

(1) Number of pages 30(2) Date of repair 9-10-13(3) Initials of the Referee [Signature]**MADRAS RECORD OFFICE.****Government of Madras.****DEPARTMENT.**

G.O. No.	351	Press
		Mis.
Dated	27-5-13	1899

Not to be folded or roughly handled

27TH MAY 1890, No. 361, REVENUE.

GOVERNMENT OF MADRAS.
REVENUE DEPARTMENT.

READ—the following Proceedings of the Board of Revenue (Land Revenue), dated 27th February 1890, No. 121:—

MR. H. W. BLISS.

MR. W. S. WHITESIDE.

Read—the following letter from W. J. H. LEFANU, Esq., Collector of North Arcot, to the Secretary to the Commissioners of Land Revenue, dated Chittoor, 29th October 1889, Reference Board No. 2622:—

In their order, dated 24th April 1882, No. 412, Revenue, embodied in Board's Proceedings, dated 12th May 1882, No. 1303, Government observed that endowments attached to a religious institution falling within the scope of Act XX of 1863 could not be resumed for neglect of the object of the grant, as such procedure is barred by the provisions of that Act. There is, however, a provision in Standing Order No. 117, paragraph 2 (new edition), corresponding to Standing Order No. 120, paragraph 3 (old edition), which enjoins that the inam lands and money allowances held by pagodas which have been abandoned or have been in a ruined condition for upwards of 12 years may be fully assessed or resumed. I have the honor to inquire if the orders of Government quoted above are not still in force, and if they are in force, whether the provision in the Standing Order does not require correction.

Resolution—dated 27th February 1890, No. 121.

The Collector's letter will be submitted to Government for orders.

2. In paragraph 2 of Standing Order No. 117 (new edition), it is stated that inam lands and money allowances, held by pagodas, which have been abandoned or have been in a ruined condition for upwards of 12 years, may be fully assessed or resumed. This order is based on Circular Order, dated 7th December 1854 (p. 104 of Maskell's Standing Order, Volume of 1851—56). The Collector of North Arcot now draws attention to G.O., dated 24th April 1882, No. 412 (Board's Proceedings, dated 12th May 1882, No. 1303) in which Government said that Act XX of 1863 barred the resumption by Government of any religious endowment on the ground that the pious and religious objects for which it was granted are neglected. Mr. LeFanu asks that, if the Government Order is still in force, the Standing Order quoted above may be amended.

3. The view taken by the Government in 1882 was based on an opinion of the then Advocate-General who remarked that, looking to the policy of the Act and the words of section 22, he did not think Government had the power to declare the forfeiture of any endowment falling under Act XX of 1863 (Board's Proceedings, dated 16th February 1882, No. 520).

The policy of the Act is explained in the preamble to the Act. It is as follows:—

“Whereas it is expedient to relieve the Board of Revenue and the local agents from the duties imposed on them by Regulation VII of 1817, so far as those duties embrace the superintendence of lands granted for the support of mosques, or Hindu temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith; and the appointment of trustees or managers thereof; or involve any connexion with the management of such religious establishments.”

By section 22 of the Act it is provided that, except as provided in the Act, it shall not be lawful for any Government in India, or for any officer of any Government in his official character,

"to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment; or to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishments."

4. Both the policy of the Act and the words of section 22 seem to prohibit the connection of Government with the superintendence or management of any religious institution or of any endowment granted for its support, but there seems to be nothing in the Act to prevent Government from resuming an endowment when the object of the grant is not fulfilled or becomes impossible of fulfilment. The question has apparently never been decided in the High Court. In the Nadiyam mutt case, however, the point was raised. There the villages granted for the support of the mutt had been sold by the civil court in satisfaction of debts contracted by the Matathipathi, and the Collector fully assessed the villages. The Collector pleaded that, as by the sale of the villages, the object of the grant had become impossible of fulfilment, he was justified in resuming the inam tenure.

* Vide paragraph 17 (last but one) of judgment in Appeal Suit No. 82 of 1886 in Board's Proceedings, dated 20th September 1889, No. 5750.

