M.R.O. 1—77,000—8-6-51.

(1) Number of pages 1-66

(2) Date of repair 14-5-38

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 799 Press ~~Mis.~~ (copy)

Dated 13-7- 1880.

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

13th July 1880, No. 799.

Read again G.O., 3rd January 1880, No. 3.

READ ALSO THE FOLLOWING PAPERS:—

No. 101. Letter from the Advocate-General, Madras, dated 8th January 1880.

ABSTRACT.—Forwarding opinion relative to the rights of Zemindars in village sites with reference to establishment of liquor shops by Abkári renters.

No. 102. Proceedings of the Board of Revenue, dated 26th January 1880, Miscellaneous No. 1,043.

Read Proceedings of the Madras Government, Revenue Department, dated 3rd January 1880, No. 3.

ABSTRACT.—Referring to the Advocate-General for his advice Board's Proceedings passing orders on Collector's proposal to keep the Abkári Farm of Vissanapet Division in Kistna District under Government management for the present.

COMMUNICATED to the Collector of the Kistna District.

2. Some light is thrown on the question of the rights of Zemindars in land excluded from the permanent settlement by the correspondence in connection with certain claims to compensation for land taken up for public purposes in the Kálahasti and Venkatagiri Zemindaris and that arising out of a difficulty experienced in obtaining sites for Christian Schools and Churches disposed of in the orders marginally noted.

G.O., 4th March 1872, No. 377.
„ 5th April „ „ 58.

3. The Advocate-General will be furnished with a file of papers relating to the questions and copy of G.O., dated 16th December 1872, No. 1,684, on which the existing rules to regulate the appropriation of village site are based.

(True Extract.)

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

No. 103. Proceedings of the Board of Revenue, dated 13th April 1880, Miscellaneous No. 3,967.

ABSTRACT.—Submitting to Government letter from Advocate-General stating that his opinion regarding the rights of Zemindars in land excluded from the permanent settlement was sent to Government on 8th January 1880.

No. 104. ORDER THEREON, 13th July 1880, No. 799.

Separate Revenue, No. 13.
Abkári.

THE Government consider it advisable that an important question of this kind involving material public interests should be brought before the Courts for decision as soon as possible if the objectionable course which has been adopted is persisted in by the Zemindar concerned in the present or in any other similar case.

2. In the instance brought to notice in his letter, dated 28th July 1879, No. 1,693, the Collector of the Kistna District should warn the Zemindar to refrain from the course which he has adopted, and report the result.

(True Extract.)

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

To the Board of Revenue.

Exd. W. H. French

45 Copies.

Extract

Gobt. of (1880) Madras.

REVENUE.

To

THE BOARD OF REVENUE.

Dated July 13th.

Printed 17th.

Read. Encl.

G.O., 13th July 1880. No. 799

JULY.

Nos. 101—104.

Rights of Zemindars in Village sites with reference to establishment of Liquor shops by Abkári renters.—Directing with remark, with reference to Revenue Board's Proceedings regarding — the Collector of Kistna, in the instance brought to notice in his letter of 28th July 1879, to warn the Zemindar to refrain from the course which he has adopted, and report the result.

are the only persons entitled to question the Zemindars right to deal with the village-site. After the decided opinion expressed by the Advocate-General, an opinion recently repeated, as I am informed, in answer to the Board's reference of the 27th January 1880. No. 1043, I need hardly say that my opinion so far as it disagrees with that of the Advocate General is expressed with considerable doubt and hesitation - Subject to this reservation, I must say that looking to the terms of the Regulation I do not think that the Zemindar can be considered as owner of the village-site so as to be entitled to demand rent from persons occupying it. As far as I know, the term "kattubadi" has not received any technical

technical interpretation and must therefore be construed in its primary etymological sense. So construed the term as used in sections 4 and 12 of the Regulation must, I think, be taken to denote village-sites, and if they were as a matter of fact excluded at the permanent settlement from the assets of the Zemindary, it seems to follow that the Zemindar is no more entitled to raise a revenue by means of rents levied on such lands than to make the other impositions enumerated in section 4.

