Archives 1—10,000—6-10-78.

(1) Number of pages 42

(2) Date of repair 24-11-84

(3) Initials of the Referencer

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue DEPARTMENT

G.O. No. / ~~B.P. No.~~	1992	Press. / ~~Mis.~~
Dated	10-12-1898	197 .

Not to be folded or roughly handled

GI

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

10th December 1878, No. 1,992.

Read again G.O., 26th November 1878, No. 1,922.

Read also the following paper:—

No. 124. From ERNEST BARCLAY, Esq., Government Solicitor, to the Secretary to Government, Revenue Department, dated Madras, 4th December 1878, No. 479.

I HAVE the honor to acknowledge receipt of the Order of Government, dated 26th November 1878, No. 1,988, Revenue Department, together with its enclosures, requesting the Advocate-General's opinion relative to the defence in Original Suit No. 11 of 1878 on the file of the District Court of Chittur, North Arcot, regarding plaintiff's right of management and possession of the Inam village of Vudamput.

2. I submitted the matter for the consideration of the Advocate-General, and I now forward herewith a copy of his opinion and return the enclosures which accompanied the above Order of Government.

ENCLOSURE No. 1.

IN THE DISTRICT COURT OF NORTH ARCOT.

Civil Suit No. of 1878.

Abdul Hakim Khan Sahib, *Plaintiff*,

versus

1. Mahomed Nasudin Sahib,
2. The Secretary of State for India, and
3. W. S. Whiteside, Esq., Collector of North Arcot,

} *Defendants.*

Written Statement of the 3rd Defendant on behalf of himself and the 2nd Defendant.

I, the undersigned 3rd defendant, state as follows:—

1. No such notice of this suit as is required by Section 424 of the Code of Civil Procedure has been given either to me-or to the 2nd defendant. The suit cannot therefore be entertained.

2. The suit is barred by Act XXIII of 1871 (the Pensions Act, 1871).

3. This suit, which is in effect a suit for a decree declaratory of plaintiff's right, cannot be entertained in its present form, inasmuch as the plaintiff being able to seek consequential relief, viz., the recovery of the village, does not do so, thereby defrauding the revenue.

4. I am informed and believe that the statements contained in paragraph 1 of the plaint are true, except that I do not know whether Nawab Kyruddeen Khan was the plaintiff's great-grandfather, and I crave leave to refer to the original perwana and other documents in that paragraph referred to.

5. I am informed and believe that the history of the Inam in question subsequent to the original grant was as follows: the Inam was granted by the Nawab long subsequent to 12th July 1792, and consequently is not one of those recognized by Regulation XXXI of 1802 as valid. In point of fact the first British Collector of the district (which was never permanently settled, Section VII) ejected the grantee, continuing, however, to pay him the net proceeds, in view probably to the Government ultimately having the case before them for determination (Section III). After this, in 1823 temporarily, and in 1848 finally, the Board of Revenue, in contravention of Section XLII, Regulation I of 1803, restored the Inam. In 1849, at his request, the registry of the village was transferred to this grantee's son, Samasumud Dowlah Abdul Khadar Khan, who continued to hold the Inam until his death in 1871, after which the village was registered in the name of the plaintiff, who held the Inam until removed by the orders of Government as hereinafter mentioned.

6. The plaintiff has for a long time been mismanaging the affairs of the said Inam. The tombs at Ranipet have been allowed to fall into disrepair, and the services to be performed there have not been performed owing to his neglecting to make proper payments for that purpose. He has misapplied the income of the said Inam and in various ways has acted in breach of the trust, and though he has repeatedly been remonstrated with for this he has continued so to act. For the preservation of the said Inam and in good faith I reported these facts to the Government and recommended that he should be removed from the management, and that the same should be conferred upon the 1st defendant, who is also a member of the family; and by the Order of Government, Revenue Department, 20th July 1877, No. 2,349, it was ordered that the management of the said Inâm should be transferred from the plaintiff to the 1st defendant, and the same have been transferred accordingly.

7. I submit that the said Order of Government and the transfer of possession made thereunder were perfectly legal and necessary for the preservation of the said endowment, and for the due carrying out of the objects thereof.

