

Revenue (189/) Department.

MISCELLANEOUS SERIES.

G.O., No. 488

Confidential No 412

DATED 21 January 1891

[Despatch Abstract.]

Recording B.O. submitting with remarks letter from
the Collector of Chingleput regarding the practice of destruction
of tenant's property for areas due by Muzai dar

BACK PAPERS.

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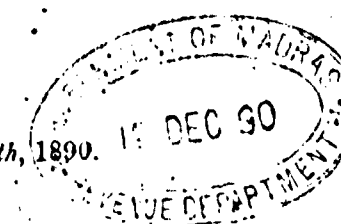
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Proceedings, dated 2nd December 1890,
No. 731.

Submitting to Government, with remarks, letter
from Collector of Chingleput regarding the practice
of distraint of tenants' property for arrears due by
mirassidars.

CONFIDENTIAL.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

MR. W. S. WHITESIDE.

READ—the following letter from M. HAMMICK, Esq., Acting Collector of the Chingleput district, to the Secretary to the Commissioners of Land Revenue, dated Saidápet, 15th September 1890, No. 621 G. & B.

I have the honor to reply to para. 10 of Board's Proceedings, dated 24th June 1890, No. 361, Land Revenue.

2. On receipt of the Board's Proceedings, I asked each of the tahsildars of the principal divisions to report whether they were aware of any practice in their taluks under which arrears due by mirasidars who hold puttahs are collected by distraint and sale of the moveables (other than crops) of their tenants, in cases where the tenants hold no leases from the puttahdars. The three tahsildars (Tiruvallúr, Ponnéri, Saidápet) report that, in their taluks, no such practice exists. The Sub-Collector has written the enclosed report in which, as regards the point on which the Board calls for information, he merely says—"When an arrear due to Government accrues, the village officers attach the moveable property of the swambhogamdar and not of the mirasidar. Sufficient instances have already been quoted, viz., Murungai, another in Sittamúr and another in Thiruvadisúlam" (para. 25). Considering the number of inhabited Government villages in the subdivision, viz., 902, it is hardly sufficient to adduce three instances in support of the statement that the *system* exists under which ryots' moveable property is illegally distrained by Government officers. Two of the instances have already been given to the Board (see para. 17, Mr. Mullaly's report read in Board's Proceedings, dated 24th June 1890, No. 361), and in the third instance, which occurred in the village of Thiruvadisúlam, I cannot help thinking that the Sub-Collector's own action was in some degree the cause of the illegal action of the munsif. The village lands are registered in the name of the village god, and since fasli 1286, or for thirteen years, the name of the trustee of the temple has been entered in the puttah along with the name of the god. Mr. Mullaly, in 1889, ordered the trustee's name to be excluded, an order which Mr. Lee Warner afterwards cancelled. The Sub-Collector also ordered that the Government dues were to be collected from the actual cultivators although they held no puttahs. The munsif's illegal attachments of the ryots' property is justified by him on the ground of the order of the Sub-Collector, and the order, though virtually cancelled by Mr. Lee Warner's order as regards the inclusion of the trustees' name in the temple puttah, was never specifically cancelled by the Sub-Collector. The munsif, who is the brother of the trustees, has been dismissed by the Sub-Collector and has appealed to me. I shall deal with his appeal without delay.

Exclusion

3. I do not believe the system of illegal attachment does very largely prevail, though I have no doubt that the practice has been occasionally adopted. It must be remembered that the cultivators in many villages make a point of asserting their right to pay the Government assessment, and it is very probable that this has been one cause of the existence of the practice of attaching their goods for arrears due on the mirasi puttahs. The practice of the district in the matter of collection has been so curious and anomalous for so many years that it is not extraordinary that the irregularity referred to has occurred. As regards the payment of revenue by the under-tenants, I ask the Board to refer to Board's Proceedings, dated 8th January 1886, No. 130. Mr. Fane's letter then shows how common was the practice, and the Board's order shows that the Board then determined to put a stop to the entry of the sub-tenants' names in the accounts as far as it was possible to do so. I have issued strict orders for the discontinuance of the practice and will see that at next jamabandi all the settling officers make an inquiry into the matter, and make it widely known that the seizure of any moveable property other than the property of the puttahdar for Government arrears is distinctly illegal and will not be countenanced.

4. Mr. Mullaly apparently has misapprehended the nature of the Board's call. Instead of giving facts, the Sub-Collector has given a historical resume of the origin and rise of the existing system of land tenure in the district and an account of what he considers its condition as at present. I hardly like to trouble the Board with a criticism of his remarks, as the matter is not really relevant at present. But I hope the Board will not accept Mr. Mullaly's views on the subject without allowing me, or somebody more cognisant than I am with the literature of the subject, and more able than I am to deal with his arguments, to have his say on the subject. Rather than return Mr. Mullaly's report or recording it in my office, I prefer to submit it to the Board for such notice as it may think fit to take of it with the following remarks.