It is not however clear that in the case reported by the Collector of the Kistna District the question of the Zemindar's right to such rent really arises; for from the facts stated by the Collector it would rather appear that the

money exacted from the renters was in the nature of a tax. In this view of the case, even if a demand for rent proper were maintainable, the present demand, being at the best a demand for what is virtually a tax under color of a demand for rent, could not I think be legally enforced.

Whichever be the correct view of the case, the immediate dispute must be between the Zemindar and the villagers, the interests of Government being affected by the demand in an indirect manner only. If it is not thought more prudent to avoid all difficulties by proceeding under the Land Acquisition Act, it only remains for Government to warn the Zemindar that the practice

of making such demands is illegal, and, should it be necessary, to support in their resistance to the demand the persons upon whom they are made.

3. I return all the papers.

I have the honor to be

Sir

Your obedient Servant

H. St. Shepherd

Acting Jr. Pleader

Madras, 8th January, 1880.

13

From

The Honorable P. O'Sullivan

Advocate General

To

J. H. Garstin Esqre

Acting Secretary to Government

Revenue Department.

Sir,

I have the honor to forward herewith my opinion on the question raised in the order of Government, dated 3rd January 1880, No 3,

Pro: B/R. No. 34 dated 7 Jany/76.
Pro: B/R No. 2197 dated 1st Aug/79.
X Subject in lieu of Enclosure No 3 of 3/1/80 No 3.

and to return the papers noted in the margin.

I have the honor to be

Sir

Your most Obedient Servant

P O'Sullivan

Advocate General.

Read 24-7-80

Observations of Legislative Steps on the Village Sites Question

Collector

Chingleput

19 July 1880

To the Secretary to G.O.M.

Rev. Dept. 5465, 22/7/80

Collr. Chingleput Rep. 19/7/80 B 31-1-80 Para 2 to

Revenue (Land) Dept.

No 3027

From H. P. Shephard

Actg Sec. to Govt.

To J. C. Thornhill Esqr.

Advocate General

Fort St. George

9th January 1880

Packet No. 104

Rec'd 1880 Dec 15

From The Advocate Genl.

Madras.

To, The Chief Secy: to Govt.

Fort.

Dated 8 Jany.

Ans. 13 Dec 1880 No. 6

Forwards opinion in reply to the cases & is accepted & hereby Zemindary in. lieu of the establishment & Liquor shops through whom a document for their leave and license 8-1-80

CJ 30-6
VC 1-7
RC 23/6 & 28/2 &c.
C-31/1/80 & 1/2 &c

Opinion.

With reference to the order of Government, dated the 3rd January 1880, Revenue Department, No. 3, the question raised is one of some difficulty. In the case of Zemindaries I understand that whatever rights in the soil the Government had, it transferred to the Zemindars under Regulation XXV of 1802. Certain reservations were made by that regulation which however do not include Nattams, village sites, so that I think the Government did not reserve to itself any rights in village sites in Zemindaries. The Zemindaries constituted for the first time in 1802, or then given away, the Government, as between itself and the newly constituted Zemindar, might no doubt have reserved the control of village sites: but in the case of Zemindaries in which an estate of inheritance had descended prior to the Regulation and the Government had made no grant to the then Zemindar or proprietor, but merely fixed a permanent assessment to be paid by the Zemindar and his successors to the Government in pursuance of the Regulation, the Government

prima facie had no proprietary right in the village site or any other part of the soil. The question is a different one as between the Zemindar and his tenants or land-holders. It may be that the right to some or all village sites was vested in the villagers and not in the Zemindars, and in such cases the Regulation did not infringe or affect the rights of the villagers. This is, I think, clear from the words of the Regulation, but still more so from Regulation IV of 1822. It may be that since 1802 village sites have been abandoned and cultivated in some cases, or purchased by the Zemindars or other persons; or a title by adverse possession has been acquired. It is a dispute in which the persons having any interest which would entitle them to be heard are the Zemindars and the villagers. Therefore, if the Zemindar requires a rent or douceur to be paid to him as owner or part-owner of the land by a person who sets up a liquor shop upon a part of a village site the question is whether the Zemindar has the right which he asserts, and if the villagers do not question the right of the Zemindar the presumption is that he has some such right. The shop-keeper generally would have no legal right to occupy the site. He might in certain cases, if he had established a shop and an action of ejectment were brought against him, rely on the rights of the villagers or of some third parties: but it is unlikely that an Abkari renter would adopt this course. If he did it would be a question in each case whether the title was in the Zemindar or the jus tertii was made out.