8. For the foregoing reasons I submit that this suit should be dismissed with costs.

I declare that what is herein stated is true to my knowledge, except as to matters stated on information and belief as to which I believe it to be true.

No. 125. ORDER THEREON, 10th December 1878, No. 1,992.

Miscellaneous.

THE Collector will file the answer drafted by the Government Pleader as slightly altered by Government.

2. He will report what issues are settled by the Judge.

(True Extract.)

Under Secretary to Government.

To the Board of Revenue.

Exd. A. F. Goodall.
Spare Copies.

6. The plaintiff has for a long time been mismanaging the affairs of the said Inam. The tombs at Ranipet have been allowed to fall into disrepair, and the services to be performed there have not been performed owing to his neglecting to make proper payments for that purpose. He has misapplied the income of the said Inam and in various ways has acted in breach of the trust, and though he has repeatedly been remonstrated with for this he has continued so to act. For the preservation of the said Inam and in good faith I reported these facts to the Government and recommended that he should be removed from the management, and that the same should be conferred upon the 1st defendant, who is also a member of the family; and by the Order of Government, Revenue Department, 20th July 1877, No. 2,349, it was ordered that the management of the said Inam should be transferred from the plaintiff to the 1st defendant, and accordingly have been transferred accordingly.

7. I submit that the said Order of Government and the transfer of possession made thereunder were perfectly legal and necessary for the preservation of the said endowment, and for the due carrying out of the objects thereof.

8. For the foregoing reasons I submit that this suit should be dismissed with costs.

I declare that what is herein stated is true to my knowledge, except as to matters stated on information and belief as to which I believe it to be true.

No. 125. ORDER THEREON, 10th December 1878, No. 1,992.-

Miscellaneous.

THE Collector will file the answer drafted by the Government Pleader as slightly altered by Government.

2. He will report what issues are settled by the Judge.

(True Extract.)

Under Secretary to Government.

To the Board of Revenue.

Exd. A. F. Goodall.
Spare Copies.

8/11/12.

1887/81

Govt. of (1878) Bijapur.

REVENUE.

To

The ADVOCATE-GENERAL, &c.,

&c.,

&c.

Dated November 26th.

Received December 3rd.

Read

G.O., 26th *November* 1878, No. 1,922.

Ind.

NOVEMBER.

Nos. 862-863.

Suit No. 11 *of* 1878, *in Chittur District Court relating to the Inam Village of Verdampat*:—Resolving to send the papers in this case to the Advocate-General for his opinion and to advise generally, after conference with the Government Pleader.

Rec'd 1992. 10-12-78

Read Judgment

No. 2,691.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 3rd October 1878.

Read the following letter from W. S. WHITESIDE, Esq., Collector of North Arcot, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Chittur, 25th September 1878, No. 294:—

I HAVE the honor to forward herewith translation of plaint in Original Suit No. 11 of 1878 on the file of the District Court of Chittur. The plaintiff, Abdul Hakeem Khan Sahib, has included the Secretary of State for India as the 2nd and the Collector of North Arcot as the 3rd defendants in the suit which is instituted to set aside the order of Government, No. 2,349, dated 20th July 1877, and to uphold the plaintiff's right of management and possession of the Inam village of Verdampat in the Gudiyatam Taluk.

2. The history of the case being fully recorded in the Proceedings of Government, dated 30th November 1876, No. 1,861, and in the Government Order above referred to, it is not necessary that I should now do more than refer the Board to the Proceedings and the correspondence therein mentioned.

3. I forward herewith a draft defence statement to be filed in the case on behalf of Government. It has been prepared by the High Court Vakil Iyasami Iyer, the leading member of the local Bar, and he has been engaged by me to conduct the defence of the suit in question on behalf of Government. I request the Board will be pleased to obtain early sanction of Government to conduct the defence of the suit in question at the public expense, and to file the statement after necessary revision.

4. I beg to add that the plaintiff never gave me the notice required under Section 424 of the Civil Procedure Code referred to in paragraph 5 of the plaint. It should be ascertained from the Government office whether he served any notice upon Government within the time and in the manner required by the said section.

5. I forward herewith for ready reference an extract from the Inam register bearing on the Verdampat Inam in question, and request it may be returned to me when no longer required.

6. The hearing of the case for the settlement of issues is adjourned at my request to the 24th proximo.

ENCLOSURE No. 1.—Translation of Plaint.