5. From my limited knowledge of a question which has puzzled everybody who has administered the district from the time of Mr. Place downwards, I consider Mr. Mullaly seriously mistaken in very many of the facts and in the inferences he draws from them. Mr. Mullaly writes as if a gigantic fraud had been perpetrated at settlement by which the swanbhogamdars, as he prefers to call them, were cheated out of rights which had admittedly belonged to them since the beginning of the century. A more mistaken notion cannot, I think, be conceived on the subject. It is the root of all the differences of opinion which occurred between Mr. Mullaly and Mr. Lee Warner, and which now exist between the Sub-Collector and myself. I believe that a perusal of the mirasi literature must convince most readers that if at the settlement, Mr. Puckle had issued puttahs to all the payakaris or swanbhogamdars and ignored the claims of the mirasidars to the puttahs when the common lands were divided, a most monstrous piece of injustice would have been perpetrated. Mr. Mullaly writes as if the progress of the payakari of the district had been from comparative independence downwards to a position of *quasi* slavery. I believe this view to be entirely wrong. The payakari, originally the mere slave of the mirasidar with whom all the Government dealings were carried on, is now feeling his way, somewhat blindly it may be, but surely, to independence. I would draw the attention of the Board to Mr. Crole's letter, dated 12th April 1875, No. 201 (page 404 of the Chingleput Manual). He puts this matter as clearly as it can be put in para. 6 of that letter, and his view, which has always, as far as I can find, been acted upon in the district, that the grant of receipts or the issue of puttahs to the sub-tenants in the samudayam holding would be an unwarrantable interference between landlord and tenant, is the view that Mr. Mullaly now so strongly opposes.

6. I have not distinguished the *payakari* from the *swanbhogamdar*, because I do not believe the distinction that Mr. Mullaly seeks to draw between them exists. In 1816 Mr. Ellis described swanbhogam as the landlord's right from all land cultivated by payakaris or persons not mirasidars (page 178, mirasi papers). No distinction seems in practice to be made in the district between the terms *payakari* and *swanbhogamdar*. They are both non-mirasi cultivators who pay rent to the

mirasidars, it may be in kind or it may be in money. In the latter case the rent is the Government revenue *plus* a fixed sum. It must also be remembered that the Sub-Collector is dealing only with the samudayam lands which Mr. Crole in 1875 showed were only 3 per cent. of the whole cultivable land in the district and of which at the time of settlement only 50 per cent. was in the hands of under-tenants. The Board's Proceedings, No. 130, dated 8th January 1866, shows that then it was the distinct policy of the Board to exclude any but the mirasidars' names from the puttahs and accounts throughout the district.

7. Another misconception of the Sub-Collector is that the grant of puttah confers an occupancy right in the land (para. 20). I need hardly say that the grant of a puttah by the Government at the settlement could not and did not diminish the rights of the cultivators in any degree.

8. The Sub-Collector apparently looks upon the existence of a munsif's seal as evidence of oppression, but I need hardly say many munsifs and other persons possess these seals, which are in constant use for sealing the heaps of unmeasured grain to be divided between landlord and tenant, and other purposes, and most persons who have studied the revenue law and customs of the country have, I imagine, been somewhat perplexed by the constant reference to the sealing of grain-heaps and wondered how the operation could be carried out. That the Sub-Collector should apparently be astonished at the existence of a village seal surprises me. That the attachments he refers to in para. 26 of his report were ever legal I doubt, but that they were constantly made is no doubt true and the reason is obvious. The village seal is, I dare say, made to make the attachment.

9. The Sub-Collector, in para. 29 of his letter, quotes from proceedings of mine passed as District Magistrate, but as those proceedings are now before the High Court, I will make no comment further than to say that the proceedings were passed with reference to a specific case of disputed possession under the criminal code, and whatever view may be taken of that case, the question of the civil status of the sub-tenants in the district remains the same. They either have or they have not occupancy right, and, as I remarked before, in my opinion, no general statement can be made on the subject which will cover all cases. Mr. Mullaly writes as if those opposed to his views of the right of mirasidars in the district, desire to produce wholesale evictions by violence and rack-rents. This is not the case as far as I am concerned. All that I desire is that the revenue authorities in the district shall act strictly in accordance with the existing law. Our position is a very difficult one and the greatest care is necessary as regards the language we use in these matters.

10. With reference to para. 34 of Mr. Mullaly's letter, I have directed him to dispose of all the cases before him in accordance with law. He can obtain any document he requires by the ordinary process. It cannot, however, be taken for granted that because a munsif granted a receipt for more than the amount entered in the Government accounts, he has actually embezzled the difference, because it has been a long custom in the district for munsifs to collect the landlord's dues with the Government revenue, and there has not been, in most cases probably, any dishonesty but merely an irregularity, for the discontinuance of which strict orders have already been issued.