Under all the circumstances it seems to me that the best course to take is that suggested by the Board of Revenue in para 2 of their Proceedings dated the 7th October 1879.

P. J. Sullivan
Advocate General.

Madras, 8th January, 1880.

Revenue Department.

Fort St. George the 1st May 1843.

Proceedings of the Board of Revenue.

Dated 20th January 1843.

Read Proceedings of the Madras Government Revenue Department, dated 3d January 1843 (No 3), referring to the Advocate General for his advice Board's Proceedings bearing on the Collector's proposal to adopt the Ryotwar System of Assessment Divisions in Madura District under Government arrangement for the present.

Communicated to the Collector of the Western District.

2. Some light is thrown on the question of the rights of Zemindars in land excluded from the Permanent Settlement by the Correspondence in connection with certain Claims to Compensation for land taken up for public purposes in the Tinnevelly & Kondapilli Zemindaries and that arising out of the difficulty experienced in obtaining sites for Christian Schools and Churches referred to in the orders marginally noted. The Advocate General will also be furnished with a

Collr of Madura No 2 of 1843. 5th April 1842 No 58.

Rec'd 1st May 1843.

a file of papers relating to the question and copy of G. O. dated 16th December 1872 No. 1884 on which the existing Rules to regulate the appropriation of Railway sites are based.

(True Extract)

(Signed) C. A. Galton

Ag Secretary

To

The Collector of the Kistna District.

(True Copy)

Ag Secretary

To

The Secretary to Government

Revenue Department

Revenue Department

Mis: No. 3767

Proceedings of the Board of Revenue
Dated 13th April 1880.

Read the following

From
The Honorable P. O'Sullivan
Advocate General,

To
C. A. Galton Esquire
Secretary to the Board of Revenue
Chepauk.

Sir,

With reference to your Official Memorandum dated 3rd April 1880, No. 572, I have the honor to state that no question was put to me by the Board of Revenue in their Miscellaneous Proceedings dated 27th January 1880, No. 1043. I had

given my opinion on the question regarding the rights of Zemindars in land excluded from the permanent Settlement on the 8th January 1880, and sent it with a letter of that date to Mr Garstin, in answer to the proceedings of Government, Revenue Department, dated the 3d January 1880 No. 3.

The papers which the Board of Revenue sent me on the 28th January 1880 did not alter the views previously expressed by me, but tended to confirm the opinion which I gave on the 8th January which, as at present advised, states my view on the questions raised in the order of Government, Revenue Department, dated the 3d January 1880, No. 3.

I may add that I discussed the question with Mr Garstin sometime between the 8th and the 28th January.

I retain the file of papers received with your Miscellaneous Proceedings dated 27th January 1880 No. 1043, and shall be glad to know if they are to be returned.

Madras, 5th April 1880. (Sd) J. P. O'Sullivan
Advocate General.

Submitted to Govt with reference to Official Memo. from the Secretary to Govt R.D. dated 1st April 1880 No. 125.

2. The Advocate General may retain the file of papers sent to him (Original & Extract)

To The Secretary to Govt R.D.