ENCLOSURE No. 2.—Draft Answer.

ENCLOSURE No. 3.—Extract from Inam Register.

BEFORE requesting the sanction of Government for the defence of the suit the Board resolve to refer the papers to the Government Pleader with the request that he will advise as to the answer to be filed, and if necessary revise the draft statement, a difficult question being involved.

2. The Board think that the suit can be defended on the ground that the jurisdiction of the Civil Courts is barred by the Pensions Act, and that objection may be taken to the form in which the claim has been put forward and to the calculation of the institution fee, Clauses 1 and 3 of the written statement proposed, but they question whether the position that Act XX of 1863 does not apply to the case and that the Government have the power of dismissing the plaintiff or resuming the Inam for neglect of duty and malversation is tenable. The Inam was confirmed for the expenses connected with the maintenance of the tomb of the Nawab Kyrudin Khan and his sons as shown by the title-deed and is undoubtedly a religious endowment and as such governed by Act XX of 1863; in recent Proceedings, copy of which will be furnished

to Mr. Handley, the Board have expressed the opinion that by that enactment Government were deprived of all power of interference with the management of religious institutions and no longer possess the power to resume Inams granted for religious purposes, even though the conditions of the grant have not been observed. If this view be correct the Inam Rules so far as they authorize resumption of such Inams are opposed to the law and cannot be relied on in support of the action taken by Government in this case.

3. The statement in Clause 6 that the plaintiff was a mere agent of Ameer-ud-Dowlah and therefore not entitled to sue for possession and management of the tomb or village appears incorrect; the circumstances under which he succeeded to the post of trustee and was deprived of the management are detailed in the papers recorded in G.Os., dated 30th November 1876, and 20th July 1877, copies of which accompany this reference; the title-deed was issued in the name of Sarfaraz-ud-Dowlah and on his decease the Inam devolved to his son the plaintiff; there is apparently nothing on record to bear out the assertion that the plaintiff and his father were mere agents of Ameer-ud-Dowlah; on the contrary, in his letter, dated 15th June 1876, the Collector states that the latter transferred the Jaghire as a gift to his son, the plaintiff's father.

4. The Collector will apply for a further adjournment to enable the Board to obtain the orders of Government after consulting the Government Pleader.

(A true Copy and Extract.)

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

To the Government Pleader, with 3 original enclosures to be returned, and copy of G.Os., dated 20th July 1877, No. 2,349, and 30th November 1876, No. 1,861; also copy of Board's Proceedings, dated 10th July 1878, No. 1,911, and 3rd October 1878, No. 2,690; and of G.Os., dated 28th August 1874, No. 1,098; 4th April 1876, No. 639; 3rd February 1877, No. 504; and 22nd August 1877, No. 2,553.

" Collector of North Arcot.

Rd. W. J. Lewis.

1878.

BOARD OF REVENUE,

MADRAS.

To

THE GOVERNMENT PLEADER,

&c., &c., &c.

Dated October 3rd.

Printed 110.

Received

PROCEEDINGS, 3RD OCTOBER 1878, No. 2,691.

Original Suit—No. 11 of 1878 instituted in the Chittur District Court, North Arcot, regarding plaintiff's right of management and possession of the Inam village of Verdiampat in Cudiyatam Taluk.—Referring to Government Pleader papers relating to —, and requesting him to advise as to the answer to be filed.

1992/4

No. 2,955.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 4th November 1878.

Read the following letters:—

From J. W. HANDLEY, Esq., Government Pleader, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Madras, 22nd October 1878, No. 133.

3rd October 1878, No. 2,691.

I HAVE the honor to reply to the reference by Board's Proceedings noted in the margin.

2. I feel very doubtful whether there is any good defence to the suit other than the technical ones as to want of notice and omission to ask for consequential relief as well as declaratory decree. The Pensions Act does not, I think, apply to the case. The Inam in question seems to come under Regulation VII of 1817, which expressly reserves the jurisdiction of the Civil Courts, and that Regulation is not, I think, affected by the Pensions Act, which, though doubtless very wide in its terms, is intended to be only a consolidation of the existing law as to personal Inams which had previously been governed by Regulation IV of 1831 and subsequent enactments. If Regulation VII of 1817 governs the case, although the controlling power over the Inam might lie with the Board of Revenue under Government, I do not think Government would have any right to dispossess a Manager or Trustee of an endowment without recourse to a Civil Court.