11. I have troubled the Board with the above remarks, as I did not like to permit Mr. Mullaly's letter to pass unchallenged. I have, however, not had time to deal thoroughly with his arguments, and as the Board have urgently called for this report I do not delay the papers any longer. I have tried since I have had charge of the district to put a stop to all irregularities on the part of our village servants. They are a singularly inefficient class of men, but I hope now that the Sub-Collector has drawn attention to the irregularities which exist, they will soon be discontinued. We owe much to Mr. Mullaly for what he has brought to light, and if we rest satisfied with amending our procedure where it has been proved faulty, we shall confer a benefit on the district, but if we interfere in any way with the existing land tenure of the district, we shall, I fear, do more harm than good.

From C. M. MULLALY, Esq., Sub-Collector, Chingleput, to the Collector of Chingleput, dated Chingleput, 15th August 1890, Reference on Nos. 2044, 2188.

I have the honor to report on para. 2 of your endorsement reference on No. 621 G and B, dated 8th July 1890, on Board's Proceedings, No. 361, dated 24th June 1890.

2. The Board requires a full report on the wrongful attachment of the moveable property of sub-tenants from whom no agreements have been taken under section 13, Act VIII of 1865.

3. The sub-tenant now in question is not the padiyal or cooly laborer, nor the payakari who pays his rent in kind (woramdar), but the swanbhogamdar (கவாஹுபோகம், self-enjoyment), who pays the Government assessment and something more to the mirasidar. The additional payment is the "kani-merai" "thundu" swatantaram or mirasi tax.

4. The swanbhogamdar claims an occupancy right or கைப்பத்து பாத்தியம். The basis of his claim is long enjoyment as proved by the entries in the paimash and subsequent adangals up to the date of settlement together with receipts frequently signed by the village officers. He admits liability to thundu, which is quite distinct from the Government assessment.

Prior to settlement the puttah was samudayam, but yet their names appeared in the accounts. At settlement, however, their names were entirely suppressed, and under the plea of dividing the common lands, the name of the mirasidar was entered.

5. As this is the foundation of this important question, I beg reference again to paras. 11, 12 and 13 of my letter, No. 330-Eng., dated 10th March 1890, on which no orders were passed by the Board.

6. I submit the correction patty of the village in which it is stated மார்ஜனில் கண்ட நெம்பர்களை முதல் நெம்பர் பட்டாதார் முதலாமா டொட்டி நெடுகளாய் அனுபவித்து வருவதால் கையாற்பேரில் பட்டா செய்க்கவேண்டுமென்று கோருகிறார்கள். ஆகையினால் "Request that puttah may be issued for the marginally-noted numbers in the name of Muthurama Reddy puttahdar No. 1 as he has been enjoying them for a long time. No objection." The request above referred to was made by Muthurama Reddy, as shown by the accompanying petition. The order on this was: "divide accordingly," and initialled by an uncovenanted assistant. There was no division at all for puttah issued in the name of this man alone.

7. The grounds on which this order was passed are incorrect, for the lands were enjoyed by and registered in the names of others as shown by the paimash, the adangal of fasli 1283 now submitted and the receipts produced by the parties. In many instances the present enjoyers correspond with or are related to those entered in the paimash and in the adangal of 1283.

8. Mr. Thomson says, "the entry in the settlement register is *prima facie* entitled to as much respect as the karnam's present statement," but the correction patty and petition now forwarded show how the entry in the settlement register came about. The consent of the parties enjoying the common or samudayam land was not taken as alleged in the settlement register and their names were struck out without their knowledge.

They had the puttah or occupancy right but were liable to the payment of thundu.

9. Why no puttahs:—The ancient revenue unit was the village; hence in the paimash most of the lands are entered in the column of remarks as samudayam (சமுதாயம்) or common, but in the first column the names of the cultivators are given.

The modern ryotwari unit is the individual; accordingly, one of the principles of the settlement was the abolition of the term samudayam and the issue of individual puttahs.

10. In his letter (in Board's Proceedings, No. 324, dated 12th February 1875) to the Board, Mr. Barlow observes "much of the land in these (samudayam) puttahs has been held by the payakari occupiers or their ancestors ever since the land was first reclaimed by them from jungle, and as long as they paid assessment and swatantarams they were never ousted, and such occupation has been frequently recognized, as against the mirasidars, by the civil courts."

11. The occupancy right existed in the payakari and the right of collecting thundu or swatantarams in the mirasidar. Mr. Barlow recommended that both the rights should be recognized in the public accounts. Mr. Puckle objected to Mr. Barlow's proposal on the ground that the Government accounts will be greatly encumbered and constant alterations will be needed and that the Government should look to the puttahdar only and to the land he holds in his puttah for the realization of the land revenue.

12. These arguments are, no doubt, very sound; but the question is: "Who is to be recognized as puttahdar? Is it the man who reclaimed, cultivated and enjoyed the land subject to the payment of the assessment and the swatantaram, or is it the man entitled to the swatantaram or thundu only?"

