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MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1248

Press
Mis.

Dated 5. 10. 1883.

Not to be folded or roughly handled

17
No. 27/3¹⁴ dt. } P

From

J. W. Holderness, Esquire,
Offg. Secretary to the Govt. of India,
To
The Secretary to the Government of Madras.

Revenue and
Agril. Deptt.
(Minerals.)

Simla, the 14th August, 1883.

Sir,

In continuation of this Department
Indorsement No. 22 dated 15th May 1883,
I am directed to forward a copy of a
Despatch from the Secretary of State
respecting the right of Government ryots
in Madras to the Minerals under their holding,
and with reference to paragraph 4 thereof
to enquire how the Government of Madras
propose dealing with the question of the
right of the State to minerals in Govern-
ment waste lands hereafter taken up
by private persons.

2. I am to mention that the
remarks of the Government of India
in paragraph 3 of the Despatch of 15th
May last, were based on the orders
issued by the Madras Government in
their

their proceedings of 6th January 1883, No 4.
It is possible, however, that in the absence
of the complete correspondence between
the Board of Revenue and the Govern-
ment of Madras, this Government may
have misunderstood the intention
of these orders.

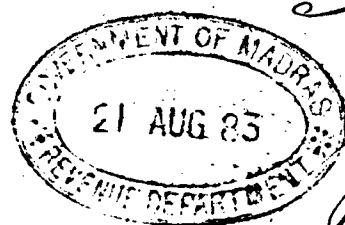
I have the honor to be,

Sir,

Your most obedient servant,

M. L. Larness

Offg. Secretary to the Govt. of India.



India Office,
London, 12th July 1883.

Revenue,
No. 49.

To His Excellency The Most Honourable The Governor
General of India in Council.

MY LORD MARQUIS,

Para. 1. I have considered in Council your Letter, No. 2, Revenue and Agriculture Department (Minerals), dated 15th May last, transmitting correspondence on the subject of the right of Government ryots in Madras to the minerals under their holdings.

2. The result of the further inquiries made by the Madras Government in accordance with the request made to them by the Government of India, and communicated to the Secretary of State in para. 6 of the India Letter of 1st September 1879, No. 7, Home Revenue and Agriculture, has been to convince that Government that the proprietary right in the occupied lands of the ryotwari districts of Madras belongs, independently of and antecedently to the settlement, to the ryot; that therefore any minerals which the soil may contain belong to him, and not to the State, but that the State has the same right to a share in the mineral produce as it has to a share in the agricultural produce of the soil. That, accordingly, the assessment of land should be calculated with reference to its mineral as well as to its agricultural value. But as the settlement assessment did not, and indeed could not, take into account the mineral value, a rent or royalty should be levied, in addition to the fixed assessment, when minerals are actually worked. This royalty should be the same as that charged on the mining of Government waste land, or, at present, Rs. 5 per acre.

3. I am not disposed to question the practical conclusions at which the Government of Madras have arrived, which appear to be generally concurred in by the Government of your Excellency, and I therefore assent to the settlement of the question referred to in para. 9 of Lord Cranbrook's Despatch, No. 35, Revenue, of 25th March 1880, in the manner proposed.

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4. I desire, however, to point out that on one point your Excellency's Despatch appears to be inconsistent with the views of the Madras Government. In the second paragraph of your letter you observe that "lands which have been occupied since the exclusive right of the State to minerals in Government waste lands was notified present no difficulty, and the Government of Madras has directed that the instrument under which such lands are leased shall expressly reserve the exclusive right of the State to the subjacent minerals." But it is clear from para. 12, clauses 5 and 6, of their Order of the 21st September 1882, that the Government of Madras disapprove of the instructions of the Board of Revenue (dated 4th August 1882) to the effect above mentioned. Their reasons are that the arrangement contemplated in those instructions will create two separate tenures of land under settlement, of the old lands, in which the minerals will belong to the ryot, subject to liability to assessment on account of them, and of the lands newly taken into occupation, in which the minerals will belong to the State, that this would be likely to create distrust in the minds of the ryots, and that it would lead to some confusion in the statistics of holdings.