The High Court held * that there was no evidence that the mutt had ceased to be kept up, except so far as it had been from causes beyond the control of the plaintiff

(successor of the man for whose debts the villages had been sold) and that therefore they could not hold that the Collector was justified in resuming the villages by reason of the conditions of the grant having been violated. From this it may probably be inferred that, if breach of the conditions of the grant can be established, the High Court would uphold the resumption of the grant. There seems to be a very clear distinction between resuming an endowment for the non-performance of the duties attached to it and taking part in the management of the charity for which it was given. The Board considers that the Standing Order may remain unchanged until the matter has been decided by a case in the courts. The orders of Government are requested.

(A true Copy and Extract.)

(Signed) M. HAMMICK,
Secretary.

To the Secretary to Government, Revenue Department,
with judgment in Appeal No. 82 of 1886 (to be returned).
Copy to the Collector of North Arcot.

ORDER—dated 27th May 1890, No. 361, Revenue.

Miscellaneous.

The Government agrees with the
Board.

(True Extract.)

(Signed) C. A. GALTON,
Secretary to Government.

To the Commissioners of Land Revenue, with one enclosure.

Exd. A. D. Xavier.

40 Copies.

Original
Govt. of (1890) Madras.
REVENUE

Issued

Recd.

Encl

G.O., 27th May 1890, No. 361.

MAY.

Endowments attached to religious
institutions.

Agreeing with the Board of Revenue in considering that the Standing Order No. 117 (new edition) regarding the resumption of —, which have been abandoned or neglected, may remain unchanged until the matter has been decided by a case in the courts.

NOTES.

18/3/99 ✓
22/11/99 ✓
7/3/01 ✓
21-7-11 ✓
28-11-09 ✓

It seems to me that para. 2 of B.S.D. 54 is wrong & misleading, & should be cancelled. It is based on orders prior to the Inam Settlement & it is inconsistent with para. 1. of the same B.S.D. while it neglects the principle laid down in G.O. No 1045 Rev. d 11 Oct. 1892. Is this not so & how has para 2 so long survived?

Al/28805

To Under Secretary.

Para 1 of S.O. No 54 lays down that when a religious or charitable institution for which an inam was granted ceases to exist or the conditions of the grant are not fulfilled the case should be reported for the orders of the Board which will, if necessary, obtain the sanction of Govt for the resumption of the inam & that where the cessation of service is recent ~~collectors~~ ^{they} should, before reporting the case for orders, give the inamdar an opportunity of reviving the service. The B.D. has been empowered to resume money allowances granted for the upkeep of temples & mosques or the performance of religious service where the conditions of the grant are not fulfilled & vide para 2 (ii) of S.O. No 411 of 28.6.99 & page 2 of the notes connected with the S.O.

Para 2 of S.O. No 54 provides that inam lands & money allowances held by temples, mosques which have

been abandoned or have been in a ruined condition for a period of 12 years may be fully assessed or resumed without the previous sanction of the B.D., the circumstances of each resumption being given in the Jamabandi report.

3. In 1849 the Govt directed the resumption of all man lands in N. Arcot attached to pagodas wherein service was not performed. Order para 9 of E. M. C. No 1035 of 30-10-49. The order of 1849 was subsequently made applicable as a general rule to the pagoda maniem & allowances in all Districts with the observation that these orders shd be liberally interpreted & not pressed so as to be unpopular among the people, opportunity being afforded for renewing the service when of recent discontinuance. Order para 5 of E. M. C. No 47 of 13-1-1852. Circular order of 5-2-52 was accordingly issued by the B.D. directing all collectors to include in their reports of lapsed manms all maniem land attached to pagodas wherein service was not performed with a view to the order of Govt being obtained for their resumption. It was pointed out that an opportunity shd be afforded to the holders of the maniem land for renewing the service when it was of recent discontinuance. This is now embodied in para 1 of S.O. No 54.

4. In recommending the resumption of certain pagoda manms in N. Arcot the collector suggested that all service manms wherein the

6-11-55 E

the service for which they were originally granted has been discontinued for a period of 12 years should be resumed by the collector as a matter of course". The B^d supported the suggestion & observed that the period named was that which formed the limit to the admission of claims for exemption from the payment of revenue & which bore the right to sue in all private transactions. If the suggestion was approved by Govt, the Board proposed to issue a circular in modification of that of S.O. 52 directing the Collectors to incorporate with the for-land names of pagodas appearing from time to time to have been abandoned for a period of 12 years without applying for special sanction but to state the amount & circumstances of such resumption in the Jamabandi reports. The B^d observed that this rule should be made applicable to money allowances for the service of pagodas. The Govt accepted the proposal - vide G.O. No 1555-828-11-54 & Circular order No 7-12-54 was issued by the Board. This circular order now appears as para 2 of S.O. No 54 with some verbal changes.