13. The reasonable answer is that the man who enjoyed the land and paid the Government assessment should get puttah and the Board has in S.O. No. 20 laid down that this is the principle on which revenue registry is based. Here it is distinctly stated that the register of holdings kept in every village should, as far as possible, show the names of persons who, in virtue of their title, whatever its nature, are in the enjoyment of the lands and should

therefore be held responsible for the payment of the public demand thereon, and in para. 6 it is laid down that possession for 12 years and payment of Government assessment as reputed owner is sufficient.

14. The swanbhogamdars claim to be the owners subject to payment of thundu and hitherto were admitted to have the occupancy right கைப்பத்து பாத்தியம். They sold, mortgaged and purchased this right, and have been in enjoyment of, and paid the assessment on the land for more than 12 years, and actually had their names entered in the public accounts.

15. At settlement, however, their names were arbitrarily omitted from the public accounts and the name of the man only entitled to the "thundu" was entered as puttahdar, thus giving him both mirasi right and puttah or occupancy right.

16. In order to understand the relations of the mirasidar and the swanbhogamdars it is necessary to consider here the exact meaning of the words கானி மேரை or thundu. Kani (கானி) is derived from the word "கான்," to see.

Mr. Logan, in his Manual of the Malabar District, says that the proper meaning of the word "kanuu" is "seeing" supervision (a secondary meaning is that which is seen, namely, property); Mr. A. Thompson, however, says it means visible wealth. This word corresponds to the kanatchykan (கானியாட்சிக்கான்) or mirasidar or owner of a kani mirasi of this district, who is, therefore, the protector. The term ryot is an Arabic word meaning literally "protected one."

17. There are numerous kinds of mirasidars, viz., god mirasidars, entitled to the devar merai; karnam mirasidars, entitled to the orai merai, the taliari mirasidars, entitled to the tukiri merai; the vetti mirasidars entitled to the vetti merai, and so on for all the village servants and artizans: We have even mirasi dancing girls!—so that the term applies to those who are entitled to certain perquisites for functions performed and not to persons possessing unlimited proprietary right over the soil.

18. The kani merai due to the kaniatchykan was called "thundu" when paid in money, or "kuppatham" when paid in kind.

These words frequently used jointly, viz., "thundukuppatham" are invariably admitted as belonging to the kaniatchykan or modern Chingleput mirasidar, and they are synonymous with the "swatantaram," கவதந்திரம், or right which, according to the ruling of the Secretary of State embodied in rule 14 of the Chingleput darkhast rules, is admitted to be 2 annas in the rupee in all lands newly darkhasted for.

19. It will thus be seen that the mirasidar was only entitled to the thundu and not the land itself. You also yourself hold the view that mirasi right is distinct from occupancy right, for in your proceedings, dated 22nd July 1890, No. 76, you say:—

"Now it is quite clear that in origin at all events the *mirasi* right in a village was held apart altogether from any fixed right of occupation in any specified portion of land in the village. As Mr. Ellis says it appears from old bills of sale drawn in the village that what is transferred as regards mirasi "is a share, shares, or part of a share, but never a particular spot of ground."

Page 206 again.—It (bill of sale) must state the exact share transferred or "when land and not right is sold the boundaries towards the four cardinal points." Page 207, paper on mirasi right, again.—"It is not here meant to deny that a particular spot of ground in a samudayam village may be transferred to a stranger without conveying to him mirasi right."

"Such transfers have frequently taken place in later times," page 207.

(2) The whole of the papers on mirasi right are clear on this point that the mirasi right had a pecuniary value quite apart from the land, and could be transferred separately from the land (see reply to question 12 by Sankarayer, Sheristadar to Collector, Madras). See again foot of page 214, Mr. Ellis—"Such sale, i.e., a sale by the sheriff of mirasi right, would only convey the superiorities, namely, the thundu varam, &c., and not the land."

20. The complaint of the mirasidars prior to settlement was that they could not collect "thundu."

Mr. Puckle, by trying to redress this grievance, has, in effect, deprived the swanbhogamdars of their occupancy right and subjected them to *eviction at will*. Even now the mirasidars cannot collect "thundu" except through the civil court, but as they obtained at settlement a far more valuable right, viz., the puttah or occupancy right, they have been silent and the swanbhogamdars are only now beginning to learn the grievous harm unwittingly done to them by Government.

21. The modes now adopted to prevent any evidence of occupancy right are:—
(1) No written agreements.
(2) No proper receipts.
(3) Shifting of holdings.

22. No written agreement.—This is the first point on which the Board call for report in para. 10. Here the distinction between the swanbhogamdar or கைப்பத்துக்குடி and the woramdar and padiyal must be kept in mind:

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It is a well known fact that in most cases there are no written agreements between the swanbhogamdar and the mirasidar.

The reasons and the consequences will now be considered.