5. These reasons appear to me to have much practical force, and, unless upon subsequent discussion, which is not before me, the Government of Madras have seen cause to alter their opinion, I am disposed to think that it would be better to adopt one rule for all occupied ryotwari lands in Madras, namely, that subjacent minerals belong to the holder of the land, subject to special assessment in the event of their being worked.

I have the honour to be,

My Lord Marquis,

Your Lordship's most obedient humble Servant,

(Signed) KIMBERLEY.

From Secy No. 5.
Shelton's
Revenue

12th July 1883

Copies

Letter to the Gov^r of India
No. 49.

No 2

3
10/10/83

Pls. 5310/83

No. 5318

From the Govt. of India,
Res & agt. Dir.

Dated 16th } Aug 1883.
Recd. 21st

No. 27
7-3 No.

2nd part

Encl.

SUBJECT.

Forwarding copy of
Despatch from the Govt.
State respecting the
of Govt. rights in the
to minerals in their
holdings, and making
certain provisions in relation

2-10-83.
2-10-83.
2-10-83.

For Orders.

Enc. 5318

Letter from the Govt.
of India, dated 14 August
1883, No. 27
7-3

* G.O. 7th Decr 1879, No. 2029

* Despatch para 6 - and
India letter para 5 - in
G.O. 7th June 1880, No. 683.
also also G.O. 1st Decr 1880,
No. 1263.

2nd 28 Jan'y 1880 No. 104 para 1
8th March - 297
7th June 1881 - 895 para 2-4.
5th Decr - 1481 para 1
23rd March - 3360
3rd Jan'y 1882 - 10
9th Feb'y - 171
6th Jan'y 1883 - 4

In accordance with
the instructions of the
Govt. of India (subsequently
confirmed by the Secretary
of State), the Govt. in 1877
announced that all
rights in minerals would
be reserved in future
grants of waste land
for cultivation, and
accordingly, in the form
of patta which, after much
discussion, was recently
finally approved, a full
reservation is made in
respect of all land occupied
on ryotwari tenure
subsequent to the date
of the said announcement.

With

2. With regard to lands
previously occupied, the
Conclusive ^{and was approved by the Secretary of State} arrived at is,
that the ryots' proprietary
occupancy includes the
sub-soil, and that the
State's right is restricted,
therefore, as in the case
of the surface soil, to
a share of the mineral
products.

3. In the order however
(G.O. 21st Sept 1882, No 1008),
in which the Govt.
arrived at this conclusion,
they recited the General
inferences drawn by
The Honorable Mr. Hudleston
in his minute from
the authorities bearing
on the subject, among
which is the one (G.O.
para 12, Clause 5). —

that it would be straining
the State's privileges to
attach the condition of
recognition of any
exclusive right to minerals
to the terms on which
land generally may be
newly occupied, although
in the interests of the
general public, it may,
in particular instances,
be justifiable to do so,
in view to the development
of ascertained mineral
resources.

4. It is to this inference
that the Secretary of State,
in his despatch with the
present communication
from the Govt. of India,
refers. Adverting to the
opinion expressed in
the next following citation
from the Hon. Member's
minute, that the
Reservation

the adjacent minerals, having any thing more than
as well as to the products a right to share in certain
of the surface, is not products emanated from
his lordships predecessor
deposited to the mineral & waste found for the
fact of a right or an outside.

darkhaasda having
killed a plot of land and
taken out a portion.