C. Gelston
Secretary

Received 1880 April
No 2245
Proceedings of the
Board of Revenue,
Dated 13th April 1880
Rec'd No 3967
Rec'd 14 April

PRINT

Subj to Govt letter
from Advocate General
stating that opinion
regarding the rights of
Zemindars in Mandi excluded
from the permanent Settlement
sent to Mr Garrett on 8th
Jany 80 & stating that the
Advocate General may retain
the file of papers on the subject
sent him.

lands allotted 2 Religious
or charitable purposes
x x x " or any other
description of the exempted
lands designated under
the general terms of
La Klizaj " -

"La Klizaj" = Firstly
~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~
including
the Brambole. Secondly
unquestionably included
the Fruitlands -- or

Bib. Lit. - 3

I think the Sec.
Last letter on the
Adv.-Gen. ascertains
the grounds for his
view more fully.

J. F. 87.

I do not agree with the
Adv.-Gen. in excluding
the "Brambole" from
La Klizaj. I think
the Sec. ascertains
2: 8 Lt. 25/

I have seen the Adv.-Gen
& the reasons for his
opinion are
1. That he does not consider
that the definition of the
term "La Klizaj" land -
given in Reg: XXV of 1892
applies so as to include
"Brambole".
2. That Christian rights
existed in respect of

village site, in Zamindari villages upon the passing of Reg: XXV 1802 contiguous to it.

3. Whereas from motives of a tender regard for Zamindars and many other inhabitants of villages it cannot be considered advisable to compel the Zamindar or resident village officer's permission to any person who comes to a Zamindari village to build a "Cutcherry" thereon without the village officer's consent.

4. Be it enacted that in all cases of disputes in which it shall be necessary for the Zamindar to prove that the settlement of the village "Cutcherry" was excluded from the grant of Zamindari.

5. Be it also enacted that any person building a house or other building on the ground of any village officer without his consent shall be liable to a fine not exceeding Rupees [illegible] to be recovered by the village officer before the Collector of the District in which the village is situated.

Can build a house on ground of village officer without his consent

Read 1st time 11/2/80

Read 2d time & referred to Mr. Wedderburn for report

23/2/80

Read 3d time & passed

28/2/80

R.C. 23/2/80 R. 28/2/80 27/2/80

Revenue Secretariat, Madras,

19/2 1880.

S.O.

My dear O'Sullivan.

Referring to your letter of the 9th Jan. last, on the question of the village "Nattam" in Zamindari villages, I am directed to forward for your information a copy of G.O. 3rd Jan. 1880 No. 3.

I am directed to request you will kindly cause the necessary entries to be made in the Village Cutcherry Chowzul

Yours sincerely

Revenue Department

No.

Official Memorandum

The undersigned is directed to request the Government Pleader will state for the information of Govt. whether in his opinion

(1) "Poramboke" lands are included in the term "Lakhiraj" or not.

(2) Whether a suit will lie against a Zemindar who refuses to let an Arbari renter open a shop within the limits of the "Grama Kattam" of a Zemindari village without paying the Zemindar

Fee

Notes of Remarks of Govt Com Advocate Genl's opinion on questions of Legislative shops in Village Sales.

C. No 546 with draft Order.

Enclosure to C. No 96 (Advocate General's opinion).

Copy of H.O. 3rd Jany 80 No 3 - R.D.

do — 16: Dec 72 — 1684 - R.D. with 1 Enclosure

do — 5: April 72 — 58 - Ecc. Dept:

do — 4: May 72 — 377 - R.D.

do — 14: March 59 — 321 - R.D.

File of Boards Orders Enclosures in H.O. 5 of 72 No. 68. Ecc. Dept:-

Jagannadharam
Registrar Rd

10/4/80.

To the Secretary
Board of Revenue
Madras.

Sir,

I have the honor to forward herewith the accompanying papers noted in the margin for the orders of the Board.

I have the honor to be
Sir
Your most obedient servant
Registrar

Advocate General's opinion on questions of Legislative shops in Village Sales.