23. *Reasons.*—(1) Swanbhogamdar will not execute *mudalikas*, as they deny being tenants at will but say they are liable to pay Government assessment *plus thundu*. They claim a saleable interest in the land which is denied. As a matter of fact they do sell and mortgage their lands.

(2) Mirasidars cannot sue summarily for agreements because section 9, Act VIII of 1865, does not apply, as they are not landlords under section 3.

(3) Mirasidars will not allow written evidence to create occupancy right.

(4) They can collect, such is their power, without the Act by forcible ejectment or illegal attachment of property.

24. *Consequences.*—A mirasidar prior to settlement was merely entitled to thundu, which could only be collected through the civil courts. At the settlement he was made a putthahdar as such a landlord of the second class or ryotwari landlord under Act VIII of 1865.

Formerly he could proceed against the swanbhogamdar only by the civil suit but he can legally proceed against him in two ways—

(1) Under section 13, Act VIII of 1865.

(2) By ordinary civil suit.

Under the first way, however, he must have a written agreement, which he does not possess. His objections to an ordinary civil suit are obvious, viz.—

(1) Uncertainty, for no suit for thundu will be sustainable unless all the mirasidars joined.

(2) Cost.

(3) Delay.

Thus having no legal summary remedy he adopts illegal measures to enforce payment, viz.—

(1) Illegal attachment of property.

(2) Illegal evictions.

25. *Illegal attachment.*—This is the second point on which the Board requires a report. These are effected by means of the village officers.

When an arrear due to Government accrues, the village officers attach the moveable property of the swanbhogamdar and not of the mirasidar.

Sufficient instances have already been quoted, viz., Murungudi, another in Sittampur, and another in Thiruvadisulam.

There is a special word for this illegal attachment, viz., *murungudi* or *infur*.

செய்தல் which is effected by placing a lump of wet mud or cowdung on the threshold and stamped with *செய்தல்*. This is a wooden seal. I enclose one belonging to Pillai, village munsif of Achiravakkam, as a specimen.

26. Originally these attachments were perfectly legal because the swanbhogamdar were in actual enjoyment of the land and had their names registered in the accounts, were liable for the Government revenue and actually paid it.

These very attachments go to prove that the swanbhogamdar had the putthah or occupancy right. This, however, was unjustly taken from them at the settlement by their names being struck out of their registers without inquiry, but although they have been struck out of Government registers they still continue in the *alamadikalai* accounts kept by the *karnams* under the orders of the mirasidars.

As putthah now stands the attachments are illegal both under Act II of 1861 and under Act VIII of 1865. Under Act II of 1861, because putthah does not stand in their names and nor are the provisions of section 15 observed.

27. The swanbhogamdar, however, rarely complain, because it was the former practice when their names were in the registers and they regard their liability to pay Government assessment as a recognition of their title to the land. Their numerous and persistent complaints are that payments are not received from them nor receipts given to them by the village officers, which is a gradual destruction of the evidence of their occupancy right.

The Board say, in their Proceedings, No. 302, dated 24th June 1890, that the mirasidar bugbear is destined gradually to die a natural death. On the contrary, the free swanbhogamdar, deprived of all the evidences of his occupancy right, is being gradually reduced to the servile condition of padiyal. The mirasidar, entitled only to thundu a few years ago, is now asserting claims of absolute ownership over the whole land, and is now evicting the swanbhogamdar will. It is this contest which is the cause of trouble in this district. It is the swanbhogamdar not the mirasidar who is dying.

28. *Evictions.*—These are effected for the most part without the orders of any court, merely by the forcible occupation of the land, usually by "overploughing" or "stealing the plough."

These cases are numerous and will become more so now that the practice of collecting and attachments by village officers has been declared illegal. They cause the utmost loss and distress and deserve the very careful consideration of the Board.

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29. A test case has recently occurred and on account of its importance, I beg respectfully to state my views on the subject.

In your proceedings, No. 207 of 1890, dated 25th July, two main points have been laid down:—

- (1) Possession of a landlord may be by means of a tenant.
- (2) The criminal courts cannot interfere. Redress might be obtained either in the civil courts or under section 12, Act VIII of 1865.

30. As to the first:—It is essential to remember that the mirasidar differs from an ordinary landlord in that he is only entitled to collect thundu through the civil courts and not to the land itself, by virtue of being mirasidar. As already stated, the mirasid right was held apart altogether from any fixed right of occupation in any specified portion of land. The mere fact that a man is mirasidar does not give him an occupancy right or actual possession of the land; it is only admitted that he is entitled to thundu or swatantaram; he differs essentially from a landlord under section 3, Act VIII of 1865; and also, from an ordinary ryotwari landlord, and the swanbhogamdar differs greatly from the ordinary parakudi and padiyal.

31. As to the second:—Section 12, Act VIII of 1865, does not give relief, for a suit cannot be brought under that section, as the mirasidar is not a landlord under section 3, Act VIII of 1865.