7. On the principle
that, in the interests of
the general public, the
reservation of the mineral
rights may be justifiable
in particular instances.
(para 12 clause 5, G.O., 21st

Sept 1882); perhaps it may
~~be sufficient to maintain~~
~~may be sufficient to maintain~~
hill tracts where no
regular village institutions
with recognised communal
rights or a preferential
right to reclaim villages
can be said; or a distinction
may be made with re-
ference to the present
division.

the Revenue Sec^y with
kindly bring the paper
& speak to the relevant
para 7 of Sec when he
next comes here
MSV

The Revenue Sec^y with
kindly bring the paper
& speak to the relevant
para 7 of Sec when he
next comes here
MSV

* Revenue Standing Order
No 34 and 35.
This distinction will not do.
Unassessed land on darkhaasda
properly say.
* Revenue Standing Order
No 32.

¹⁵⁺
division of waste land
into two classes; viz
land held to be available
for sale by auction and
land dealt with under
the ordinary darkhaasda
rules.
P. Excepting the Khyasad
and the hilpiri & the rocky
hills, which are subject
to special rules, land
in the first of the two
categories above specified
is designated "unassessed",
and that under the
second "assessed". The
principle on which this
distinction was first
adopted and is now
observed in the actual
working of the rule
is not clearly ascertainable
from the existing records
or the correspondence
relating to the waste
land.

land sale rules. Through
~~the rules of the latter~~
commencing from 1857
has been examined.

The terms referred to
have been taken apparently

from the Govt of India
Resolutions dated 17th Decr
1861 - paras 8 & 35; and

En. G. O. 25 Feb 1862
No. 395.

From the general tenor
of that paper and of
the subsequent corres-
pondence, the inference
to be drawn seems to be,
that the division had
reference rather to
revenue considerations
than to the ^{rights} preferential
right to the occupancy
of waste lands under
the Madras ryotwari
system, though it is
a measure adverse to
an index to the latter.

Assessed.

^{17th}
Assessed lands have
a known value, and
as they are certain sooner
or later to contribute
to the public exchequer
a revenue proportioned
more or less to their
actual value, their
alienation in perpetuity
on necessarily easy
conditions, under the
waste land rules,
involves a needless
sacrifice of prospective
revenue. On the other
hand, unassessed waste
as a rule consists of
hills and forests, and
the prospect of its being
reclaimed is necessarily
remote.

9. It is to be observed
that the unassessed
waste rules do not
assume at starting,
as

as they would, if the
division had reference
to rights, that none could
exist in such lands. They
provided for the possibility
of claims being brought
forward and established,
and for their adjustment
(vide Sir Charles Wood's
despatch of 7 July 1862
— paras 13-15).

10. The words "rights of
private proprietorship
or exclusive occupancy"
in the preamble of the
Board's Standing order
No. 34 seem to have been
taken from the Govt of
India Resolutions above
quoted. "Proprietorship"
refers apparently to some
Zamindar or Encumber
coming forward and
saying that the land
is included within the
limits

limits of his estate, or
persons professing to be
descendants of former
peasant proprietors
coming forward and
stating that their
forefathers had deserted
the lands and emigrated
during famines and
wars (vide Lord Stanley's
despatch to India of 31st
Decr 1858 — para 4 and

* See Madras letter 25 Aug^r
1859 No 1132 & G.O. of 24th
Sept 1862 No 2080.

— Sir Charles Wood's despatch
of 7 July 1862 — para 15).
and "Exclusive occupancy"
seems to refer
to the Mirasi right in
Chingleput and Tanjore,
in both of which Districts
the ^{unaffected} ~~unaffected~~ land rules
have been declared to be
"for the present" inapplicable
(Home Despatch of 1862
para 16 & Board's Standing
order No 34 — para 23).
If

11. If the Hyndab, the
Kilpis and the Chernaw
and Pami hills, as also
the hill tracts of the
northern Districts not
included in proprietary
estates, be excluded,
it comes to about the
same thing almost;
for in the course of the
correspondence relating
to the objections recently
taken by the Govt of
India to revenue free
sales, it has been seen
that, if sales of building
and garden plots of small
sizes be excluded, there
have been
are very few, almost no,
sales in principle
in the plains. At the
same time, if all
the hill tracts be excepted,
the opinion expressed
by

by His Govt^{mt} that the
reservation of mineral
rights would be "absolutely
objectless" would apply,
so far at least as gold
is concerned, to almost
the fullest extent to
waste lands left.

