

1. Date of receipt 1-18
2. Date of issue 1-12-18
3. Date of return
M.R.O. 1-82,400-22-11-83

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2231 From Press
Mis.

Dated 2nd April 1890.

Not to be folded or roughly handled

6.7.16
4/5/16
Revenue (1990) Department.

MISCELLANEOUS SERIES.

G.O., No. 2824

DATED 2nd April 1890

Private

[Despatch Abstract.]

Village of Leomandel

Passing orders on petitions from
Khader Hussain regarding the —

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Government of Madras.

REVENUE DEPARTMENT.

MISCELLANEOUS.

Recd. } *Enclosures*
Regd. } 1890. *Spare copies*

G.O. No. 2231, 2nd April 1890.

Village of Coromandel

Passing orders on petitions from Khader Hussain regarding the —.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following papers:—

I

Petition—of KHADER HUSSAIN, the nephew and only legal representative of Kazi Abdul Khader Muhammad Abu Bakr, the late Kazi of Madras.

To—His Excellency the Right Honourable the Governor in Council, Fort St. George.

Dated—2nd December 1889.

MOST SUBMISSIVELY SHEWETH:—That petitioner on the 28th November 1889, received, in reply to his petition, dated 30th October 1889, endorsement No. 7562, dated 25th November 1889, desiring petitioner to furnish copies of petitions sent to the local authorities, or authenticated copies of them, and the answers or orders of those authorities, respectively, which, petitioner herewith begs to enclose, viz.—

1st. Government Order, dated 25th November 1889, in original.

2nd. Copy of petitioner's memorial to Board of Revenue, dated 23rd June 1888, and Board's endorsement thereon, dated 31st July 1888, in original.

3rd. Copy of petitioner's memorial to Board of Revenue, dated 2nd April 1888, and Board's endorsement thereon, dated 2nd June 1888, in original.

That petitioner further begs to show that the village of Coromandel and other minor villages had been registered by the Inam Commissioner M. Ramachandra Row on the 3rd April 1782, as *inams*.

That on the 2nd July 1784 the then Jaghire Committee resolved on this subject as follows:—

“Read representation of Bagavanlu, renter of Ponneri, stating that the village of Coromandel had been let to the Kazi of Madras Abu Bakr at the favourable rent of 130 pagodas *per annum* previous to the grant of the jaghire to the Company. That about 9 or 10 years subsequent to that period he (Kazi) obtained from the Nawab a purvana of the same date as the shrotriem grant making over that village to him as *inam*, and requesting that, if the village of Coromandel is to be continued to the Kazi as *inam*, a deduction of 130 pagodas *per annum* may be made from his rent of the district.

“Bagavanlu and Mohiuddin Muhammad Abu Bakr the Kazi being called in before the committee, the latter produces the Nawab's purvana, dated two years previous to the grant of the jaghire to the Company, giving him the village of Coromandel as *inam*.

“The committee being perfectly satisfied with the authenticity of the sanad, Bagavanlu is directed not to molest the Kazi in possession of the village, and is at the same time informed that no deduction whatever can be allowed from his rent on this account.

“J. LAUDON,
“Secretary.”

Petitioner having no authenticated copy of this extract, prays Your Excellency to order the books of the Jaghire Committee of 1784, to be looked up, and this entry will be found.

4th. In 11th August 1811, the village of Coromandel has been registered in the Chingleput Register's office as *inam*.

That under the above references, Your Excellency in Council may now well opine as to how the Board of Revenue could venture to endorse, dated 31st July 1888, that “the inam is an endowment of the *Kaziship*, petitioner who performs no “service can claim no portion of it.”

Petitioner therefore prays justice at Your Excellency in Council's merciful hands.

For which petitioner as in duty bound will ever pray.

II

Petition—of KHADER HUSSAIN, the nephew and only legal representative of late Hafiz Abdul Khader Muhammad Abu Bakr, the late Kazi of Madras.

To—the Chief Secretary to Government.

Dated—the 5th December 1889.

MOST SUBMISSIVELY SHEWETH:—That petitioner had received endorsement from Government, dated 25th November 1889, No. 7562 (in reply to his petition, dated 30th October 1889, regarding which petitioner had addressed your honour on the 6th November 1889) desiring petitioner to send copies of petitions addressed to the local authorities, or authenticated copies of them, and the answers or orders of those authorities, respectively, which, petitioner has respectfully done in his subsequent petition to Government, dated 2nd December 1889, giving cover therein to three original documents, being replies from the Board of Revenue and Government, with authenticated copies of those petitions which elicited such replies.

That petitioner also, in the above petition to Government, dated 2nd December 1889, added a copy of an extract from a resolution passed by the Jaghire Committee held on the 2nd July 1784, touching the village of Coromandel, etc. (now the subject of contention) which was as follows:—

“Read representation of Bagavanlu, renter of Ponneri, stating that the village of Coromandel has been let to the Kazi of Madras Abu Bakr, at the favourable rent of 130 pagodas *per annum*, previous to the grant of the jaghire to the Company. That about 9 or 10 years subsequent to that period, he (the Kazi) obtained from the Nawab a purvana of the same date as the shrotriem grant, making over that village to him as *inam*, and requesting that, if the village of Coromandel is to be continued to the Kazi as *inam*, a deduction of 130 pagodas *per annum* may be made from his rent of the district.

“Bagavanlu and Mohiuddin Muhammad Abu Bakr the Kazi being called in before the committee, the latter produces the Nawab's purvana, dated two years previous to the grant of the jaghire to the Company, giving him the village of Coromandel as *inam*.

“The committee being perfectly satisfied with the authenticity of the sanad, Bagavanlu is directed not to molest the Kazi in possession of the village, and is at the same time informed that no deduction whatever can be allowed from his rent on this account.

“J. LAUDON,
“Secretary.”

That petitioner humbly prays your honour to kindly look up the petition addressed by petitioner to His Excellency the Governor in Council, dated 2nd December 1889, wherein further information may be elicited, and that the subjects mentioned in this and the previous petition, dated 30th October 1889, may be taken collectively for consideration, when reply thereto is being written.

That petitioner entertains strong hopes of success in his case at your honour's hands, as your honour had much to do and knew a great deal on the subject, as Collector while your honour were Collector of Chingleput district.

That petitioner simply prays, under the circumstances, for common justice to be done him in the matter, which he is sure your honour will strictly accord to petitioner as Chief Secretary to Government.

For which benevolence, petitioner as in duty bound will ever most gratefully pray.

III

Petition—from KHADER HUSSAIN, nephew and only legal representative of the late Kazi of Madras.

To—the Chief Secretary to Government.

Dated—the 12th March 1890.

I beg most respectfully to apprise your honour that, on the 30th October 1889 and 2nd December 1889, I had memorialised Government relative to the subject of my claim to the income of the village of Coromandel and informed your honour of same, but up to date, not being favoured with endorsement thereon, I have humbly taken the liberty of hereby respectfully reminding.

Further, I beg to add that both by the Nawab Wallajah's purvana and the Government purvana issued in 1779, I am rightly to be considered the legal claimant, because I am the only surviving legal representative of the late Kazi Hafiz Abdul Khader Muhammad Abu Bakr; therefore, by the tenor of these two purvanas my claim is indisputable.

Order—Mis. No. 2231, Revenue, dated 2nd April 1890.

The Government declines to comply with petitioner's requests. The inam has been resumed by Government.

(True Extract.)

C. A. GALTON,
Secretary to Government.

REVENUE DEPARTMENT.

NOTES TO G.O. Mis. No. 2231, REVENUE, DATED 2ND APRIL 1890.

[SUBJECT.—*Regarding the village of Coromandel.*]

Petitions from Khader Hussain, dated 2nd December 1889 and dated 5th December 1889.

One Mir Ghulam Hussain is at present the Kazi of Madras and as such is in enjoyment of the net revenues derived from the village of Coromandel. But the petitioner, who is the brother's son of the late Kazi, claims the income. He contends that the village is not attached to the kaziship but that it was granted as a personal inam. The Board informed the petitioner that the inam was an endowment of the kaziship and that the petitioner who performed no service could claim no portion. The petitioner says that although he is entitled to the *full* income, he will not object to only two-thirds of it being given to him, the remaining one-third being continued to Ghulam Hussain.