3. If the endowment is of a religious character within the scope of Act XX of 1863 the case is worse for Government, for that Act expressly divests Government of any right of control over the management of such endowments (See Section XXII).

4. I see in some of the papers a suggestion that the original grant was invalid against Government, and perhaps it may be suggested that this would give a right of interference. Whether the grant was originally binding on the Government or not, and probably it was having been made in 1797, I do not think Government could, after allowing the village to be held as an endowment so many years, summarily resume it, and unless they could do so I do not see by what right they could transfer it from one holder to another.

5. I have drawn a written statement which, I think, raises all the arguable grounds of defence. The facts as to the history of the Inam, &c., should, I think, be stated more fully than in that prepared by the Vakil, and the quotation of authorities had better be reserved until the hearing.

6. I return the three original enclosures to the above Proceedings.

ENCLOSURE No. 1.—Revised Answer.

From W. S. WHITESIDE, Esq., Collector of North Arcot, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Chittur, 20th October 1878, No. 319.

WITH reference to paragraph 4 of the Board's Proceedings, No. 2,691, of the 3rd instant, I have the honor to state that on the application of the Government Vakil the Court have adjourned the hearing of the Virdamput suit (No. 11 of 1878, on the file of the District Court) to the 16th of December next. The written statement on behalf of Government has to be filed a week before that date.

G.O., 30th November 1876, No. 1,861.
G.O., 20th July 1877, No. 2,349.

SUBMITTED with copy of Board's Proceedings, dated 3rd Oct. 1878, No. 2,691, for the orders of Government with reference to the orders noted in the margin.

6 N. 4869.

Revenue department.

Memo for orders

1992/6

Board's Proceedings dated 4th November 1878 No. 2955 } Submitted for orders.

2. The history of the case is fully given in the correspondence recorded in G.O.s 30th November 1876 and 20th July 1877 Nos. 1861 and 2349 respectively.

3. If is the decisions conveyed in these two orders which have given rise to the present suit. The earlier of the orders held that the Government could resume the grant referred to or make it over to another family in the circumstances of the case, and that the Collector was in error in supposing that there was no power to intervene, and the later accordingly transferred the possession and management of the village now under litigation from

4869.

1878.

Board of Revenue, MADRAS.

To

THE SECRETARY to GOVT.,
REVENUE DEPARTMENT.

Dated November 4th.

Printed 11th.

Received

PROCEEDINGS, 4TH NOVEMBER 1878, No. 2,955.

Read,

NOVEMBER.

No. 2,955.

Suit, Original—No. 11 of 1878, on the file of the District Court of Chittur in North Arcot District regarding plaintiff's right of management and possession of the Inam village of Viriampat granted for the maintenance of the tomb of Nawab Kyruddin and his sons and for religious service.—Recommending that the sanction of Government be accorded for the defence of—.

Abdul Hakim Saheb (Plaintiff)
v. Nasir-ud-din Saheb (1st Respondent).

4 The Board [x] took that there was undoubtedly a religious endowment and as such governed by Act XX of 1863. They doubt whether Government have the power of dismissing the Plaintiff or resuming the Enam for neglect of duty and misbehaviour. They however recommend the defence of the suit in order that the important question involved may be judicially determined.

5 The Government Pleader whose opinion the Board have obtained finds "very doubtful whether there is any good defence to the suit other than the technical ones" suggested in the draft-answer submitted by the Collector viz (1) want of notice, (2) omission to ask for consequential relief as well as declaration, decree -

[x] Board's Proc. 3rd Oct. 1878 No 2691.

[x] Board's Proc. 4th Nov 2/878 No 2955

[x] Act for judicial decisions under Reg VII of 1817 and Act XX of 1863 vide
M. H. C. R - Vol III - 335
" V - 334
" VII - " 111

1997

(3) The suit is barred by Act XXIII of 1871 (the Limitation Act).
(4) The institution fee is not fully paid.