1100 p.m. 10/10/83

1100 p.m. 10/10/83

1100

Land Revenue

1248 of 2-10-83.

Recd again G.O. dated 25 May 1883

no 2171.

letter from the Secy of India No. 27 of 3/4

dated 14 Aug 1883. forwarding

copy of despatch from the Secy of

State dated 12 July 1883 No 49.

In paras 4 & 5 of the

Communicated to the Board

of Revenue with reference

G.O. 6 January 1883 No 4.

In paras 4 & 5 of the fore-

going despatch from the

Secretary of State the views and

intentions of this Government

as to the incidents in respect

of subjacent minerals of the

ryotwari tenure of land; and

H.E. in Council thereupon reads

accepts the rule which it is

proposed to apply to all such

land, namely that subjacent

minerals ~~lands~~ belong
to the holder of the land

Subject to special arrangements
in the event of their being
worked.

3. In future therefore there will

be no distinction in regard
to lands held in puttas and
falling under Clauses I &

II (a) (b) (c) described in para

3 of Board's Prog. 4 Aug. 1883

No. 1931; and a single form

of putta should be adopted

for all such land. The

puttas already issued for

in revised forms for lands

taken up since the order

of Government directing the

creation of the State rights

to minerals, should be recalled

and the lands should be

G. O. 6 Jan 1883 No. 4.

G. O. 7 Oct 1879 No. 2029.

27th 8.

added to the other ordinary
puttas of the holders.

4. The present order does not
touch the case of lands sold
under the waste land rules,
which is provided for in
the conditions of sale, accord-
ing to the old or new forms.

5. The Board will submit
a draft of a standing order
embodying the present decision
of the and defining the rights
of ryotwari holders in
respect of minerals. They
will also consider and report
their views whether it is
necessary in addition
to such general standing
order, a clause upon the
subject should be inserted
in the puttas; and if they
will think such necessary

They will submit a form for
such a
sanction. The clause should be
brief and free from technicalities
if possible, and should be a mere
notification of the right of soil
to share in mineral produce
by the imposition of assessment
thereon, if worked.

16 So. Sec. Board of Revenue.
Des 22-10-83

25-9-
24-10-83.
28-10-83.

297
8TH OCTOBER 1883, No. 1248, REVENUE.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—again G.O., dated 28th May 1883, Mis. No. 2171, Revenue:—

Read—the following despatch from the Government of India, Revenue and Agricultural Department (Minerals), to the Right Honorable the EARL OF KIMBERLEY, Her Majesty's Secretary of State for India, dated Simla, the 15th May 1883, No. 2:—

In reply to paragraph 9 of Lord Cranbrook's Despatch No. 35 (Revenue), dated the 25th March 1880, regarding the rights of ordinary Madras ryots in respect to the subjacent minerals of their holdings, we have the honor to forward, for your Lordship's information, a copy of the papers marginally noted, from which it will be seen that From the Government of Madras, No. 1009, dated the 21st September 1882, and enclosures. Minute by Sir. Charles Turner, C.I.E., Chief Justice of the Madras High Court, dated 30th July 1879.

the Government of Madras considers that no exclusive right on the part of the State to the mineral products of the soil in the occupation of Madras ryots can be maintained. In the opinion of that Government the best practical solution of the question would be to require applicants for mining leases to make their own terms with the occupiers of land, and to limit the share of the Government in the mineral produce of the area to such royalty or rent per acre as is demanded from miners working in waste lands, the property of the State. Such royalty or rent would be in addition to the assessment already levied on the land in respect to its agricultural character. In the case of ryots extracting the minerals themselves, the State's share of the produce would be apparently determined in a similar manner.