The village was granted originally as a Kazi service inam by the Wallajah and the very next year after the grant it was confirmed as a personal inam to Fakruddin Abu Bakr and his descendants for ever independent of the duty of performing the offices of Kazi. For some reason or other, the Company's Government in 1779 issued a "purvana" confirming the original grant as a service inam and overlocking entirely the later grant and since that time the Government

This is not found in the records of the office and was not produced in the High Court, who however, accepted secondary evidence of it.

R. C. C. CARR—21-12-89.

has never receded from its position that the inam is attached to the *service* of Kazi. It is submitted that the question cannot be reopened now as it seems impossible to ascertain the reason for the overlooking of the acknowledged grant as personal inam. In 1867, one Karunakara Menon purchased the village from the Kazi and the Government thereupon resumed the inam and decided to substitute a money payment to the Kazi. Karunakara Menon sued Government in the Chingleput District Court, but his suit was dismissed and his subsequent appeal to the High Court in 1887 was also dismissed for default; it was subsequently taken on the file again and disposed of on its merits as A.S. No. 94 of 1887—judgment attached. It is not quite clear how Ghulam Hussain became Kazi, but he seems to have been appointed by the will of the previous holder; whether such an appointment was valid it is unnecessary to enquire as Ghulam Hussain is undoubtedly performing the duties of Kazi and has been since before the enactment of Act XII of 1880. Moreover, petitioner makes apparently no claim for the office, only for the emoluments.

Submitted therefore that his petition must be rejected. Full particulars of the case will be found in Board's Proceedings No. 579, dated 21st September 1887.

R. C. C. CARR—21-12-89.

Note for the Under Secretary—

The statement that Karunakara Menon has bought the village, and that the inam has been resumed is not consistent with the statement that the Kazi as such is in enjoyment of the revenues derived from the village.

An appeal was heard in the High Court three or four weeks ago in Karunakara Menon's case; but I don't know whether judgment has been issued yet or not. It will decide either that Government were justified in resuming (in which case petitioner should be told that the inam has been resumed) or that the inam has been enfranchised (in which case petitioner must be referred to the courts).

J. G[ROSE]—21-12-89.

Demi-official—from R. C. C. CARR, Esq., Under Secretary to Government, Revenue Department.
To—E. B. POWELL, Esq., High Court.
Dated—the 21st December 1889.
No.—74.

Can you inform me whether a certain suit in connection with the inam of the Madras Kazi has been decided by the High Court quite recently. I cannot tell you the number of the suit but the present holder of the inam is one Mir Ghulam Hussain who is, I believe, still holding it on service tenure. One Khader Hussain has for some time laid claim to it as a personal inam and a petition from him is at present before Government. Mr. Grose has therefore directed me to find out about the suit alluded to.

A suit in connection with this matter was dismissed for default in 1887. (A.S. No. 94 of 1887), but Mr. Grose feels sure he saw a speech by Mr. Nelson referring to this or a similar suit reported in the papers a few weeks back—he has not however noticed any judgment. Kindly reply to me to the club.

Demi-official—from E. B. POWELL, Esq.
To—the Under Secretary to Government, Revenue Department.
Dated—the 23rd December 1889.

The case you allude to was heard in appeal by the High Court about a month ago but judgment has not yet been delivered. It was a suit brought by Karunakara Menon, a vakil of the High Court, to whom the late Kazi sold all his right in the inam of Karimundalam. The Government of Madras resumed the land on the ground that it was a service grant but allowed the present Kazi (the successor of the grantors) to receive the whole income. Karunakara Menon failed to establish his right in the court below and his suit was dismissed with costs. I think his appeal must fail. Yes, the appeal was dismissed for default at first but afterwards readmitted on the file. Yes, Nelson made a remarkable speech in which he took the Judges back to the Magna Charta. I think the judgment will probably be given immediately after the holidays. If it would be useful to Mr. Grose I would let him have the printed papers in the case which I carefully arranged in order when I appeared in the lower court. They pretty well show the history of the inam.

[*Demi-official* sent (27th December) saying reply will be sent about the papers after the holidays.]

R. C. C. CARR—27-12-89]

Demi-official—from E. B. POWELL, Esq.
To—the Under Secretary to Government, Revenue Department.
Dated—the 19th March 1890.

The judgment in the case referred to by you is only just ready. I enclose you a copy.

ENCLOSURE.

IN THE COURT OF JUDICATURE AT MADRAS.

Wednesday, the eighth day of January One thousand eight hundred and ninety.

PRESENT:

The Hon'ble Mr. Justice MOTHUSWAMI AYYAR, C.I.E.

and

The Hon'ble Mr. Justice WILKINSON.

Appeal No. 94 of 1887.

C. R. Karunakara Menon Appellant (Plaintiff).
 The Secretary of State for India in Council Respondent (Defendant).

Appeal against the Decree of the District Court of Chingleput in original suit No. 10 of 1885.

This appeal coming on for hearing, on Monday the 18th day of November 1889: Upon perusing the grounds of appeal, the judgment and decree of the lower court, and the material papers in the suit, and upon hearing the arguments of Mr. R. H. Nelson, Counsel

and the Honourable V. Bhashyam Aiyangar, Vakil for the appellant and of the Government Pleader for the respondent, and the case, having stood over for consideration till this day, the court made the following

Order.

This was a suit brought by the appellant to establish his title as against the Crown to the shrotriem village of Coromandel in the district of Chingleput. The village was included in what was originally called the late East India Company's jaghire which was ceded by His Highness the Nawab Wallajah to the British Government in 1763. In 1760 the Nawab granted the village free of assessment and with all sources of revenue to one Fakrudin Muhammad Abu Bakr, Kazi of Madras, as an endowment for his office. In 1761 the Nawab regranted it to the said Kazi's son, Muhi-ud-din Abu Bakr, for his personal benefit and that of his descendants without the condition of service. In 1779 the British Government, referring to the first grant, confirmed the village in perpetuity to Muhi-ud-din Muhammad Abu Bakr and such of his direct heirs of suitable qualification and fitness on account of the office which he filled. Muhi-ud-din Muhammad Abu Bakr since held the office of Kazi and died in 1808 and his son Muhammad Abu Bakr then succeeded to the office and to the inam village. Muhammad Abu Bakr died in 1862 and left no direct male heirs. There were then several claimants for the office and the Government approved of the nomination of one Abdul Khader, a daughter's son of the original grantee and directed that he should hold the village, adding that it was originally assigned as an endowment for the support of the kaziship (Exhibit I). In November 1862 the inam enquiry was extended to the village and the Inam Commissioner considered that the grant was apparently for the personal benefit of the holder and confirming it accordingly as a personal inam in ignorance of the previous orders of Government on the subject enfranchised it and issued a title-deed (F and G). In 1865 the matter came to the notice of Government and after calling for a report, the Government held that the right of the Kazi to the village depended on the British purvana or grant of 1779 and on 20th February 1866, directed that the title-deed issued by the Inam Commissioner be cancelled and that the village be registered as an endowment of the Madras Kaziship (Exhibit IV). In September 1867 the new Kazi transferred the village to the appellant under an instrument of perpetual lease and a deed of sale and placed him in possession. The title-deed which the Government directed to be cancelled not being produced, it was notified in the *Fort St. George Gazette* of the 27th May 1868 that it had been cancelled. In 1872 the appellant claimed the wrecks within the limits of the village of Coromandel under the purvana or grant of 1760, and rejected certain terms offered by the Government in settlement of his claim on the ground that there was no law to compel him to accept them. On the 3rd April 1873 the Government referred to the perpetual lease granted by the late Kazi as unauthorized and as nullifying to a considerable degree the intention of Government in continuing the gift of the late Nawab and observing that there will always be a liability of the same thing happening so long as the endowment consists of an interest in land, resolved to resume the grant and to pay the Kazi for the time being a monthly allowance equivalent to the net income derivable by the inamdar of the village *per annum*. The village was accordingly resumed in April 1873 and in October 1876 the Government directed that the whole of its net revenue be paid to the then Kazi.