5- It will be seen from the above that para 2 of S.O. No 54 relates to names & money allowances attached to pagodas & mosques which have been abandoned or have been in a ruined condition for upwards of 12 years while para 1 relates to

Cases where the abandonment of the charitable or religious institution or the cessation of service has been for less than 12 years. Please see also P.O. No 1829 of 2-7-75. Para 2 of P.O. No 574 is not, it is respectfully submitted, inconsistent with para 1. In resumptions of inams under para 1 it does not appear that collectors neglect the principle approved in P.O. No 1045 of 11-10-92, viz that except in the case of lands which are unoccupied at the time of resumption only the assessment on the land should be considered as constituting the inam & rythu pattas should be granted to the inamdar in lieu of the inam title deeds which should be cancelled. The Jamabandi reports for the five years ending 1902-03 have been looked into. Cases of resumptions of inams are reported by the Collectors of Chingleput, Nellore, Tanjore, Malabar & Coimbatore. In Coimbatore the inams consisted of assignments of assessment & being deducted the inam land was fully assessed in Malabar while in the remaining districts the information furnished does not show what constituted the inams - whether the land themselves or the assessment thereon. It may be observed that in most cases it is exceedingly difficult to ascertain whether the land or the assessment constitutes the inam & that the land cannot be taken out of

Please see list of
inam lands marked with a cross

the possession of the mandator intended resort to Civil Court.

6. The question whether para 2 of I.O. No. 54 should be retained, having regard to the provisions of Act XX of 1863 was raised in 1890. The Govt. agreed with the B. in considering that it might be retained for the present. vide fo. No. 361 827-5-90.

16/9/05

Self

Para. 2 of I.O. No. 54 might perhaps be made clearer. I understand that the resumption of the income is carried out by denying the full right of succession from the mandator, cancelling the income grant but not dispossessing the possessor of the income in his possession.

19.5.07

Thanks. The papers may be lodged. Tho', as U.S. notes, para. 2 of the S.O. 54 might be clearer, as the question of retaining that para. was considered & decided in the negative in 1890, it is hardly worthwhile to raise it now.

20.9.05

No. 2009

From Board of Revenue (Land Revenue).

Dated 29 Feb 1890.

FOR ORDERS.

The question submitted to order is one of some difficulty and has been raised before on occasions than one, but the opinions expressed in regard to it by the Board or Government have not been unanimous. In its Prop. dated 14th July 74 No. 1805 the Board stated as follows:—

"The Board have carefully considered the effect of Act XX of 1863 with regard to this case, but they have come to the conclusion that there is nothing in that Act to prevent Government from exercising its right to impose a tax assessment on lands held conditionally when the conditions cease to be fulfilled, even if the lands were granted as religious."

Endowments.

This view was accepted by Government and the imposition of full assessment was accordingly made (G.O. 25th April 1874 no. 1098).

2. The same view was held in G.O. 22nd April 1875 no. 638, in para 3 of which it was remarked that the penalty for the non-performance of the service as well as for the non-payment of the quit-rent was the resumption of the land tenure. It was accepted by the Board of Government in G.O. 3rd Feb. 1877 no. 504.

3. In its Prop. dated 3rd Oct. 1878 no. 2690, however, the Board changed its opinion and observed as follows:-

"... the Board are of opinion that by Act XX of 1863 they are divested of all power of interference with the lands or property of religious institutions and that the Govt. have no power to resume lands granted for religious purposes even though the conditions of such grants

have not been observed."

The Government, while declining to deal with the general question ~~on the ground~~ ^{because that rule was} then being made to legislate on the subject, remarked as follows:-

"As regards individual question of misappropriation of endowment there is a palpable distinction between misadministration by Trustees of an institution while existing and quasi-misappropriation of an endowment granted for an institution which no longer exists. In the latter case the State cannot be held bound to maintain an assignment of State revenue in the former it is for the interest to enforce due administration." (G.O. 27th Nov. 1878 no. 1926).