6. Mr Handley however has drawn a written statement which raises all the arguable grounds of defence. The 1st para of it refers to the want of notice under Section 424 of the Civil Procedure Code. But para 5 of the Plaint states that "on 16th May 1878 the Plaintiff gave notice to Government that their illegal order above referred to should be revoked", and the enclosed paper obtained from the petition writer to a certain extent bears out this Statement. The Plaint was filed on 20th July 1878, and ~~three months~~ previously ~~elapsed~~ two months ~~notice was~~ plaintiff had requested ~~to have decree~~ and this ground that the decision of Government ~~& defence therefore fails as a ground~~ be revoked. This is not however ~~notice~~ of the recorded ~~statement~~ ~~complete~~ notice of the ~~record~~ paragraph refers to want of jurisdiction of the Court under the Pensions Act, but

Mr Handley himself thinks that this Act "does not apply to the Case".

vide para 2 of his letter.

7. Paragraph 3 refers to insufficiency of the Institution fees and informality in obtaining the Plaint. But there are defects which are not fatal to the Case.

× Vide Sections 53 to 56 of the Civil Procedure Code

8. The remaining paragraphs of the Statement relate to questions of fact, which even if admitted on both sides, are not sufficient to demonstrate the legality of the intervention of Government, if the Case comes within the scope of the Act XX of 1863 as alleged by the Board.

※ 4, 5 & 6.

9. Mr Handley remarks that the Grant in question "seems to come under Regulation VII of 1817 which expressly reserves the jurisdiction of the Civil Courts" and which he thinks is "not affected by the Pensions Act", and that even under that Regulation, the Government have no "right to dispossess a Manager or Trustee of an endowment without recourse to a Civil Court".

10. Mr Handley adds — "If the endowment is of a religious character within the scope of Act XX of 1863, the Case is worse for Government, for that Act expressly denies to Government any right of Control over the management of such endowments (See Sec XXII)".

11. But the Board are positive on this point, for they say — "the village in question being a religious endowment falling within the scope of Act XX of 1863, Government are precluded from resuming the Inam or interfering with its possession".

× The second of these Rules referred to in para 4 supra.

12. Mr Handley alludes to a suggestion in the Correspondence that the original Grant was invalid against Government

× On this point, please see the Memorandum for orders just issued with G.O. 30th Nov. 1876 No. 1861-RD.

the

and that this might perhaps give them the right of interference, but he added at the same time, "Whether the Grant was originally binding on the Government or not, and probably it was, having been made in 1797, I do not think Government could after allowing the Village to be held as an endowment so many years summarily resume it, and unless they could do so I do not see by what right they could transfer it from one holder to another."

13. The question whether Government have the power to interfere with religious endowments under any circumstances has been recently fully discussed in connection with Board's Proceedings dated 3rd. October 1898 no. 2690. The Honble members were of opinion that the Govt.

1992
9

have this power when the distribution for which the endowment was originally granted does not now exist, and that ~~they have not (but that the intended beneficiary)~~ the ~~grant~~ when the institution still exists but the endowed property is being misappropriated (as in the case) ~~apparently connected with the latter part of~~ it is for those interested to take action. They did not deem it expedient to deal with the general question while the ~~new~~ Religious endowments Bill is under consideration.

Here the question must be answered one way or the other

EJM

Vide note on C. No. 4383.

See draft order on Bd. Pro: 30 Oct 1898 No 2690 at Page 9 ante

research

Rev. Department 1792/10

No 1922. dated 28th November 1878

PROCEEDINGS of the MADRAS GOVERNMENT.

READ the following letter from

Bd Rev. No 2955. dd 4-11-78.

To

Advt Genl

This being an important case, the papers will be sent to the Advt Genl, who will state his opinion with reference to the following remarks, and advise generally, after conference with the Govt Pleader.

2. It is to be observed that the grant of the village by the Nabob Walajah bears date subsequent to 12 July 92, it is not one of those which were confirmed by Regn XXV of 1802 as valid. In point of fact, the first British Collector of the district (who was never permanently settled - Sect VII) objected the grantee, containing however to pay him the net proceeds, in view possibly to the Govt ultimately being the case before them for determination (Sect III). After this, in 1823 temporarily and in 1848 finally, the Bd of Rev. without obtaining the requisite decision of Govt, authorised the Collr to restore

the lands to be granted: thus
practically exempting them from the
public assessment & enacting as known,
in direct contravention of Sect XLII,
Reg I, 1803.