2. The appellant's case was that the tenure on which the village was held was personal, that the Inam Commissioner was right in enfranchising it as a personal inam, and that even if he was in error, it was not competent for the Government to cancel the title-deed once issued by him and to resume the village. He denied that the British Government issued any purvana in 1779 superseding that of 1761 and pleaded that even if it did, it was not competent for it to do so. On the other hand, it was contended for the Crown that the British purvana of 1779 was genuine, that it superseded that of 1761, that the village was thus confirmed only as an endowment for the Kaziship of Madras on service tenure, that it was upon that grant, the Kazi's right to the village depended, that its alienation to the appellant was improper and tended to defeat the purpose with which the grant was made and that the village was therefore lawfully resumed on the 3rd April 1873, the net income derived from it being thenceforward paid to the Kazi of Madras for services rendered. The Counsel for the Crown suggested also in the court below that the resumption of the village was an act of State and applied for a separate issue in regard to it; but the Judge considered that the question was embraced in the second issue, viz., whether the resumption of the inam by the Government is invalid and *ultra vires*. The Judge upheld the contention for the Crown and dismissed the suit with costs. Hence this appeal.

3. It will be observed that three purvanas are referred to in connection with the original grant of the village. But none of them is now forthcoming; and as they were issued more than 100 years ago it might be presumed, as alleged, that they had been lost. The finding of the Judge is that all the three purvanas were genuine, that they were issued in 1760, 1761 and in 1779, that by the first, the Nawab Wallajah granted the village on service tenure; that by the second he granted it as personal inam, and that by the third, the British Government confirmed the village subject to the terms of the first grant, viz., on the condition of the grantee and his heirs performing the duties of Kazi in the town of Madras. So far as the first two grants are concerned, the finding is not questioned in appeal and it is also sufficiently

supported by Exhibits C, D, E, and IV of which the substance is accurately stated by the Judge in his judgment. The contest in appeal is restricted to the British purvana of 1779. But that a British purvana did once exist and that it was relied on and accepted as the basis of title to the village, there can be no doubt. The recital in Exhibit B which evidences the perpetual lease granted to the appellant by the Kazi of 1867 is that "the village was granted as inam to my ancestors by Nawab Wallajah in the year 1760 to be enjoyed by them hereditarily by sons and grandsons and confirmed by the Madras Government in the year 1779." Again, in 1838 the then Kazi claimed compensation for certain sources of revenue in the inam village of which the collection had been resumed by the Government and actually produced the British purvana among other documents in support of his claim. The correspondence which took place on that occasion between the Collector, the Board of Revenue and the Government shows beyond doubt that the then Kazi produced the British purvana of 1779, relied upon it as authentic and alleged that he once pledged it with one Sabapathy Madali and since redeemed it, that at the instance of the Government, the Collector then forwarded it for inspection, that from 1838 to 1840 it remained with the Government and that in January 1841, it was returned to the Collector for delivery to the then Kazi. (Exhibits XI, XIII, XIV to XVII.)

4. Further, in 1854 the then Nawab of Arcot claimed the right to interfere with the Kazi's possession of the village on the ground of its being a service grant to the Pesh Imam of the Black Town Mosque. The Government then denied the authority of the Nawab so to interfere with Abu Bakr's possession and observed that "the purvana issued by the Madras Government after the cession of the jaghire, dated 2nd August 1779, which confirmed the grant of the village on its original terms can alone be admitted in an examination of the Kazi's rights, and that the purvanas of Nawab Wallajah of an antecedent date have no bearing on the right of the Kazi to the village in question, that right being clearly defined by the purvana of this Government which, though the original may not be forthcoming, has been recognized by the local and controlling authorities for the last 75 years." (Exhibit VIII.)

5. Again, in 1862 when the Kazi died and his office became vacant, the Government rejected his widow's claim on the ground that the village was held on service tenure and appointed the appellant's vendor as Kazi and recognized his right to hold the village by virtue of his office. (Exhibit I.)

6. It is true that in 1794 the Jaghire Committee sent for the then Kazi and referred to the purvana produced by him as "the purvana issued two years previous to the grant of the jaghire to the East India Company giving him the village of Coromandel as inam." The Jaghire Committee made an enquiry with reference to a claim for remission made by one Bagavanolu, renter of the Ponneri taluk. It was not the object of the committee then to ascertain and determine with precision whether the tenure was personal or service and Exhibit D only shows that the then Kazi did not choose to produce the British purvana. It is again urged that in the report made by Mr. Smolley, the Collector of Chingleput, in 1822 the only purvana referred to by him was that of 1761 (Exhibit XII). But this circumstance does not appear to us to carry the case further than Exhibit D. We have therefore no hesitation in accepting the finding that the British purvana of 1779 really existed and in rejecting as unfounded the suggestion for the appellant that it was not a genuine document and that there was no legal evidence of its existence.

7. Though the purvana is not now forthcoming, it was presumably returned, as observed by the Judge, in 1841 to the then Kazi.

8. The appellant who must naturally be in possession of it, if it is still in existence, denies that it was handed over to him in 1867 by the then Kazi. Nor was the original produced in Original Suit 473 of 1869 on the file of the High Court. We find also a statement in Exhibit VIII that the original was not then forthcoming. Under these circumstances and having regard to the age of the document, we are unable to accede to the contention for the appellant that no sufficient foundation has been laid in this case for the reception of secondary evidence as to the contents of the British purvana.

9. The next contention in appeal is that the Judge is not warranted in accepting XI as a correct translation of the British purvana. It was certified by the Collector, Mr. Maclean, in 1838 in the discharge of his official duty to be a true translation and it was then acted upon as such by the Collector and the Government and again by the Government in 1854 with the knowledge of the Kazi on both occasions. It was also then attested by the then Persian Translator to the Government and now comes from official custody where it has been for more than 40 years. We see no sufficient reason to hold that the Judge is in error in accepting the translation as correct.

10. The next question for consideration is whether the Government was entitled to cancel the title-deed issued by the Inam Commissioner. Exhibits F and G show that the Inam Commissioner had not before him at the time of his enquiry either the correspondence which had previously taken place regarding the British purvana or the orders of Government passed in 1854 and 1862 as to the nature of the tenure. Although Kazi Muhammad Abu Bakr, the principal party with whom the Inam settlement purports to have been made, was the person

who produced the British purvana in 1838, he appears to have withheld information about it at the inam settlement and claimed the village as a personal inam. Though the settlement purports to have been made with him and another, he appears to have died before the title-deed was ordered to be issued in November 1862. (Exhibit F.) The appellant's vendor was in August 1862 appointed Kazi by the Government on the ground that the inam was a service grant and he derived his title thereto by virtue of his appointment to the exclusion of the former Kazi's widow. On his application that the title-deed should be issued in his name by virtue of his appointment, the Inam Commissioner appears to have written to the Tahsildar to send back the title-deed. In this state of things the matter came to the notice of Government and the title-deed was set aside as already stated. As observed by the Judge, the action of the Inam Commissioner was clearly wrong in enfranchising as personal inam without special permission from the Government, what was really a service grant, his powers being limited by rules framed and sanctioned by the Government for his guidance. But it is argued that under Madras Act IV of 1862 the title-deed issued by the Inam Commissioner is to be deemed sufficient proof of the enfranchisement of land previously held on inam tenure and that if the Inam Commissioner made a mistake and if it was not corrected before the title-deed was issued, the Crown was bound by the settlement made by him however erroneous it might be. We are unable, however, to accede to this contention. The title-deed is only evidence of the settlement and whether it is valid or otherwise must be determined on other considerations. Section II of Act IV of 1862 must be read together with section I and the latter refers to inams of the classes described in clause I, section 2, Reg. IV of 1831; and an inam granted as an endowment for the office of Kazi is not of the kind mentioned in Regulation IV of 1831. Moreover, the appellant's vendor obtained his title to the village by reason of his appointment as Kazi and on the view that the grant was personal, his predecessor's widow would be entitled to it in preference to him and he was not therefore at liberty to demur to the tenure subject to which he accepted the village. Again, the alienation in favor of the appellant was subsequent to the cancellation of the inam title-deed and Exhibit B, as already observed, gave him distinct notice of the British grant of 1779. If he had made due enquiry he would have become cognizant of its contents and of the real nature of the tenure on which the village was held. Having regard first to the mode in which the Government has acted from 1838, next to the numerous claimants for the office of Kazi in 1862 and lastly, to the complaints made by the widow of the grandson of the original grantee in 1865, it is difficult to believe that the appellant, a pleader of this court, was really ignorant of the cancellation of the title-deed or of the contents of the British purvana. There is also the fact that the Kazi with whom the inam settlement was made withheld information regarding the British purvana from the Deputy Collector who held the inam enquiry and thereby misled him and the Inam Commissioner. On these grounds we are of opinion that the Judge was right in holding that the Government acted within its powers in cancelling the enfranchisement and the title-deed, and in ordering the registration of the village on service tenure.