Sd/-

Registrar Rd

List of papers sent to 39
Mr Shephard Scots Reader -

Notes of Members of Scots on Advocate
Gen[l]s opinion on question of Liquor
Shops in Villages sites -
C. No 546 with draft Order -
Encl: to C. No 96 (Advocate Gen[l]s opinion)
Copy of G.O. 3d Jany /80 No 3 R.D.
— do — 16: Dec /72 - 1684 ~~Encl: to ditto: R.D~~
with 1 Enclosure
— do — 8: April /72. 68. Eccl. Depts.
— do — 4: Mar /72 - 377 - R.D -
— do — 14: Mar /59 - 321 - R.D -
Files of B[d]s Proc: (Enclosures in G.O. of 5 April
1872 No 58 Eccl. Depts. —

10: April /80

41.

Dear Mr. Shephard.

I am directed to forward for your Confidential perusal the Advocate General's opinion on the question put to him in G.O. 3d January 1880 No 3. P.O. (2) the duties of the Members of Govt. thereon and with reference to the latter to observe that as the opinion given does not commend itself to Govt it is their desire to obtain your views but in such a way as may not give cause of offence to Mr. O'Sullivan

The Govt further forward dated 27. June last No 1043 has not been yet replied to by the Advocate General.

Yours Sincerely

List of papers forwarded.

D. O. to Govt. Chiefs

Sir I am instructed
by the Secretary of
State to transmit
to you the enclosed
Copy of a Letter
from the Secretary
of the Treasury
dated the 23d. inst.
and to request
that you will
obtain and
transmit to
this Department
such information
as you may
possess
relative to the
Cases
of the Vessels
mentioned
in the Letter
from the
Secretary
of the Treasury

privilege established close
in village cities.

I assume that the
proposing Shepherdess was
such be a villager
of this de do. I contend
that a such villager
he is entitled to occupy
any vacant site in the
"Kutlum" or to the
exclusion of the occupiers
any occupied site -
for I deny first! to the
Inundation. The Kutlum
being included in the
"La Kaizaj" area
& by the Treaty Settlt
has expressly excluded
from the Inundation

45 assist in construction of
in roads -

I hold that the Adv.
Gen: in bringing in
his opinion that the
Reservation limited by
Regt. 25 of 1802 did not
include "Kutlum"
village sites and
such means of the
Rajah for obtaining
a judicial decision
as to such -

"Kutlum" is another
"Brinjolee" or Central
Reserve of Lepcha
assignable area -

47

REVENUE (FAMINE) DEPARTMENT.

No.

From

Dated 187

FOR ORDERS.

FOR ORDERS.

Official Memorandum.

With reference to official Memoran=
=dum dated the 4th September 1882, Revenue
Department, No. 418, the undersigned has
the honor to forward herewith copy of his
opinion dated the 8th January 1880 on the
rights of Zemindars to village sites in their
estates.

P. Sullivan
Advocate General.

Madras,
11th September 1882.

To
E. F. Webster Esqr.
Revenue Secretary to Government
Ootacamund.

C30/6
No 1-7.

Bofng

53

Opinion.

With reference to the order of Govern-
-ment, dated the 3rd January 1880, Revenue Depart-
-ment, No. 3, the question raised is one of some diff-
-iculty. In the case of Zemindaries I understand
that whatever rights in the soil the Government
had, it transferred to the Zemindars under Reg-
-ulation XXV of 1802. Certain reservations were
made by that Regulation which, however, do not
include Nattams, village sites, so that I think the
Government did not reserve to itself any rights in
village sites in Zemindaries. In Zemindaries consti-
-tuted for the first time in 1802 or then given away
the Government, as between itself and the newly
constituted Zemindar, might, no doubt, have reserved
the control of village sites, but in the case of
Zemindaries in which an estate of inheritance had
descended prior to the Regulation, and the Gov-
-ernment had made no grant to the then Zemindar
or proprietor, but merely fixed a permanent

assessment to be paid by the Zemindar and his successors to the Government in pursuance of the Regulation, the Government primâ facie had no proprietary right in the village site or any other part of the soil. The question is a different one as between the Zemindar and his tenants or land-holders. It may be that the right to some or all village sites was vested in the villagers and not in the Zemindars, and in such cases the Regulation did not infringe or affect the rights of the villagers. This is, I think, clear from the words of the Regulation, but still more so from Regulation IV of 1822. It may be that since 1802 village sites have been abandoned and cultivated in some cases or purchased by the Zemindars or other persons, or that a title by adverse possession has been acquired. It is a dispute in which the persons having any interest which would entitle them to be heard are the Zemindars and the villagers. Therefore