2. We understand that the Government of Madras does not consider that legislation is required to secure the rights of the State as thus defined in lands already in occupation. A reference to the correspondence at pages 20—23 of the Proceedings Volume of the Government of Madras in the Revenue Department for January 1883, a copy of which has doubtless reached your Lordship, will explain more clearly the manner in which it is proposed to deal with the subject. Lands which have been occupied since the exclusive right of the State to minerals in Government waste lands was publicly notified, present no difficulty, and the Government of Madras has directed that the instruments under which such lands are leased shall expressly reserve the exclusive right of the State to the subjacent minerals. But in regard to lands previously occupied, a preliminary question was raised by the Board of Revenue as to whether during the currency of the existing land-revenue assessment the State was debarred from asserting its share to the mineral produce of the soil. The Government of Madras rightly, in our opinion, holds that as the revenue assessment neither referred to nor took into consideration the State's right to a share of the mineral produce, the State is quite free to impose, in addition to the current land-revenue assessment, a "sub-soil assessment," when minerals are worked for.

3. The Government of Madras has therefore directed the Board of Revenue to insert in every putta, or lease, of already occupied land a declaration that the State reserves to itself a right of assessing the subjacent minerals. When any such holding is increased by the addition of Government unoccupied lands, the exclusive right of the State to minerals found in the latter is separately reserved.

No. 22-M.

Copy forwarded to the Government of Madras for information.

(Signed) T. W. HOLDERNESS,
for Secretary to the Government of India.

Order—dated 28th May 1883, Mis. No. 2171.

Recorded.

(True Extract.)

(Signed) E. F. WEBSTER,
Secretary to Government.

READ—the following letter from T. W. HOLDERNESS, Esq., Officiating Secretary to the Government of India, Revenue and Agricultural Department, (Minerals), to the Secretary to the Government of Madras, dated Simla, the 14th August 1883, No. 27—9-3M :—

In continuation of this Department endorsement No. 22, dated 15th May 1883, I am directed to forward a copy of a despatch from the Secretary of State respecting the right of Government ryots in Madras to the minerals under their holdings, and with reference to paragraph 4 thereof, to inquire how the Government of Madras propose dealing with the question of the right of the State to minerals in Government waste lands hereafter taken up by private persons.

2. I am to mention that the remarks of the Government of India, in para. 3 of the despatch of 15th May last, were based on the orders issued by the Madras Government in their Proceedings of 6th January 1883, No. 4. It is possible, however, that in the absence of the complete correspondence between the Board of Revenue and the Government of Madras, this Government may have misunderstood the intention of these orders.

ENCLOSURE.

Despatch from the Right Honorable the EARL OF KIMBERLEY, Her Majesty's Secretary of State for India, to His Excellency the Most Honorable the Governor-General of India in Council, dated India Office, London, 12th July 1883 (Revenue), No. 49 :—

I have considered in Council your letter No. 2, Revenue and Agriculture Department (Minerals), dated 15th May last, transmitting correspondence on the subject of the right of Government ryots in Madras to the minerals under their holdings.

2. The result of the further inquiries made by the Madras Government in accordance with the request made to them by the Government of India, and communicated to the Secretary of State in paragraph 6 of the India letter of 1st September 1879, No. 7, Home, Revenue and Agriculture, has been to convince that Government that the proprietary right in the occupied lands of the ryotwari districts of Madras belongs, independently of and antecedently to the settlement, to the ryot; that therefore any minerals which the soil may contain belong to him, and not to the State, but that the State has the same right to a share in the mineral produce as it has to a share in the agricultural produce of the soil. That, accordingly, the assessment of land should be calculated with reference to its mineral as well as to its agricultural value. But as the settlement assessment did not, and indeed could not, take into account the mineral value, a rent or royalty should be levied, in addition to the fixed assessment, when minerals are actually worked. This royalty should be the same as that charged on the mining of Government waste land, or, at present, Rs. 5 per acre.