11. Another point which is urged upon us is that it was not competent for the Madras Government in 1779 to alter the nature of the grant made by the Nawab Wallajah in 1771, two years prior to the cession of the jaghire and that the position of the East India Company was at that time that of a mere jaghirdar. An ordinary jaghirdar has no sovereign power and it is not correct to liken his status to that of the East India Company in 1779. The relation between the Company and the Nawab Wallajah was of a political character regulated by sanads issued by him and any act done by them by virtue of that relation is clearly an act of State and governed by the principle laid down by the Privy Council in the case of the East India Company *versus* Syed Ali and others (VII Moore's I. A. 552).

12. As regards the contention that the resumption of the village in 1873 was an act of State, we consider it sufficient to state for the purposes of this appeal that the alienation by the appellant's vendor of the endowment of his office cannot be upheld at all events beyond his lifetime. As he died in 1868 we see no reason to question the resumption in 1873.

13. The only point which remains for us to consider is the claim set up by the appellant to certain Mirasi rights and Menkaval lands in the village. No issue has been framed and no information is to be had from the original judgment on the subject. Document A purports to convey to the appellant for value "the single crop village Miras" with all its income whilst document B evidences a perpetual lease of the Melvaram right and the income appertaining to it. And Exhibit B which is a copy of the order whereby Government resumed the village directed that it be struck out of the Inam Register and classed under jirayati, adding however that under that order there was to be no disturbance of the occupancy rights of any landholder, that the full assessment payable was to be levied and credited to Government and that that was all. Whilst thus the apparent intention was to levy the full assessment and not to interfere with any occupancy right, there is the averment in the written statement that the village has been in the defendant's possession since the date of the resumption. It is by no means clear whether under documents A and B, the appellant is entitled to any and what Mirasi rights and Menkaval lands, and if so, whether his claim thereto is good as against the Crown and whether the Crown in any way interfered with it. We are unable to dispose of this part of the case without further enquiry and we shall direct the Judge to try the following issue and return a finding within one month from the date of the receipt of this

order. Both parties are at liberty to adduce fresh evidence if so advised. Seven days after the date of the posting of the finding in this court will be allowed for filing objections.

Issue:—Whether the plaintiff has any and what Mirasi rights and Menkaval lands in the village of Coromandel—and, if so,

Whether he has any cause of action as against the defendant and whether to any and what decree he is entitled in respect of such Mirasi right and Menkaval lands.

Petition from Khader Hussain, dated 12th March 1890.

Note for the Under Secretary—

The question for consideration is whether the order of the High Court passed on the 8th January 1890 in Appeal No. 94 of 1877, does necessitate any modification in the views of Government hitherto held regarding the nature of tenure of the inam village of Coromandel.

In the first paragraph of its order, the High Court gives a brief history of the village from the time of its original grant up to the date of its resumption by Government in 1873. The narrative, it is submitted, is in no way different from what the Government records show it to be.

In the next eight paragraphs, the contention of the appellant that the inam was personal and his denial that the British Government issued any purvana in 1779, have been examined at length. It has been found as proved that three purvanas were issued with reference to this village in 1760, 1761 and 1779, respectively; two by the Nawab and the third by the British Government. By the first the village was granted on condition of service, by the second it was granted free from any condition of service as a personal inam to the son of the then Kazi. But in confirming the grant, the British Government issued the third purvana in 1779 making it a service inam. Though the original of this last purvana is not now forthcoming, it has been satisfactorily proved that it once existed, referred to on several occasions in subsequent correspondence and its genuineness therefore has been clearly established. It has also been held that the British Government possessed the power of altering the nature of the grant as it did in 1779, its action in the matter having been considered to be an act of "State". It is therefore established that the nature of the inam is what the purvana of 1779 gives it to be, i.e., service inam.

In paragraph 9, the question whether the Government is within its powers in cancelling a title-deed once issued by the Inam Commissioner, was next examined. After stating that a title-deed is only evidence of the settlement and whether it is valid or otherwise must be determined on other considerations, the Judges say that the Government acted within its powers in cancelling the enfranchisement and the title-deed and in ordering the registration of the village on service tenure.

It is further held that the alienation by the appellant's vendor of the endowment of his office cannot be upheld beyond his lifetime (paragraph 11). The last holder of the office died in 1868.

But an issue was sent to the lower court regarding the appellant's alleged occupancy right over some lands in the village. Seeing that he has not any enjoyment of the lands, at any rate after the village was resumed in 1873, it is submitted, the appellant may fail to prove this right also.

The result of the appeal, therefore, is that all doubts hitherto existing as to the powers of the Government in having altered the nature of the grant in 1779 and resumed it subsequently in 1873, have been removed and its position is legally fortified.

The view taken in the note of 10th December 1889, it is submitted, is in perfect accordance with the above decision and requires no alteration. The petitioner is not a successor in office to the late Kazi and cannot, it is submitted, claim any share in the income attached to the office.

With reference to the inconsistency noticed by the Hon'ble Mr. J. Grose in the statement of the facts of the case, it is submitted a re-arrangement of the facts will remove all doubt. It is perhaps more correct to say that the Kazi having improperly

alienated the inam lands attached to his office, the Government found it necessary to resume the endowment and to order the net income only to be paid to the Kazi which he has since been receiving.

20-3-90.

Please see the note for orders dated 21st December 1889, and the Hon'ble Mr. Grose's note thereon. The petition has been lying over pending receipt of a copy of the High Court's judgment in Karunakara Menon's case: this has now been received and is printed above.

A reference to Board's Proceedings No. 579, dated 21st September 1887, paragraph 5, will show that the inam was resumed in 1873 and classed as jirayati, an allowance of Rs. 1,000 *per annum* being given to the Kazi. Subsequently in 1876 G.O. No. 1472, dated 12th October 1876, it was resolved to pay the Kazi the net revenues of the village, but this did not of course affect the previous order of resumption.

Karunakara Menon, who purchased the inam in 1867, has now practically failed in his appeal to the High Court, although the question of his Mirasi rights still remained undecided. The High Court has held that Government was acting within its powers "in cancelling the enfranchisement and the title-deed and in ordering the registration of the village on service tenure," and that the alienation could not in any case be upheld beyond the vendor's lifetime: the vendor, i.e., the late Kazi, died in 1868, so that the resumption of the inam in 1873 was unquestionably valid.

The present petitioner claims the revenues of the village as heir to the late Kazi; he does not apparently lay any claim to the office. The Board's order against which he appeals says that "the inam is an endowment of the kaziship" and that "petitioner who performs no service can claim no portion of it." The justice of this order has been upheld by the High Court's judgment above alluded to and it is submitted that the petition may be rejected.

R. C. C. CARR—24-3-90.

Yes.
J. H. G[ARSTIN]—29-3-90.

Petitioner clearly has no claim and his petition should be rejected.

C. A. GALTON—26-3-90.

The judgment of the High Court is important as ruling that the Government have the power in certain cases to cancel title-deeds issued by the Inam Commissioner. It may help us very considerably in the case of the so-called inam settlement of Coimbatore where the so-called inams were not inams at all. This point should be looked into.

J. H. G[ARSTIN]—29-3-90.

The grounds on which the cancellation of the title-deed in this case was upheld seem to be entirely special and not such as would apply to the Coimbatore cases, where no ground for upsetting this settlement can be alleged except that we want to charge full assessment instead of $\frac{2}{3}$. It was never asserted that no title-deed could be cancelled in any event.

H. E. S[TOKES]—11-4-90.

I think it might be asserted in respect of the Coimbatore inams that the Inam Commissioner had really no authority to enfranchise them at all, that they might be all fully assessed and the title-deeds cancelled, but I am not prepared to say that we should assert it.

J. H. G[ARSTIN]—16-4-90.

Discussed in the Council and settled that no further action on this subject need be taken.

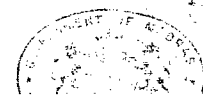
C. A. GALTON—18-4-90.

[G.O. Mis. No. 2231, Revenue, dated 2nd April 1890.]