3. In regard to the Govt Solicitor's opinion
that his "know" comes under
Reg VII, 1817, it may be pointed out
1st) that it appears to be a mere
charitable grant in its origin, viz
that it was found with the view of
trans the property vested maintaining
in perpetuity a style into the words
ceremonies the tenets of an ancient
and was not designed for a college,
charity, or other beneficial purpose.
2dly) that the date of its unauthorised
restoration by the Bd of Rev is since
the Comp. after the enacting of that
Regn, which appears prima facie to
contemplate only endowments
heretofore existing; nor does there
appear to be anything in the Regn
to bar the resumption of any en-
dowments, especially much more of
unauthorised ones; the disclaimer in Sec 6 of
notwithstanding, that the object
of the Regn is "not to resume" for the
benefit of Govt.

4. If the Village does not come under
Reg VII/17, then this Enactment
Act XX/63 does not apply, as the Govt

proposed to relieve the Bd of Rev
of the superintendence with which other
Depts had unnecessarily burdened them; and
that without a certificate authorising
Govt, as such, it is not competent
to take cognizance of the claim, the
Village not being an endowment
[illegible], Act XXIII/71 - Sect 4 (c).

Govt
Bd of Rev
Board of Revenue

Copy of 187 } Madras.

To

Dated
Recd. } 187 , No.

Nos.

Original Summons with Rs No in Suit No to Pleader and to Fort Pleader under Chapter - 14/1/15

No. 479.

Madras 4th December 1878.

From

Ernest Barclay
Government Solicitor
Madras

To

The Secretary to Government
Revenue Department
Fort St. George

Sir,

1. I have the honor to acknowledge receipt of the Order of Government dated 26th November 1878, No. 1983 Revenue Department, together with its enclosures, requesting the Advocate Generals opinion relative to the defence in A.S. No. 11 of 1878 on the file of the District Court of Chittoor, North Arcot, regarding Plaintiffs right of manage-ment and possession of the Inam Village of Vudampet.

2. I submitted the matter for the consideration of the Advocate General and I now forward herewith a copy of his opinion and return the enclosures which accom-panied the above Order of Government.

I have the honor to be
Sir
Your most Obedient Servant

Ernest Barclay

Government Solicitor

1992/14

Opinion.

I have conferred with the Government Pleader as directed by the Order of Government dated the 26th November 1878, No. 1988, Revenue Department, upon the questions involved in Civil Suit No. 11 of 1878 on the file of the District Court of North Arcot.-

The plaint states that the grant under which the plaintiff claims was made in 1802, but he does not, apparently, produce it; and I cannot ascertain whether the document, or a true copy of it, is forthcoming. The plaint, para: 1, further states that the grant was made for "services expenses &c. connected therewith" - that is with the tomb of Nabob Ruaddeen Khan, the Plaintiff's great-great-grandfather. The written statement of the 3rd defendant, the Collector, settled by the Government Pleader, para: 4, says - "I am informed and believe "that the statements contained in para: 1 of the plaint are true, "except that I do not know whether Nabob Ryanddeen Khan "was the Plaintiffs' great great grandfather", and para: 6 contains the following statement - "The Plaintiff has for a "long time been mismanaging the affairs of the said endow- "ment. The tombs at Ranipet have been allowed to fall into "disrepair and the services to be performed there have not been "performed owing to his neglect to make proper payments for "that purpose".

Amongst the documents sent to me is an Inaam Register, or an extract from or a portion of it. It appears to be dated the 2nd February 1866 and to be signed by W. J. Blair, the Officiating Inaam Commissioner, and it contains this statement. "This is a Village granted to the grand-