4. In 1882, however, the Government held that it was bound by the provisions of Act XX of 1863 from resuming an endowment to which it applied on the ground that the persons and religious objects for which it was granted by

repeated (p. 24th April 1882
No 412) and this view
was based on the opinion
of the ^{then} Advocate-General
which is printed in p. 7th
Decree No 1887. This 5th
conflict between this view
and the provision in para 2
of the Standing Order No 117 (new
Edition) that the attention
is now drawn by the Chief
of North-West.

5. The Board, as now
constituted, is of opinion
that there is a very clear
distinction between receiving
an endowment for the
performance of the duties
attached to it and taking
part in the management
of the charity for which it
was given; and that while
the latter is prohibited by
sec 22, there is nothing in the
Act to prevent the former
being done. Submitted that
the following ~~correct~~ observation
made by the Board itself
in its Rep. printed in p. 10.

FOR ORDERS.

REVENUE DEPARTMENT.

No.

From

Dated

18

FOR ORDERS.

dated 27th Nov 1882 No 1926
sufficiently meets the above
argument:—
“ + + + no objection
is made as to the power of
receiving such endowments
on any pretext whatever.
The law provides a specific
remedy for any breach of
trust (vide sec 14), and it
would be manifestly no
satisfaction to any person
interested in the maintenance
of a religious institution if
the Government on the complaint
of misappropriation were to
revoke the endowment. When
under the procedure above
referred to he can enforce
the due execution of the
trust and secure the per-
formance of the defaulting

"trustee or manager."

Woodman's digest of Indian
Law has been gone
through but it does not
appear that the precise
question before Government
has ever been decided.

The decision of the local
High Court in the ^{Madras} ~~Madras~~
Smith case does not settle
the point &

whether it is not clear whether
any such inference as the
Board might draw from it.
In these
circumstances it seems
desirable to refer the
matter again to the present
Advocate-General before
passing final orders.

I think the earlier views
and the Board's view as
stated in the current
correction. The former
opinion of the Advocate
(General) did not deal
fully with the arguments
presented in the printed
report to be referred for a
further opinion. July
1875

I think the inference
the Board draw from the
ending of para 17 is
the judgment is legitimate.

Yours
H.S.

Yes. I think the Govt. has power
to examine persons per-
formance, such power
is certainly not taken
away by Act XX of 1873
in my opinion.

Yes
21/5/75
I don't think it is
21 May

FOR ORDERS.

Re. the powers of Govt. to resume
religious endowments under
act XX of 1863.

The Honble Mr. Secretary
CS.

The Honble Mr. Secretary
CS.

G.O. No. 361
27-5-90

BOARD OF REVENUE (LAND REVENUE), 27TH FEBRUARY 1890, No. 121.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

MR. H. W. BLISS.
MR. W. S. WHITESIDE.

READ—the following letter from W. J. H. LEFANU, Esq., Collector of North Arcot,
to the Secretary to the Commissioners of Land Revenue, dated Chittoor,
29th October 1889, Reference Board No. 2622:—

In their order, dated 24th April 1882, No. 412, Revenue, embodied in Board's
Proceedings, dated 12th May 1882, No. 1303, Government observed that endowments
attached to a religious institution falling within the scope of Act XX of 1863 could
not be resumed for neglect of the object of the grant, as such procedure is barred by
the provisions of that Act. There is, however, a provision in Standing Order No. 117,
paragraph 2 (new edition), corresponding to Standing Order No. 120, paragraph 3
(old edition), which enjoins that the inam lands and money allowances held by pagodas
which have been abandoned or have been in a ruined condition for upwards of 12
years may be fully assessed or resumed. I have the honor to inquire if the orders of
Government quoted above are not still in force, and if they are in force, whether the
provision in the Standing Order does not require correction.

RESOLUTION—dated 27th February 1890, No. 121.

The Collector's letter will be submitted to Government for orders.