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allude to was heard in
 appeal by the High Court
 about a month ago but
 judgment has not yet been
 delivered. It was a case brought
 by Karunakaran Menon
 a solicitor of the High Court

to whom the late
Cuzco sold, all his
rights in the Inca of
Kariandalam. Then
Govt of Madras resumed
the ^{lands} grant on the ground
that it was a service
grant but allowed the
heir, Cuzco (the successor
of the grantor) to receive
the whole income. Kariandalam



Revenue Secretariat

Memorandum failed to establish his
rights in the Court below and
his suit was dismissed with
costs. I think his appeal must
fail. Yes the appeal was
dismissed for default at first
but afterwards readmitted on
the file. Yes Cuzco made a
remarkable speech in which
he told the judges based to
the Magna Charter. I think

the judgment will probably
be given immediately after
the holidays. If it would
be useful to Mr. Green I
could let him have the
printed papers in the case
which I carefully arranged
in order when I appeared in
the Lower Courts. They pretty well
show the history of the Luam.

Yrs sincerely
W. Powell



Revenue Secretariat

21 Decr 1889

No 71-

Dear Mr. Powell.

Can you inform me
whether a certain suit in connection
with the Luam of the Madras Cause
has been decided by the High Court
quite recently. I cannot tell you
the number of the suit but the
present holder of the Luam is
one Mr. Gopalram Hapsai, who I
believe still holds it on some
tenure. One Khader Hopsai has
for some time laid claim to it as a
personal Luam and a petition of
him is at present before your

- sent

12 B. 5
Government. Mr. Grose has
therefore directed me to find
out about the suit alluded
to.

A suit in connection with
the matter was dismissed for
default in 1887. (A. S. 94 of 1887)
but Mr. Grose feels sure he can
- speak ~~by~~ Mr. Nelson
referring to this or a similar
suit reported in the papers a
few weeks back - he has not
however noticed any judgment.
Kindly reply to me to the Club.

Yours sincerely
H. J. R. C. Carr -

V. H. Torse

1007 High Court
19. 3. 90
J. H. Carr
The Judgment in
the case referred to by you is
only just ready - I enclose
you a copy -

Yours L. J.
H. J. Carr

R. E. Carr &

5

(1889.)
REVENUE DEPARTMENT.

No. 9408.

From Khadist Hussain
Madras.

(address
within)

Dated 2nd Dec.

Received 3rd Dec.

Enclosures 5

No. -

SUBJECT.

Submitting certain
papers called for.

ABSTRACT.

Read also C.R. 9527/89
C.R. C.O.

The Board's order is approved
and the appeal dismissed.

By
16 Dec.

Note
One Mir Ghulam Hussain is
present the Kazi of Madras.
As such is in enjoyment of the
revenues derived from the village
of Enamanah. But the petitioner
is the brother's son of the late Kazi
claims the revenue. He contends that
the village is not attached to the Kazi-
ship but that it was granted
as a personal man. His contention
is not tenable (vide C.R. 9527/89
20-2-1886
20-2-1887 and 9527/89-1882.)
The Board informed the petitioner that the
was an endowment of the Kazi-ship &
that the petitioner who performed no service
claims no portion. The petitioner says that
although he is entitled to the full

attached to the ~~proposed~~ above
to Kagi. It is not quite clear how
Shulman & Kagi became appointed by
he seems to have been appointed by
bill of the previous soldiers; whether or
an appointment was valid it is unnecessary
to inquire as Shulman & Kagi is undoubtedly
performing the duties of Kagi & has been
since before the enactment of the act of
November 1st 1863.

In 1867 one Karmakarna Inmon purchased the village from the Kazi & the fort. Thereupon he sued the Duran & decided to substitute a money-payment to the Kazi. Karmakarna sued fort. in the Chingleput Dist. Court but his suit was dismissed. His subsequent appeal to the High Court in 1887. ~~His appeal has been~~ was dismissed for default.

the movement.
Submitted therefore that his petition
should be referred to the full particulars
case will be found in R.P. 579
21st 87.
H. H.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the eighth day of January,

One thousand eight hundred and ninety.

PRESENT :-

C. I. E.,

THE HONORABLE MR. JUSTICE MUTTUSAM

AND

THE HONORABLE MR. JUSTICE WILKINSON.

APPEAL No. 94 of 1887

C. B. Karunakara Menon.

Appellant (Plaintiff).

The Secretary of State for India in Council

Respondent (Defendant).

Appeal against the Decree of the District Court of Chaglepunt in Original Suit No. 10 of 1885.

This Appeal coming on for hearing, on Monday, the 18th day of November 1889: Upon perusing the grounds of Appeal, the Judgment and ~~decree~~ of the Lower Court, and the material papers in the suit, and upon hearing the arguments ~~made~~ by H. Nelson, Counsel and the Honorable W. Bhashyam Iyengar, Vakil for the Appellant ~~and~~ of the Government Pleader for the Respondent; and the case having stood over for ~~consideration~~ till this day; the Court made the following

ORDER.

This was a suit brought by the Appellant to es-
Shrotriam village of Coramandel in the District
in what was originally called the late East India Company
the Nabob Wallajah to the British Government in
village free of assessment and with all sources of revenue
Kazi of Madras, as an endowment for his office. In
Kazi's son, Mohidin Abubakar, for his personal bene-
condition of service. In 1779 the British Government
the village in perpetuity to Mohidin Mohamed
of suitable qualification and fitness on account of the
Abubakar since held the office of Kazi and died in 1808
then succeeded to the office and to the Inam Village.
and left no direct male heirs. There were then several
ment approved of the nomination of one Abdul Kad-
and directed that he should hold the village, adding
ment for the support of the Kaziship (Exhibit I).
extended to the village and the Inam Commissioner
the personal benefit of the holder and confirming it
of the previous orders of Government on the subject
(F and G). In 1865 the matter came to the notice
the Government held that the right of the Kazi to the
vana or grant of 1779 and on 20th February 1866,
Inam Commissioner be cancelled and that the village
Madras Kaziship (Exhibit IV). In September 1867
Appellant under an instrument of perpetual lease and
sion. The title-deed which the Government directed

was notified in the Fort Saint George Gazette of the 27th May 1868 that it had been cancelled. In 1872 the Appellant claimed the works within the limits of the village of Coramandel under the Purvana or grant of 1769, and certain terms offered by the Government in settlement of his claim on the ground that there was no law to compel him to accept them. On the 3rd April 1873 the Government refused to the perpetual lease granted by the late Kazi as unauthorized and as nullifying to a considerable degree the intention of Government in continuing the gift of the late Nabob and observing that there will always be a liability of the same thing happening so long as the endowment consists of an interest in land, resolved to resume the grant and to pay the Kazi for the same being a monthly allowance equivalent to the net income derivable by the Inamdar of the village per annum. The village was accordingly resumed in April 1873 and in October 1876 the Government directed that the whole of its net revenue be paid to the then Kazi.

The Appellant's case was that the tenure on which the village was held was personal, that the Inam Commissioner was right in enfranchising it as a personal Inam, and that even if he was in error, it was not competent for the Government to cancel the title-deed once issued by him and to resume the village. He denied that the British Government issued any Purvana in 1779 superseding that of 1761 and pleaded that even if it did, it was not competent for it to do so. On the other hand, it was contended for the Crown that the British Parvana of 1779 was genuine, that it superseded that of 1761, that the village was thus confirmed only as an endowment for the Kaziship of Madras on service tenure, that it was upon that grant, the Kazi's right to the village depended, that its alienation to the Appellant was improper and tended to defeat the purpose with which the grant was made and that the village was therefore lawfully resumed on the 3rd April 1873, the net income derived from it being thenceforward paid to the Kazi of Madras for service. The Counsel for the Crown suggested also in the Court below that the resumption of the village was an Act of State and applied for a separate issue in regard to it; but the Judge considered that the question was embraced in the second issue, viz. whether the resumption of the Inam by the Government is invalid and *ultra vires*. The Judge upheld the case for the Crown and dismissed the suit with costs. Hence this Appeal.

