our Common
enjoyment.

A stamp of Rs 10 is affixed to this
plaint under part 1 article 7 schedule
II of the Court Fees Act.

The cause of action arose on the 21st of
April 77.

(Here enter description of property)

21st Sept 77

/s/ Narraimannick Naik

/s/ Subbaya Naik

True Translation

/s/ H. J. Thomas
Collector

True copy

Ch. Cttn
M. Secretary

205
12

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 5th January 1878

Read the following

No 272

FROM

H. J. Thomas Esquire
Collector of Tanjore

TO

H. E. Stokes Esquire
Secretary to the Bd of Rev. Madras

SIR,

I have the honor to acknowledge for order
translation of plaint in C.S. No 259 of 1877 on
file of the District Munsiff of Tirunelveli
2. This is a suit brought by one Karayana
- sanny Nair and another purchaser of
the endowment referred to in P.D. No 823
March/77 No 327 from which the history of
the suit will also be seen. Now the plain-
- tiffs seek to cancel the notice issued in pur-
- suance to the above quoted Proc of Board
by which they were informed that if they
did not undertake to conduct the charity
in conformity to the intention of the origi-
- nal founder, the endowment would be
taken up under Govt management.

Endowment in P.D. No 823
to the Govt to Govt No 8
1878-79 February 178
No 312

No 522/78

No 102

3. The nature of the defence to be set up depends upon the solution of the question referred to the Joint Pleaders opinion in P^{re}s No 5111 of 29th November/77 and I have therefore not proposed the written statement to be filed in the case.

4. The hearing of the suit is posted for the 26th February ~~next~~ on 26.

5. I beg to add that the plaintiffs have applied also for an injunction against any order I may issue to place the lands &c belonging to the Endowment under Joint management and a notice has been received by me to show cause on the 25th February next why the injunction should not issue.

Tanjore Collector's Office } I have
Vallam Tanjore Taluk } per H. S. Thomas
31st January 1878 } Collector

Communicated, with reference to P^{re}s No 5116 Jan'y/78 & No 124, to the Joint Pleader who is requested to prepare a draft answer. His opinion is also requested as to whether the Colly should now file the suit suggested in the Joint Pleader's letter.

Letter of 22nd Decr/77 & No 150 para 4 on
await the result of the present suit.

205/13
/True Copy & Extract/

per J. C. T. Galsworthy
Agg Secretary

To
The Joint Pleader, &c.
/True Copy/

To
Agg Secretary

The Secretary to
Government R. D.
with Copy of enclosure
with reference to Board's
Proceedings dated 16th January 1878 & No 124

CH

M^cLXXIX

Revenue 1870-1871
No 522.
 PROCEEDINGS OF THE BOARD
 OF REVENUE.

Date 5th February 1878
Despatched by 1205
Recd by 1205
SUBJECT.

2
Communicated to Lord Alton
= date letter from Coll^d of Empire
governing the whole of
Plaint in A. 2009 of 1977
on Right of District Council
of Government regarding
certain restrictions

QUL

90

Suit in Tangier
Dist.

101-105

59 Feb 18 R. W. Feb 18