2. In paragraph 2 of Standing Order No. 117 (new edition), it is stated that inam
lands and money allowances, held by pagodas, which have been abandoned or have
been in a ruined condition for upwards of 12 years, may be fully assessed or resumed.
This order is based on Circular Order, dated 7th December 1854 (p. 104 of Maskell's
Standing Order, Volume of 1851—56). The Collector of North Arcot now draws atten-
tion to G.O., dated 24th April 1882, No. 412 (Board's Proceedings, dated 12th May
1882, No. 1303) in which Government said that Act XX of 1863 barred the resump-
tion by Government of any religious endowment on the ground that the pious and
religious objects for which it was granted are neglected. Mr. LeFanu asks that if the
Government Order is still in force the Standing Order quoted above may be amended.

3. The view taken by the Government in 1882 was based on an opinion of the
then Advocate-General who remarked that, looking to the policy of the Act and the
words of section 22, he did not think Government had the power to declare the
forfeiture of any endowment falling under Act XX of 1863 (Board's Proceedings,
dated 16th February 1882, No. 520).

The policy of the Act is explained in the preamble to the Act. It is as
follows:—

"Whereas it is expedient to relieve the Board of Revenue and the local agents from the
duties imposed on them by Regulation VII of 1817, so far as those duties embrace the superin-
tendence of lands granted for the support of mosques, or Hindu temples and for other religious
uses; the appropriation of endowments made for the maintenance of such religious establish-
ments; the repair and preservation of buildings connected therewith; and the appointment of
trustees or managers thereof; or involve any connexion with the management of such religious
establishments."

x 22/1-218/12

Sw-14/5
R 21/5

By section 22 of the Act it is provided that, except as provided in the Act, it shall not be lawful for any Government in India, or for any officer of any Government in his official character,

"to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment; or to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishments."

4. Both the policy of the Act and the words of section 22 seem to prohibit the connection of Government with the superintendence or management of any religious institution or of any endowment granted for its support, but there seems to be nothing in the Act to prevent Government from resuming an endowment when the object of the grant is not fulfilled or becomes impossible of fulfilment. The question has apparently never been decided in the High Court. In the Nadiyam mutt case, however, the point was raised. There the villages granted for the support of the mutt had been sold by the civil court in satisfaction of debts contracted by the Matathipathi, and the Collector fully assessed the villages. The Collector pleaded that as by the sale of the villages, the object of the grant had become impossible of fulfilment, he

* Vide paragraph 17 (last but one) of judgment in Appeal Suit No. 82 of 1886, in Board's Proceedings, dated 20th September 1889, No. 5750.

was justified in resuming the inam tenure. The High Court held * that there was no evidence that the mutt had ceased to be kept up, except so far as it had been from causes beyond the control of the plaintiff

(successor of the man for whose debts the villages had been sold) and that therefore they could not hold that the Collector was justified in resuming the villages by reason of the conditions of the grant having been violated. From this it may probably be inferred that if breach of the conditions of the grant can be established, the High Court would uphold the resumption of the grant. There seems to be a very clear distinction between resuming an endowment for the non-performance of the duties attached to it and taking part in the management of the charity for which it was given. The Board considers that the Standing Order may remain unchanged until the matter has been decided by a case in the courts. The orders of Government are requested.

(A true Copy and Extract.)

Secretary.

To the Secretary to Government, Revenue Department,
with judgment in Appeal No. 82 of 1886, to be returned. ✓
Copy to the Collector of North Arcot.

REVENUE DEPARTMENT.

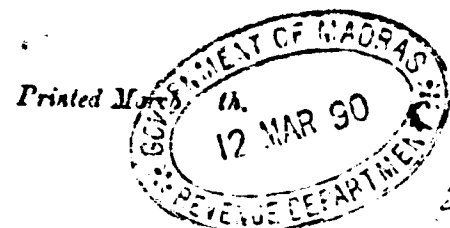
1890.

Board of Revenue

(Land Revenue),

MADRAS.

No 2009.



Proceedings, 27th February 1890, No. 121.

Res 12 March.

Submitting, with remarks, for orders of Government, letter of the Collector of North Arcot inquiring if Government can resume the endowments attached to a religious institution for neglect of the object of the grant.

Print
27/5-
Gnd. Secy.

279 May 1890, no. 361.
S.O. 276/5700

The Government
agrees with the Board

22/5

To the account of the
revenue

40/3

27/5
27/5