It will be observed that three Parvanas are referred to in connection with the original grant of the village. But none of them is now forthcoming; and as they were issued more than 100 years ago it might be presumed, as alleged, that they had been lost. The finding of the Judge was that all the three Parvanas were genuine, that they were issued in 1760, 1761 and 1767, that by the first, the Nabob Wallajah granted the village on service tenure; that by the second, he granted it as personal Inam, and that by the third, the British Government confirmed the village subject to the terms of the first grant, viz. on the condition of the grantee and his heirs performing the duties of Kazi in the town of Madras. So far as the first two grants are concerned, the finding is not questioned in appeal and it is also sufficiently supported by Exhibits C, D, E, and IV of which the substance is accurately stated by the Judge in his judgment. The contest in Appeal is restricted to the British Parvana of 1779. But that a British Parvana once exist and that it was relied on and accepted as the basis of title to the village, cannot be no doubt. The recital in Exhibit B which evidences the perpetual lease granted to the Appellant by the Kazi of 1867 is that "the village was granted as Inam to my ancestors by Nabob Wallajah in the year 1760 to be enjoyed by them hereditarily by sons and grand-sons." Again, in 1838 the then Kazi of the village of which the collection was produced the British Parvana among other documents which took place on that occasion. The Government shows beyond doubt that it relied upon it as authentic and alleged that he once pledged it with one Sabapathy Mudali and since redeemed it, that at the instance of the Government, the Collector then forwarded it for

information, that from 1833 to 1840 it remained with it and was returned to the Collector for delivery to the Kazi. (Exhibits XI, XII, XIV to XVII.)

Further, in 1854 the then Nabob of Arcot claimed session of the village on the ground of its being a serfholder's Mosque. The Government then denied the author Baker's possession and observed that "the Parvana of the cession of the Jaghire, dated 2nd August 1777, its original terms can alone be admitted in an exact Parvannas of Nabob Wallajah of an antecedent date to the village in question, that right being clearly established, which, though the original may not be forthcoming, is attested by the controlling authorities for the last 75 years". (Exhibit I.)

Again, in 1862 when the Kazi died and his office was vacant, the Government rejected his widow's claim on the ground that the village was held on service tenure and appointed the Appellant's vendor as Kazi and recognized his right. (Exhibit I.)

It is true that in 1794 the Jaghire committee Parvana produced by him as "the Parvana issued to the East India Company giving him the village of Coramandel as Inam." The Jaghire committee made an enquiry with reference to a claim of the Renter of the Ponneri Taluq. It was not the object of the enquiry to determine with precision whether the tenure was that of the then Kazi did not choose to produce the report made by Mr. Smolley, the Collector of the Jaghire, dated 17th April 1794, in which it was stated that the Parvana of 1761 (Exhibit XII) was the only one which carried the case further than Exhibit D. We have no doubt that the British Parvana of 1779 really existed and that there was no legal evidence of its existence.

Though the Parvana is not now forthcoming, it was presumably returned, as observed by the Judge, in 1841 to the then Kazi.

The Appellant who must naturally be in possession of it, if it is still in existence, denies that it was handed over to him in 1867 by the then Kazi. Nor was the original produced in Original Suit 453 of 1869 on the file of the High Court. We find also a statement in Exhibit VIII that the original was not then forthcoming. Under these circumstances and having regard to the age of the document, we are unable to accede to the contention for the Appellant that no sufficient foundation has been laid in this case for the reception of secondary evidence as to the contents of the British Parvana.

The next contention in appeal is that the Judge is not warranted in accepting XI as a correct translation of the British Parvana. It was certified by the Collector, Mr. Maclean, in 1833 in the discharge of his official duty to be a true translation and it was then acted upon as such by the Collector and the Government and again by the Government in 1854 with the knowledge of the Kazi on both occasions. It was also then attested by the then Persian Translator to the Government and now comes from official custody where it has been for more than 40 years. We see no sufficient reason to hold that the Judge is in error in accepting the translation as correct.

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the Government and that in January 1841, the Kazi; (Exhibits XI, XII, XIV to XVII.)

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Though the Parvana is not now forthcoming, it was presumably returned, as observed by the Judge, in 1841 to the then Kazi.

The Appellant who must naturally be in possession of it, if it is still in existence, denies that it was handed over to him in 1867 by the then Kazi. Nor was the original produced in Original Suit 453 of 1869 on the file of the High Court. We find also a statement in Exhibit VIII that the original was not then forthcoming. Under these circumstances and having regard to the age of the document, we are unable to accede to the contention for the Appellant that no sufficient foundation has been laid in this case for the reception of secondary evidence as to the contents of the British Parvana.

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or the then Kazi and referred to the previous to the grant of the Jaghire amandel as Inam." The Jaghire commission made by one Bagavanolu, the committee then to ascertain and al or service and Exhibit D only shows arvana. It is again urged that in the st, in 1822 the only Parvana refer- cumstance does not appear to us to no hesitation in accepting the finding rejecting as unfounded the suggestion

and that there was no legal evidence of its

passed in 1854 and 1862 as to the nature of the principal party with whom the Inam son who produced the British Parvana is about it at the Inam Settlement and claim settlement purports to have been made with the title-deed was ordered to be issued by the Appellant's vendor in August 1862. It is argued that at the Inam was a service grant appointment to the exclusion of the former should be issued in his name by virtue of the title-deed to have written to the Tasildar to send back the title-deed to the notice of Government and the same was served by the Judge, the action of the Inam Commission in granting the Inam without special permission, his powers being limited by rules framed by the Government. But it is argued that under Madras Act I of 1862 the title-deed is to be deemed sufficient proof of title and that if the Inam Commission issued the title-deed, the Crown was bound to accept it. We are unable, however, to decide of the settlement and whether it is a service grant or not. Section II of Act IV of 1862 refers to Inams of the classes described in the Inam granted as an endowment for the Inam of 1831. Moreover, the Appellant's appointment as Kazi and on the view of the title-deed would be entitled to it in full liberty to demur to the tenure subject to the Inam, in favor of the Appellant was subsequent to the Inam, B, as already observed, gave him distinct notice of the British grant of 1779. If he had made due enquiry he would have become cognizant of its contents and of the real nature of the tenure on which the village was held. Having regard first to the mode in which the Government has acted from 1838, next to the numerous claimants for the office of Kazi in 1862 and lastly, to the complaints made by the widow of the Appellant, a pleader of this Court, in 1865, it is difficult to believe that the Appellant, or of the contents of the British Parvana, was really ignorant of the cancellation of the title-deed or of the contents of the British Parvana. There is also the fact that the Kazi with whom the Inam settlement was made withheld information regarding the British Parvana from the Deputy Collector who held the Inam enquiry and thereby misled him and the Inam Commissioner. On these grounds we are of opinion that the Judge was right in holding that the Government acted within its powers in cancelling the enfranchisement and the title-deed, and in ordering the registration of the village on service tenure.

Another point which is urged upon us is that it was not competent for the Madras Government in 1779 to alter the nature of the grant made by the Nabob Wallajah in 1771, two years prior to the cession of the Jaghire and that the position of the East India Company was at that time that of a mere Jaghirdar. An ordinary Jaghirdar has no sovereign power and it is not correct to liken his status to that of the East India Company in 1779. The relation between the Company and the Nabob Wallajah was of a political character regulated by sanads issued by him and any act done by them by virtue of that relation is clearly an Act of State and governed by the principle laid down by the Privy Council in the case of the East India Company *versus* Syed Alli and others (VII Moore's I. A. 552).

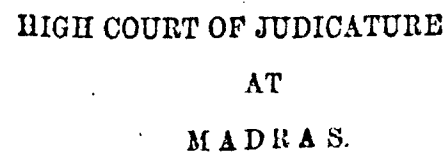
As regards the contention that the resumption of the village in 1873 was an Act of State, we consider it sufficient to state for the purposes of this appeal that the alienation by the Appellant's vendor of the endowment of his office cannot be upheld at all events beyond his life-time. As he died in 1868 we see no reason to question the resumption in 1873.