3. I am not disposed to question the practical conclusions at which the Government of Madras have arrived, which appear to be generally concurred in by the Government of your Excellency, and I therefore assent to the settlement of the question referred to in paragraph 9 of Lord Cranbrook's Despatch, No. 35, Revenue, of 25th March 1880, in the manner proposed.

4. I desire, however, to point out that on one point your Excellency's despatch appears to be inconsistent with the views of the Madras Government. In the second paragraph of your letter you observe that "lands which have been occupied since the exclusive right of the State to

minerals in Government waste lands was notified, present no difficulty, and the Government of Madras has directed that the instrument under which such lands are leased shall expressly reserve the exclusive right of the State to the subjacent minerals." But it is clear from paragraph 12, the exclusive right of the State to the subjacent minerals, that the Government of Madras disapprove of the instructions of the Board of Revenue (dated 4th August 1882) to the effect above mentioned. Their reasons are that the arrangement contemplated in those instructions will create two separate tenures of land under settlement, of the old lands, in which the minerals will belong to the ryot, subject to liability to assessment on account of them, and of the lands newly taken into occupation, in which the minerals will belong to the State, that this would be likely to create distrust in the minds of the ryots, and that it would lead to some confusion in the statistics of holdings.

5. These reasons appear to me to have much practical force, and, unless upon subsequent discussion, which is not before me, the Government of Madras have seen cause to alter their opinion, I am disposed to think that it would be better to adopt one rule for all occupied ryotwari lands in Madras, namely, that subjacent minerals belong to the holder of the land, subject to special assessment in the event of their being worked.

ORDER—dated 8th October 1883, No. 1248, Revenue.

Land Revenue, No. 176.

Communicated to the Board of Revenue with reference to G.O., 6th January 1883, No. 4.

2. In paragraphs 4 and 5 of the foregoing despatch from the Secretary of State, the views and intentions of this Government as to the incidents, in respect of subjacent minerals, of the ryotwari tenure of land are correctly stated; and His Excellency in Council therefore readily accepts the rule which it is proposed to apply to all such land, namely that subjacent minerals belong to the holder of the land subject to special assessment in the event of their being worked.

3. In future, therefore, there will be no distinction in regard to lands held on putt and falling under Clauses I and II (a) (b) (c) described in paragraph 3 of Board's Proceedings, 4th August 1882, No. 1931,* and a single form of putta should be adopted for all such land. The puttas already issued in revised forms for lands taken up since the orders† of Government directing the reservation of the State's rights to minerals, should be recalled and the lands should be added to the other and ordinary puttas of the holders.

4. The present orders do not touch the case of lands sold under the Waste Land Rules, which is provided for in the conditions of sale, according to the old or new forms.

5. The Board will submit a draft of a standing order embodying the present decision and defining the rights of ryotwari in respect of minerals. They will also consider and report their views there, in addition to such general standing order, a clause upon the subject should be inserted in the putta; and if they think such necessary, they will submit a form for sanction. Such a clause should be as brief and free from technicality as possible, and should be a mere notification of the right of Government to a mineral produce by the imposition of assessment thereon, if worked.

(True Extract.)

(Signed) H. E. STOKES,
Ag. Secretary to Government.

To the Board of Revenue.

Exd. W. H. French.

50 Copies.

Govt. of 1883 Madras.

REVENUE.

Issued

Recd.

Encl.

G.O., 8th October 1883, No. 1248.

OCTOBER.

Ryots' Rights to Minerals.

Letter from Government of India, forwarding copy of a despatch from the Secretary of State respecting —, communicated to the Board of Revenue, with intimation that, in the case of all lands held on ryotwari tenure, the holder is to have a right to subjacent minerals, subject to special assessment in the event of their being worked, and instructions issued as to the form of putta to be adopted.