In the famous case of Chockalingam Pillai *versus* Vaithalingapandaram Sannady, in 6 M.R.C.R. 164, Holloway J. laid down that there was nothing in these Acts (Act VIII of 1865 and previous Regulations) to settle, so as to bind the courts of law the duration of a lessee's tenancy. Whatever law, statute or customary, or the contract of the parties makes it, such it continues to be after the enactment of these regulations.

In the case now under consideration there is no written contract between the parties, but there is a customary law, viz., that the mirasidar is entitled to the superiorities, viz., thundu, and the swanbhogamdar to *செய்தல்* or occupancy right of the land. This possession of the land, dating back for a long series of years, recognised by entry in the public accounts and by custom must be considered as long ago adverse to the mirasidar. Hence under the statute of limitations, para. 144, Schedule II, Act XV of 1877, a suit for possession would be barred, and this is well known. Is it then right to permit eviction by violence when it probably could not be obtained by civil suit; and to close the criminal courts to him who has hitherto enjoyed the land and force him contrary to custom and the Limitation Act into a civil court?

The result will be wholesale evictions and grievous rack-rents, modified only by the fear of agrarian outrages; for if this is the law, the mirasidar will have little else to fear—he becomes an irresponsible zamindar, not liable to summary suit or criminal complaint for eviction, while only a few years ago in Government villages and at present in adjacent zamin and shrotriam villages he can only sue for thundu merni.

32. *No proper receipts.*—Mr. Barlow, in his letter, No. 630, dated 11th November 1874, strongly recommended the grant of sub-receipts and the opening of a new column in the adangal showing the names of payakaris.

This was disallowed.

Account No. 18.—The receipt or kachayat is for the putthahdar, but the heading of column 2 shows that it includes payakari payments as well, but the value of this is nullified by the omission to enter the name of the payer in column 3 of account No. 13 (the thandal) as is the practice here. A receipt in form No. 18 is, however, very seldom given to a payakari; their receipts (when they get them) are usually cadjans in which there are no particulars of land, survey number, kists, and frequently without date or signature. They are perfectly useless for the purpose of identifying the land for which payment is made, and this is intentionally done to prevent evidence of occupancy right.

33. Others again bear the signature of the putthah moniyam or village munsif, but these amounts are not properly brought to the thandal.

Mr. Power excused this on the ground that it was a district custom although unknown to the Board or to the European officers.

34. I submit a case, which has come up for my orders, which illustrates the enormous capacity for excess collections which such a practice involves. On the 23rd August 1889, the third-class revenue inspector, Madurantakam, reported a village munsif for punishment for embezzlement.

Here the village munsif gave receipts in the Government form for Rs. 78-13-10, but failed to credit in the thandal Rs. 53-14-4, *vide* statement submitted. The tahsildar now excuses this on the ground that they are payakari payments.

It, however, appears to me to be a clear case of embezzlement or excess collection punishable under Regulation IX of 1822, and that a custom winked at by the subordinate officials cannot justify the offence, although it may be pleaded as a reason for mitigating the penalty.

I submit the case for the favor of orders, and I also request orders as to the disposal of cases Nos. 1 to 9 of 1890, under Regulation IX of 1822, on my file, as the essential documents connected with them have been returned and the same question of excuse arises.

8 BOARD OF REVENUE (LAND REVENUE), 2ND DECEMBER 1890, No. 731.

35. The great importance of these receipts is unquestionable. Ryots in Government villages are entitled to receipts in form No. 18, and even to sub-receipts for joint puttahdars. Tenants under Zamindars, &c., (section 3), are entitled to receipts and can recover damages for refusal under section 81, Act VIII of 1865. But a swanbhogamdar has neither of these reliefs; his only course is to refuse payment and then he is summarily evicted or his property illegally attached (சுட்டுக்கப்பட்டது).

36. *Shifting of holdings.*—The swanbhogamdar claims to have occupied the same land for generations, but now a puttah stands in the name of the mirassidar, attempts are made as in Bengal to shift the holdings, which are naturally objected to and result in violence and criminal cases. The existence of this practice and the necessity for checking it were recognized in the Madras Tenancy Bill and a special clause inserted.

Section 5 (2) lays down—"A person shall be deemed for the purposes of this section to have continuously held land in a village notwithstanding that the particular land held by him in the village has been different at different times."

The importance of securing an occupancy right for the tenant and the difficulty of proving it were admitted in the draft bill by the provision giving occupancy right after 12 years enjoyment (section 5) and throwing the burden of proving want of occupancy on the landlord (section 4).

Even such provisions, however, would not help the swanbhogamdar; for being deprived of puttah, he becomes the under-tenant of a ryotwari landholder and the application of para. 6 of Standing Order No. 20 is doubtful.

These draft sections and this Standing Order appear to be founded on para. 141, Schedule II of the Limitation Act, which bars suits for the possession of immoveable property after adverse possession of 12 years.