grand-father of the present Managers for the maintenance of the tombs of the grantee's father and brother and the management is continued in the same family". What the services are which ought to be performed, but which have been neglected by the Plaintiff, does not clearly appear, but if they are services enjoined or even recommended by the Mahomedan religion the endowment will probably be rightly treated as a religious endowment. It would come under the words of the preamble and Section 2 of Regulation VII of 1817 as an endowment "for the support of Mosques, Hindoo "temples, Colleges and Choultries and other pious and beneficial "purposes", the superintendence of which was, by the Regulation, vested in the Board of Revenue. I do not know whether the Board did in fact assume the superintendence of this endowment. It is also probably within the words of the preamble to Act XX of 1863 which declares that it is expedient to relieve the Board of Revenue and the Local Agents from the duties imposed upon them by Regulation VII of 1817, so far as those duties embrace the superintendence of lands granted for Mosques, Hindoo Temples and for other religious uses: the appropriation of endowments made for the maintenance of such religious establishments: the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof: or involve any connection with the management of such religious establishments. The Act contains provisions giving effect to the intention announced in the preamble. If the facts turn out to be as I have assumed them to be, it would seem that the course adopted by the Government in removing the plaintiff from, or appointing the 1st defendant to the management was not

warranted

1992

warranted by law, and I don't think any thing contained in Regulation XXXI of 1802 (repealed by Madras Act II of 1869) would afford a legal ground of justification. The Regulation must be read in connection with Regulation VII of 1817 and Act XX of 1863.

It is very doubtful whether the Pensions Act (XXIII of 1871) applies in this case, partly for the reasons stated in the letter of the Government Pleader to the Secretary of the Board of Revenue, dated the 22nd October 1878, No. 133, and partly for another possible reason. If the grant in this case was a grant of land, and not of land revenue, the Act may be held not to be applicable. The words of Section 4 of Act XXIII of 1871 are "Except as hereinafter provided no Civil Court shall entertain any "suit relating to any pension or grant of money or land-revenue conferred or made by the British or any former "Government, whatever may have been the consideration "for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which "such pension or grant may have been substituted."

The expression "grant of money or land revenue" includes any thing payable on the part of Government in respect of any right, privilege, perquisite or office.

It has been held by the High Court of Bombay that where the grant is a grant of the proprietorship of the soil, though it may reserve the rights of Hackdars and Inamdars, and not of the revenue thereof, the Act does not apply. See the Indian Law Reports, Bombay Series Vol. 1 page

523.

1882
16

523. If this view be correct, it would perhaps be held in the present case that the onus of proving that it was the land revenue only, and not the land, that was granted in 1802 was upon the Defendants, and I do not know whether they could establish this.

It appears to me that if the Plaintiff brought a Suit against the 1st defendant within six months from the date of ouster and asked for possession he would have been entitled to a decree under Section 9 of the Specific Relief Act 1877 (No. 1 of 1877). In the present Suit he does not seek for possession, and this is one of the objections taken to the Suit. If the Plaintiff should now bring a Suit for possession he must prove a title as against the 1st defendant, and it may be a good answer if the first defendant can establish the alleged misappropriation of funds, mismanagement or neglect by the Plaintiff.

/Signed/ P. O'Sullivan
Advocate General.

Madras, 2nd December 1878.

/True Copy/
Ernest Barclay
Government Solicitor.

No 1992 (39) 17 R.D

Proceedings of the Madras Government

Under date the 10 December 1878

Read a paper in
G.O. 26 November 1878,
No 1922.

Read also letter from the Govt. Solicitor, Madras, dy 4 December 1878, No 479 forwarding copy of Advocate Genl's opinion on defence in O.S. No 11 of 1878 on the file of the District Court of Chittoor.

1. The Collr will file the answer drafted by the Govt. Pleader, as slightly altered by Govt.

2. He will report what issues are settled by the Judge.

[illegible]

To Secy to the Board of Revenue dy 10 Decr
14 Forwarded Copy for Inf. dy 16 do

No 124

Paper referred to in letter from the Government Solicitor to the Secretary to Government, Revenue Department, dated 4th December 1878.

Per 6363/78

Defence of Suit &c
11 of 1878 - Chittur

1992/19

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

26th November 1878, No. 1,922.

Read the following paper :—

No. 362. Proceedings of the Board of Revenue, dated 4th November 1878, No. 2,955.

Read the following letters :—

From J. W. HANDLEY, Esq., Government Pleader, dated Madras, 22nd October 1878, No. 133, regarding the suit in Chittur District Court relating to the Inam Villages of Virdampett.

From W. S. WHITESIDE, Esq., Collector of North Arcot, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Chittur, 20th October 1878, No. 319.