The only point which remains for us to consider is the claim set up by the Appellant to certain Mirasi rights and Menkaval lands in the village. No issue has been framed and no information is to be had from the original judgment on the subject. Document A purports to convey to the Appellant for value "the single crop village Miras" with all its income whilst document B evidences a perpetual lease of the Mel'aram right and the income appertaining to it. And Exhibit B which is a copy of the order whereby Government resumed the village directed that it be struck out of the Inam Register and classed under jirayati, adding however that under that order there was to be no disturbance of the occupancy rights of any land-holder, that the full assessment payable was to be levied and credited to Government and that that was all. Whilst thus the apparent intention was to levy the full assessment and not to interfere with any occupancy right, there is the averment in the written statement that the village has been in the defendant's possession since the date of the resumption. It is by no means clear whether under documents A and B, the Appellant is entitled to any and what Mirasi rights and Menkaval lands, and so, whether his claim thereto is good as against the Crown and whether the Crown in any way interfered with it. We are unable to dispose of this part of the case without further enquiry and we shall direct the Judge to try the following issue and return a finding within one month from the date of the receipt of this order. Both parties are at liberty to adduce fresh evidence if so advised. Seven days after the date of the posting of the finding in this Court will be allowed for filing objections.

Issue :—Whether the Plaintiff has any and what Mirasi rights and Menkaval lands in the village of Coramandal—and, if so,

By the Court.

Deputy Registrar,
Appellate Side.



HIGH COURT OF JUDICATURE
AT
MADRAS.

IN

APPEAL No. 94 of 1887.
(Original Suit No. 10 of 1885).
District Court of Chingleput.

Dated 8th January 1890.

Sent

49

41
 The Honorable S. F. Pickens
 Chief Justice of the Supreme Court
 at Washington



The Court of Claims, I beg to respectfully inform you, is
 organized, and the first session was held on the 1st of December 1891.
 The Court is composed of three judges, and is now sitting in the
 building of the Department of the Interior, at Washington, D.C.
 The Court is now receiving applications for claims, and is
 holding hearings on the same, and is now in the process of
 settling the claims of the various tribes of Indians.
 The Court is now in the process of settling the claims of the
 various tribes of Indians, and is now in the process of settling
 the claims of the various tribes of Indians, and is now in the
 process of settling the claims of the various tribes of Indians.

M. 1000
 1/2 1/4 2 - Leather
 12th March 1890

The 9th Remains
 Most Honorable
 Your most Affectionate
 Son
 Wm. Harrison
 nephew & only legal representative
 of the late George W. Harrison.

20

No. 2239

ABSTRACT.

From

His Highness
the Prince and only legal
representative of
the late Kazi of
Madras

Address
written.

Dated 12 March.

Received 20. 8. 20.

Enclosures ✓

No.

SUBJECT.

SUBJECT.
Praying for early orders
on his petitions dated
October and 2^d Decr
1887 regarding his claim
to the income of the
allotment of Brownsville.

3/12

Y. J. 100

His Excellency
The Right Honourable
Robert Lee Comyns, G. C. S. I.
Governor in Council
Fort St. George.

The Switz. petition of Henry Thoreau
the Nephew of a Judge of the
of Cambridge Mass. H. Thoreau
and a letter to the Hon. Secy of State

} 1889. *Staph. obscurus*
 } *Staph. obscurus* 1889.

...that village. I have a
...if the village of Coromandel
...as known, a deduction of
...be made from her rent

Mohammed - Mohammed Hakeem
...the Committee, the latter
...dated 2 years previous
...the Comptroller, giving him
...as known.

...perfectly satisfied with the
...Hajavento is directed not
...cession of the village, and
...that, no deduction whatever
...in this account!

W. J. ...
" ... "

...copy of this extract, prop
...of the Jaghat Committee of
...only will be found).

the village of Coromandel &
...1 Regent's Office as known,
...reference, your ...
...to know the ... of
...dated 31st July 1885 that,
...the ... , ... who
... portion of it"

... pray, ... a ... Ex
... ..

... as in duty, ... will

(18 89.)

ABSTRACT.

REVENUE DEPARTMENT.

No. 9522.

From

*Khadis Hussain
Madras*

(address within)

Dated 5. Dec.

Received 6. Dec.

Enclosures -

No.

SUBJECT.

*Prays that his previous
petition may be disposed
of together.*

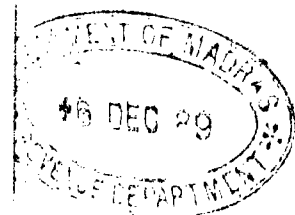


5.12.89

The Honorable J. J. Davis
Chief Secretary to Government
Nagpur

28

24



The humble petition of Khade
Husain the representative of Late
The late Khade Husain
Husain alias baba, the late
Cazi of Nagpur.

Most Submissively Sheweth,

That petitioner has received from
His Excellency the Governor
of Nagpur, dated 26th November 1889,
No. 1567 (in reply to his petition dated 30th
October 1889, regarding which petition he had
desired copies of the 6th & 10th November 1889,
desiring petitioner to send copies of petitions addressed
to the local authorities, or authenticated copies of
them, as the answers or copies of those authorities
respectively, in reply to his petition has respectfully
done in his subsequent petition to Government
dated 1st December 1889, giving cover there
to Original documents, being replies from the
Board of Revenue to Government, with authen-
ticated copies of the petitions which elicited
said replies.

That petitioner also, in the above
petition

Resolution No. 1, dated 2nd Feb^y 1887, a copy of which was forwarded by the Jaghirc Committee held on the 2nd July 1884, touching the village of Coromandel for (now the subject of) resolution, which was as follows:

"Read representation of Bhagawanth Kuler of Purni stating that, the village of Coromandel has been let to the Cazi of Madras & Abad, at the favorable rent of 150 Pagodas per annum, previous to the grant of the Jaghirc to the Company. That about 9 or 10 years subsequent to that period, he (the Cazi) obtained from the Government a lease of the same date as the Jaghirc grant, making over that village to him as Inam, and requesting that, if the village of Coromandel is to be continued to the Cazi as Inam, a deduction of 150 Pagodas per annum may be made from his rent of the district.

"Bhagawanth and Mohiudin - Mohiudin Abbodah, the Cazi, being called in before the Committee, the latter produced the Nawab's Durwanah dated 2 years previous to the grant of the Jaghirc to the Company, giving him the village of Coromandel as Inam.

"The Committee being perfectly satisfied with the authenticity of the Durwanah, Bhagawanth is directed not to molest the Cazi in possession of the village, and is at the same

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same time informed that no deduction whatever can be allowed from his rent on this account.

J. G. J. I. London
" Secy: "

That petition humbly prays your honor to kindly take up the petition addressed by petitioner to H. E. the Governor in Council dated 2nd Dec^r 1887, wherein further information may be elicited, and that the subject's merits in this and the previous petition dated 2nd October 1887, may be taken collectively for consideration, whereupon reply thereto is being written.

That petitioner entertains strong hopes of success in his case at your honor's hands, as your honor has much to do and knew a great deal in the subject, as far as while your honor was District of (Cantonment) District.

That petitioner, simply prays, and the circumstances, for common justice to be done him in his case, which he is sure your honor will gladly accord, to petitioner's Chief, Secretary to Government.

For which benevolence, petitioner and his duty bound to ever most gratefully pray.

Madras,
Triplicane High Court
No. 1 & 2 Section, Supt
5th December 1887.

Khader Hussain

Sept 11/89

Read also C. no 9522/89.

His G.O.

~~The Board's order
is approved and the
appeal dismissed.~~

Per

Vote for orders 21. 12.

At

One Mir Ghulam Hussain
is at present the Kaxi of Madras
+ as such is in enjoyment
of the ^{net} revenues derived from
the village of Coramandel.
But the petr who is the brother's
son of the late Kaxi claims
the income. He contends that
the village is not attached
to the Kaxiship but that it
was granted as a personal
Inam. The Bd informed
the petr that the Inam was
an endowment of the Kaxi-
ship and that the petr who
performed no service could
claim no portion. The

The petitioner says that although he is entitled to the full income, he will not object to only two-thirds of it being given to him, the remaining one-third being continued to Ghulam Hussain.