It is a remarkable fact that this Act is contemporaneous with the settlement in this district. On the one hand the imperial legislature respected long possession, on the other the settlement ignored it, whether intentionally or misled by interested persons, I cannot say. The fact remains that in Sithamur village those who ought to have got puttah did not, and now can be evicted at will.

Holloway J. says: "It is perfectly open to the legislature of any country and of any time to protect tenants against the unreasonable exercise of the so-called rights of property." It seems to me that the swanbhogamdar deserves some protection either from the executive, or, if that is not possible, from the legislature.

37. The evils attendant on want of occupancy right are:—

- (1) Liability to eviction.
- (2) No likelihood of permanent improvement.
- (3) Rack-rents.

The payakaris in my division are victims to all these evils.

38. *Liability to eviction.*—This has already been dealt with.

39. *No likelihood of improvement.*—It has often been asserted that this is a very poor district and the soil unfertile.

The real reason, however, for the backward state of agriculture in occupied lands and the miserable condition of the homestead is the absolute denial of title and permanency of holding involved in this great question of occupancy-right.

No payakari will sink a well or improve land or build a substantial house from which he is liable to be ousted at any time and the benefits wrested from him.

The large extent of unoccupied lands is, of course, due to the darkhast rules, vide letter No. 146-Ver., dated 29th July 1890.

40. *Rack-rents.*—These can only be levied when there is a want of occupancy right and a complete occupation of cultivable land or artificial checks on its occupation; such is the case in this district.

If the swanbhogamdar loses his occupancy right, for which he is now fighting, he will be reduced to the servile condition of a porakudi or padiyal.

RESOLUTION—dated 2nd December 1890, No. 731.

Submitted to Government with reference to para. 10 of Board's Proceedings dated 24th June 1890.

2. Mr. Mullaly argues that Government, in giving puttah at settlement to the mirassidar, instead of to the tenant, thereby transferred the occupancy right in the land from the former to the latter: clearly Government did no such thing; a puttah latterly given.

BOARD OF REVENUE (LAND REVENUE), 2ND DECEMBER 1890, No. 731. 9

does not necessarily create occupancy right, and this is clearly one of the cases in which it would not do so. It may possibly, by implication, have prejudiced the tenant, but before it can be said to have done so unfairly, it must be shown that the tenant was entitled to it and the mirassidar not.

3. To attempt to do this would be to re-open the whole question of mirassi tenure, which the Board has no intention of doing. Mr. Mullaly, to a certain extent, begs the question by calling these tenants swanbhogamdars and not paikaris, because they hold occupancy right, and the mirassidars hold only the right to collect the mirassi tax; but these are the very matters in dispute, and, however much the tenants may point to long and effective possession in the entry of their names in the accounts prior to settlement, it would evidently be undesirable for the Revenue authorities to take on themselves to decide it in the manner implied, namely, by a wholesale change of puttahs. The matter was fully discussed at settlement, and the issue of puttahs then made, although Mr. Mullaly thinks that in particular cases it was due to fraud, was, on the whole, in accordance with the general principles laid down, namely, that, in the place of the two entries, "samudayam" and "tenant," there should be only one, that of the former, the mirassidar. Even if this was wrong, it is too late now to alter it, but, as a matter of fact, the present Acting Collector's view, that there is no such intrinsic difference between paikaris and swanbhogamdars as Mr. Mullaly sees, is in accordance with the view taken by Mr. Puckle, in para. 6 of his letter in Board's Proceedings, No. 331, dated 13th February 1875.

4. Whether, however, these swanbhogamdars are aspiring to rise from an original serfdom, as the Collector thinks, or are struggling to retain an original independence, as Mr. Mullaly thinks, it is, of course, the duty of the State to hold the scales impartially, and this Mr. Mullaly implies that it is not doing: he argues that the mirassidar, at last realizing his powers as puttadar, is beginning to make use of them to destroy the tenant's right of occupancy, the State in part assenting thereto.

5. Premising that the area affected is only a small percentage of the samudayam lands, which themselves are only 3 per cent. of the cultivable lands of the district, the case appears to stand as follows. A mirassidar holds a rather anomalous position, more or less midway between the two classes of landholders mentioned in Act VIII of 1865, but of the two, he inclines more to the second, than to the first class. As such, he cannot make use of the summary procedure of that Act, unless, under section 9, he has taken a written agreement from his tenants, and this he has not done, because the tenants refuse to execute such an agreement, and because, not coming under section 3, he cannot compel them to give one: his only remedy, therefore, is recourse to the civil court: as this, however, would raise the whole question of occupancy right, with perhaps a doubtful issue, he proceeds to adopt a more summary, but illegal, procedure: to wit, when an arrear of Government revenue accrues, he allows the village officers to attach the moveables (other than crops, it is presumed) of the tenant, though as the puttah does not stand in the tenant's name, this is contrary to the provisions of Act II of 1864: the mirassidar also evicts, for the most part forcibly, and cases of this are said to be numerous: the tenant also receives no receipts, apparently either for his payment of the Government assessment to the monigar, or of the mirassi tax to the mirassidar; and finally the mirassidar shifts the tenant's holding.