With reference to paragraph 4 of the Board's Proceedings, No. 2,691, of the 3rd instant, I have the honor to state that on the application of the Government Vakil the Court have adjourned the hearing of the Virdampett suit (No. 11 of 1878, on the file of the District Court) to the 16th of December next. The written statement on behalf of Government has to be filed a week before that date.

G.O., 30th November 1876, No. 1,861.
G.O., 20th July 1877, No. 2,349.

Submitted with copy of Board's Proceedings, dated 3rd Oct. 1878, No. 2,691, for the orders of Government with reference to the orders noted in the margin.

2. The Jaghire Village of Virdampett, granted for the maintenance of the tomb of Nawab Kyruddin and his sons and for religious service, was held by plaintiff as Manager and Trustee of the endowment until 1877, when he was removed from office on account of bad management and misappropriation of the funds, and possession of the village was transferred to Nasir-ud-din, 1st defendant, by order of Government, dated 20th July 1877, No. 2,349. Plaintiff now sues to have this order cancelled. The Government Pleader doubts whether there is any good defence to the suit other than the technical grounds of want of notice and omission to ask for consequential relief. The Board are of opinion that the village in question being a religious endowment, falling within the scope of Act XX of 1863, Government are precluded from resuming the Inam or interfering with its possession, but they recommend that the defence of the suit be sanctioned in order that the important question involved may be judicially determined.

(A true Copy and Extract.)

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

No. 363. Order thereon, 26th November 1878, No. 1,922.

Miscellaneous.

This being an important case, the papers will be sent to the Advocate-General, who will state his opinion with reference to the following remarks, and advise generally, after conference with the Government Pleader.

Ir. L. 1992
27-10-12-78

2. It is to be observed that the grant of the village by the Nabab Wallajah being long subsequent to 12th July 1792, is not one of those which were recognised by Regulation XXXI of 1802 as valid. In point of fact, the first British Collector of the district (which was never permanently settled—Section VII) ejected the grantee, continuing however to pay him the net proceeds, in view probably to the Government ultimately having the case before them for determination (Section III). After this, in 1823 temporarily, and in 1848 finally, the Board of Revenue without obtaining the requisite decision of Government, authorised the Collector to restore the lands to the grantee: thus practically exempting them from the public assessment and creating an Inam, in direct contravention of Section XLII, Regulation I, 1803.

3. In regard to the Government Pleader's opinion that this 'Inam' comes under Regulation VII, 1817, it may be remarked:—

1stly.—That it appears to be a mere charitable grant in its origin, though burthened with the service of maintaining in proper style with the usual ceremonies the tomb of an ancestor of the grantor; and was not assigned for a college, choultry, or other beneficial purpose.

2ndly.—That the date of its unauthorised restoration by the Board of Revenue is long after the enacting of that Regulation, which appears from its Preamble to contemplate only endowments then subsisting; nor does there appear to be anything in the Regulation to bar the resumption of any endowments, on just and proper grounds, much more of unauthorised ones; the disclaimer in Section XV notwithstanding, that the *object* of the Regulation is not to resume "for the benefit of Government."

4. If the village does not come under Regulation VII of 1817, then it is presumed Act XX of 1863 does not apply, as that was passed to relieve the Board of Revenue of the superintendence with which the Regulation had invested them; and that without a certificate authorised by Government, a Civil Court is not competent to take cognisance of the claim, the village not being an *enfranchised* Inam, Act XXIII of 1871, Section 4 to 7.

(True Extract.)

Under-Secretary to Government.

To the Advocate-General, with five enclosures.
,, the Board of Revenue.

Exd. W... ch.
...ies.

1492
20

Original

Govt. of 1878 Madras

REVENUE.

To

The BOARD OF REVENUE.

Dated December 1878.

Printed 1878.

Read Encl.

G.O. 1078 Revenue 1878, No. 1,692.

DECEMBER.

Nos. 124-125.

Original Suit No. 11 *of* 1878 *on the file of the District Court of Chittur,*—Directing the Collector to file the answer drafted by the Government Pleader in connection with —, and requesting him to report what issues are settled by the Judge.

8-7-12

MADRAS RECORD OFFICE.
Government Records.

Revenue Department.

G. O. (Printed).
Dated 10 - 12 1878.
No. 1992.