if the Zemindar requires a rent or douceur to be paid to him as owner or part owner of the land by a person who sets up a liquor shop upon part of a village site, the question is whether the Zemindar has the right which he asserts, and if the villagers do not question the right of the Zemindar the presumption is that he has some such right. The shop-keeper generally would have no legal right to occupy the site - He might, in certain cases if he had established a shop and an action of ejectment were brought against him, rely on the rights of the villagers or of some third parties: but it is unlikely that an Abkari renter would adopt this course. If he did it would be a question in each case whether the title was in the Zemindar or the *jus tertii* was made out.

Under all the circumstances it seems to me that the best course to take is that

suggested by the Board of Revenue in para 2 of their Proceedings dated the 7th October 1879.

(Signed) P. O'Sullivan

Advocate Genl

Madras 8th January 1880.

57

Revenue Department.

G.O. Rob. 13 Jan. 1880

No-799

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 13th July.

Read agreeably G.O. 5th January 1880 No 203

READ the following papers:—

*Confidential

Clogh/80. Letter from the Advocate General, — Madras dy 8th January 1880

Proceedings of the Board of Revenue dy 7th January 1880, Mis. No 16/80.

Do do do dy 13th April 1880, Mis. No 22/80.

Regarding the rights of Zemindars in village sites with reference to establishment of liquor shops by Abkhari renters.

—o—

The Govt consider it advisable that an important question of this kind should be decided on deliberation

Mr McCannichael's view of clause 3 — in which Mr Sargent — the Solicitor-General would be — to concur &c

material public interests should be brought before the Courts as soon as possible if the objectionable course which has been adopted is persisted in by the Zamindar concerned in the present or any other similar case.

2. It has already been noted in the order read above that ~~the~~ as from the proposed village sites were excluded from the assets of the Zamindari

Immediately after the Permanent Settlement, and any demand made by the Zamindar for payment on account of the privilege of establishing a liquor shop in such site is, in the opinion of Government, altogether illegal, assuming, as is probable, that the proposing shopkeeper, usually one of the villagers, is entitled to ~~occupy~~ the ~~any adjacent spot~~ in the "Nattam" or village [illegible]

In [illegible] the proposed shop is to be [illegible] Village, in a [illegible] village [illegible] Circular (G.O. 16 Dec 1872 & G.O. 1854) [illegible]

or, with the consent of the occupier, any occupied site, free of any payment to the Zemindar.

24. In the instance brought to notice in this letter dated 28th July 1879, Kolls 93 the Collector of the Kistna District should be instructed to warn the Zemindar to refrain from the course which he has adopted and

19 Fols. Board's Rec'd 24/7/80

45
3

should and to report the result.

5 Should it be practically necessary to obtain a judicial decision the question arises whether the villagers are not strictly speaking the parties affected and who should sue to establish them, and from this point of view it would be necessary to determine how the Govt. can proceed to educe a judicial decision.

This point will be
referred for the
decision of the
Govt Pleaders

13-7-80

PRINT
15. 7. 80

Revenue Department
Bor Cert: 8 12 - 7 - 80
No 779

C5-7 do
A16-7-80
K12-7
R12-7.

101 @ 104.

Original

Govt. of (1880) Madras.

REVENUE.

To

THE BOARD OF REVENUE.

Dated July 13th.

Printed 17th.

Read. *Encl.*

G.O., 13th July 1880, No. 799.

JULY.

Nos. 101—104.

Rights of Zemindars in Villages with reference to establishment of Liquor shops by their renters.—Directing with remark, with reference to Revenue Board's Proceedings regarding — the Collector of Kistna, in the instance brought to notice in his letter of 28th July 1879, to warn the Zemindar to refrain from the course which he has adopted, and report the result.

OOTY RECORD