6. Of these four causes of annoyance, the second and fourth obviously belong to the civil and criminal courts to dispose of, and only the first and third come within the cognizance of the Revenue authorities: as regards these, the Collector has already given orders that the former should be put a stop to at once, though he points out that, as a matter of fact, it is not looked on as any hardship by the tenant, since it evidences, to a certain extent, the possession by him of occupancy right; and, as to the latter, it is not clear exactly what is meant; so far as the collection of the mirassi tax by the village officers goes, this has already been stopped by the Collector, and the recognition of the right of the tenant to separate entry of his own name in the accounts, as payer of the Government dues,

direct to Government, was decided at settlement to be inadvisable; as was also, the recognition of the right of a tenant to receive a separate receipt for his payment; if it is intended to re-open this latter question, it should be done more at length.

7. Finally, the Board proceeds to pass the orders on paras. 11-14 of his letter, dated 10th March 1890, No. 330 Eng. (in Board's Proceedings, dated 24th June 1890, No. 361), which Mr. Mullaly again asks for. The principle laid down at settlement was (*vide* para. 4 of Mr. Puckle's letter in Board's Proceedings, No. 331, dated 13th February 1875) that the common land should cease to be common and should be divided among the mirassidars: in the present case, there appears to have been only one mirassidar, or, at least, only one mirassi claimant, and the customary order to "divide" having been passed, the lands were registered in his name accordingly: Mr. Mullaly's argument that the consent of the tenants had not been taken does not affect the case, for it was not necessary that it should be taken, and the "consent" referred to in the patti was that of the other mirassidars; nor can his plea in favor of the tenants' occupancy be accepted, as this has already been overruled: no action should, therefore, be taken in the cases quoted.

(A true Copy and Extract.)

Ag. Secretary.

To the Secretary to Government, Revenue Department.
Copy to the Collector of Chingleput.

Exd. E. Fernandez.

C No. 8904/50.

Confid^l no. 53.

From the Board (Land Rev.)

Dated 2. Dec. 1890.

FOR ORDERS:

The above paper is submitted for the perusal of Hon. Members: it does not seem that any specific orders are required.

The Board's Pios. gives account of the report regarding the alleged illegal attachment of movable property, not belonging to pottaladars, called for in para. 3. of G.O. 704. dt. 3. Sept. 90. Mr. Mullaly's report deals however with many connected questions: in fact, as the Collector says, he gives "a historical résumé of the origin & rise of the existing system of land tenure in the Chingleput district, and an account of what he considers its condition at present". Several of Mr. Mullaly's propositions & deductions are contested by the Collector.

and the Board has passed
orders in all necessary
cases.

Rem

8 Jan 91

I do not think the Govt
should say anything as the
orders are called for
and it is understood that
Govt should attempt to
define the relations between
the landlord and the
tenants unless it is
practical to do so.

I question however whether
the Board is correct in
the view taken in para 5
that a landlord cannot
make use of the existing
provisions of Act 1865
because he does
not come under sec 3 of
the Act. I think it is
better to make an
agreement. A Chinglepur
landlord appears to
fall under the second class
of landlords specified
under sec 3 and the

No orders are required

H
12/1

H
15 Jan

I am inclined to think
Board is right

I am strongly of the Board's
opinion.

H
15 Jan

Jagdishan? Inq into

no. all holders of land under
Mangalore & Chikmagalur

Act 1865 refers to words
used in future acts. Copies
they are not more than
properly, but they are
sufficient for the purpose

now act I refer to which
is the Imperial General
Classes. I refer to
Act 1867

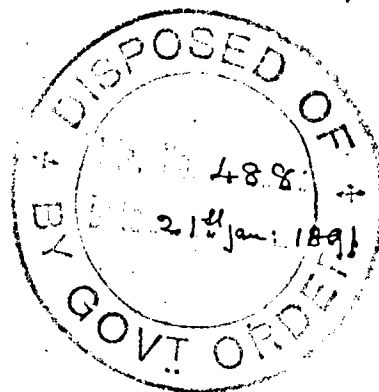
voluntarily for has
been required as a
legitimate interest.
However this is a question
for the local courts to
decide & as far as I am
concerned it has not been
raised.

The Board's view is
as reasonable property but
there being no definition
of the term in the Land
Revenue Act, the defini-
tion in the Penal Code
applies, and besides
General Classes are
under that definition
growing crops are in-
cluded property.

Ch
10/1/91

FOR ORDERS.

Confidential



10.

*Ditainit of property
for arrears in
Chingleput.*

*The Hon. Mr. Goss.
The Hon. Mr. Stokes. C81*

*Co. uni 21st January 1891
exh 488*

Recorded.

Rm

16 Jan 91

Ser: (from order)

16/1/91

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BY ARMY WITH LETTER

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