The village was granted originally as a Karzi Service Inam by the Wallajah and the very next year after the grant it was confirmed as a personal Inam to Fakruddeen Abdu Baksh and his descendants for ever independent of the duty of performing the offices of Karzi. For some reason or other, the Company's Govt. in 1779 issued a 'Pardwana' confirming the original grant as a service Inam & overlooking entirely the latter grant and since that ^{time} ~~date~~ the Govt. has never receded from its position that the Inam is

This is not found in the records of the office - and was ^{not produced} in the High Court, who however accepted secondary evidence of it.

it was subsequently taken on the file, and disposed of on its merits as A.S. no. 94 of 87 - judgment attached -

is attached to the Service of Karzi. [It is submitted that the question cannot be reopened now as it seems impossible to ascertain the reason for overlooking of the acknowledged grant as personal Inam. In 1867, the Karunakara Menon purchased the village from the Karzi and the Govt. thereupon resumed the Inam and decided to substitute a money payment to the Karzi. Karunakara Menon sued Govt. in the Chingleput District Court but his suit was dismissed & his subsequent appeal to the High Court in 1887 was also dismissed for default. It is not quite clear how Ghulam Hussain became Karzi, but he seems to have been

been appointed by the will
of the previous holder; whe-
ther such an appoint-
ment was valid, it is
unnecessary to enquire
as Ghulam Hussain is
undoubtedly performing
the duties of Karsi and
has been since before the
enactment of Act XII of '80.

Moreover, petitioner makes, appa-
rently, no claim for the
office, only for the em-
oluments.

Submitted therefore,
that his petition must
be rejected. Full parti-
culars of the case will
be found in B.P. 579
21 Sept 81.

Rm
2. 12.

U
C. N. 9408 & 9522/89
Petition from

Khadir Hussain
d. d. 21. 12. 81.

The Hon. Mr. Justice C.J.

Note for the Under Secretary.

Note 1P
In the matter of suit:
Rammagaramenon & Secretary of S. S. S. S.

The question for consideration
is whether the order of the High
Court passed on the 8th Jan 1890
in Appeal no 94 of 1877, does
necessitate any modification
in the views of Govt. hitherto
held regarding the nature of
tenure of the Inam village
of Coromandel.

In the 1st para of its
Order, the High Court gives
a brief history of the village
from the time of its original
grant up to the date of its
resumption by Govt. in 1873. The
narrative, it is submitted is
in no way different from what
the Govt. records show it to be.

In the next 8 paras, the
contention of the appellant that
the

the Inam was personal and his denial that the British Govt. issued any Purvana in 1779, have been examined at length. It has been found as proved that three Purvanas were issued with reference to this village in 1760, 1761 & 1779 respectively; two by the Nawab and the third by the British Govt. By the 1st the village was granted on condition of service, by the second it was granted free from any condition of service as a personal Inam to the son of the then Ragi. But in confirming the grant, the British Govt. issued the third Purvana in 1779 making it a service Inam. Though the original of this last Purvana is not now forthcoming, it has been satisfactorily proved that it once existed, referred to on several occasions in subsequent correspondence and its genuineness therefore has been clearly established. It has also been held that the British Govt. possessed the power of altering

the nature of the grant as it did
in 1779, its action in the matter
being considered to be
having taken to have been 'an act
of State'. It is therefore established
that the nature of the Suam is
what the Puvana of 1779 gives
it to be i.e. service Suam.

In Harro, the question whether the Govt. is within its powers in cancelling a title deed once issued by the Enam Commission^{er}, was next examined. After stating that a title-deed is only evidence of the sealman's and whether it is valid or otherwise must be determined on other considerations, the judges say that the Govt. acted within its powers in cancelling the enfranchisement and the title deed and in ordering the registration of the village in service tenure.

It is further held that
the alienation by the appellants
under of the endowment of
his office cannot be upheld
around his life-time (para 11)
the last holder of the office, died
in 1868.

But an issue was sent to the lower court regarding the appellants' alleged occupancy right over some lands in the village. See that he has not any enjoyment of the lands, at any rate after the village was resumed in 1873, it is submitted, the appellant may fail to prove this right also.

The result of the appeal, therefore, is that all doubts as to the force of the Govt. in having altered the nature of the grant in 1779 and ~~and~~ resumed it subsequently in 1873, have ~~at~~ been removed and its position is legally fortified.

The view taken in the note of 10th December/89, it is submitted, is in perfect accordance with the above decision and requires no alteration. The petitioner is not a successor in office to the late Razi and cannot, it is submitted, claim any share in the income attached to the office.

office.

With reference to the inconsistency noticed by the Honorable Mr. J. G. G. in the statement of the facts of the case, it is submitted, a re-arrangement of the facts will remove all doubt. It is perhaps more correct to say that the Razi having improperly alienated the immovable lands attached to his office, the Govt. found it necessary to resume the endowment and to order the net income only to be paid to the Razi, which he has since been receiving.

High Court's decision in
the Coromandel Inam suit

NOTE FOR THE UNDER SECRETARY.

9408

The statement on the 3^d page
of this note that Karumakara
Munna has bought the village, &
that the Inam has been resumed

not consistent with the statement
on the 1st page that the Kazi
& such is in enjoyment of the
revenues derived from the village

An appeal was heard in the
High Court 3 or 4 weeks ago in
Karumakara Munna's case; but
I don't know whether judgment has
been pronounced yet or not. It will

No. S. 9408. and 9522/89
Cno. 2239/90

From Khadi Hussein -

Dated

18

FOR ORDERS.

decide either that Evt were justifi-
fied in Resuming (in which case
pdr shd be told that the man
has been resumed) or that the
I am has been enfranchised
(in which case pdr must be
referred to the Courts).

JG

21/12

1 page 11/10/11
4 page 11/10/11

Please see the note for orders
tied with red tape, and the
Mr. W. Gross's note thereon.
The petition has been lying
over pending receipt of a
copy of the High Court's judgment
in Kanakara Menon's case.
This has now been received &
is put up.

A reference to Bd's Pros.
no. 579 dated 21. Sept. 87. para 5
will show that the man was
S.O. 383. d/ 3. Apr. 73. resumed in 1873 and classed
as jirayoti, an allowance of
Rs 1000 per annum being given
to the Cazi - Subsequently in
S.O. 1472. d/ 12. Oct. 76. 1876 it was resolved to pay
the Cazi the net revenues of the
village, but this did not of-
course affect the previous order
of resumption -

FOR ORDERS

Kurnahara Memon, who purchased the mian in 186, has now practically failed in his ^{appeal} to the High Court, although the question of his mian rights still remains undecided. The High Court has held that Govt was ^{acting} within its powers "in cancelling the enfranchisement of the title deed and in ordering the registration of the village on service tenure", and that the alienation could not in any case be upheld beyond the vendor's life time: the vendor is the late Kazi, died in 1868 so that the redemption of the mian in 1873 was unquestionably valid.

The present petitioner claims the revenues of the village as heir to the late Kazi - he does not apparently lay any claim to the office - The Board's order against which he appeals says that "the mian is an endowment after Kazi'ship" & that "p.t. who becomes no service

Dismissed the mian
and I would that no
further action on this
subject need be taken.

No.

Dated

FOR ORDERS.

I think it might be assumed in
favor of the Coimbatore case
that the Govt. had really no
authority to deprive him of the
mian as the mian was not
fully alienated & the title deed cancelled.
But I am not prepared to say that
he should be restored to it.

The grounds on which the cancellation
of the title deed in this case was upheld
seem to be entirely special & not such
as would apply to the Coimbatore case,
where no ground for upsetting the
settlement could be alleged except that
we would to change full argument
instead of 5/8. I was never arrested
that no title deed could be cancelled in
any case.

The judgment of the High
Court is important and as being
that the Govt. have the power
in certain cases to cancel
the title deed issued by the
Govt. Court.

help us now
considerably in
the coming 10-15 years
- called from settlement
Coimbatore where the
so-called income there is
now at all - This point
is to be looked into.

15/8

can claim no portion of it -
The justice of this order has
been ^{upheld} by the High Court's
judgment above alluded
to and it is submitted that
the p.t. may be rejected.

Cuo. 2239/90. is
merely a reminder to
Cuos. 9408 and 9522/89.

Run
24.3.90.

Petitioner clearly has
no claim + his petition
should be rejected.

26/3

FOR ORDERS

2231
2 Apr/20.

GOVT
Petitions from
Khadii Hussein
regarding the village
of Comandul -

the Hon. Mr. Garstin. C.S.

[Faint handwritten notes]

G.O. no 2231/20/20
The Govt declines to
comply with pet^r request
The matter has been
resumed by Govt.

Rm

2.4.50

pet^r 8 }
lost from order 1.

27/3.
24/3

When given for copying _____
When copied _____ } 191
When examined _____
When signed _____

READ AGAIN G.O., No. _____ DATED 19 _____

CURRENT No. _____

ENCLOSURES TO C. No. _____

ORDER OF GOVERNMENT.

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—
A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

A A A A A A A

38