Revenue Department

G. 6 No 1291 5/22-9-1858

Back No 5-7

Diary 28-8-1858

No. 5. Read the following Papers.

From CLEMENT DALE, Esq., Government Pleader Sudr Udalut; to W. H. BAYLEY, Esq., Acting Secretary to Government, dated Madras, 19th August 1858, No. 90.

SIR,

Para. 1. With reference to the *M. C. 29th May* 1858, *No* 712, *Revenue Department.* Extract from the Minutes of Consultation noted in the margin, I have the honor to report for the information of the Right Honorable the Governor in Council, that I have perused all the papers forwarded to me by the Board of Revenue, and given the subject much careful consideration.

2. From the Decree passed by the Moonsiff of Weyoor in O. S. No. 859 of 1824 (which was not forwarded to me originally and necessitated an application for it) it would appear, that that Suit was brought by the same man, who is the Plaintiff in O. S. No. 105 of 1855 (referred to in the Minutes of Consultation noted above) against the then possessor of the Goodoor Estate.

3. I observe from the Minutes of Consultation of the 28th April 1856, para 2; and the answer filed by the Collector in O. S. No. 105 of 1855; that the Government purchased that Estate. The circumstances of the purchase are not mentioned; I am not aware however, that those circumstances would alter my opinion as to the law of the case.

4. I entertained considerable doubt on the case, but after mature consideration, I am of opinion that as purchasers of the Estate, the Honorable Company have taken the estate subject to all the liabilities to which the vendor was liable in respect of that estate; and that as purchasers the Regulations referred to, are not applicable.

5. A question then arises as to the effect of the Decree in O. S. No. 859 of 1824; this question is involved in much difficulty, I am of opinion however, that the fair construction to be put upon that Decree, is, that thereby the grant of the 4½ Cutties of land to the Pagoda was established; and that the payment of the sum of 30 Pagodas per annum is thereby decreed, as an equivalent for the occupation of those 4 and half Cutties of land; and that in the event of the 30 Pagodas being withheld, the Manager of the Temple is entitled to resume possession of the land.

6. That Decree is final; it was never appealed against; and if the opinion I have expressed in paras. 4 and 5 be correct, it follows that the Honorable Company as the purchasers of that estate, must either pay the 30 Pagodas, or give up possession of the land.

7. I am however of opinion, that from long acquiescence, the parties interested in the Pagoda have relinquished their right to the possession of the land, so long as the 30 Pagodas are paid; and that in Decreeing to the Plaintiff the lands sued for, the Decree of the Civil Judge in O. S. No. 105 of 1855, is erroneous. I observe, however that the Honorable Company directed that land should be given to the Managers, in lieu of the money payment. It may therefore be deemed by His Lordship, worthy of consideration, whether under all the circumstances, it is desirable to appeal from the Decree referred to.

No. 6. Extract from the Proceedings of the Board of Revenue, dated 8th September 1858, No. 3402.

In Cons. 4th Sept. 1858. Read again letter from the Collector of Masulipatam, dated 1st September 1858, calling attention to the fact, that, the time for appeal in Original Suit No. 105 of 1855, has expired.

In Cons. 8th Sept. 1858. Read also letter from the Government Pleader Sudder Adawlut, dated 7th September 1858, enclosing copy of his letter to Government on the subject of Original Suit, No. 105, of 1855.

(Here enter No. 108.)

Resolved that the foregoing letters be submitted for the information and orders of the Right Honorable the Governor in Council.

(A true Extract.)

(Signed) J. D. SIM, *Secretary.*

No. 7. ORDER THEREON, No. 1291; dated 22nd September 1858.

The foregoing papers have reference to a cause, O. S. No. 105 of 1855, decided in the Civil Court of Masulipatam against the Collector of the District and the late Special Assistant; the suit having been brought by the Trustee of the Madavaswamy Pagoda at Goodoor, for the payment with four years' arrears of an annual allowance of 120 Rupees, or the restoration of the original Enam, which he asserted the Pagoda once possessed, and in lieu of which the said allowance had been paid. The circumstances connected with the institution of the suit by the Trustee, and the grounds on which its defence was ordered on the part of the Government officers, are detailed in Extracts from Minutes of Consultation dated 28th April 1856, No. 427, and 29th August 1856, No. 912, and in the papers recorded therein. It is needless therefore to refer to them at length in this place; but the case may be thus briefly stated. The Madavaswamy Pagoda enjoyed a money allowance of 120 Rupees a year from the Zemindar of Goodoor up to Fusly 1260, when the estate reverted to Government. In Fusly 1261, the allowance was stopped pending enquiry; and on a report from Mr. Ballard, Special Assistant to the Collector for the investigation of Enam tenures, Government passed an order continuing this and some other allowances, pending a general enquiry into all Enams and other alienations on the ground that they had been based on land Enams; and directed that instead of money payments, land to an equal value should be given. This order dissatisfied the Trustee, and he sued the Government to recover the original Enam. Government ordered the defence of the suit, as it appeared to them that there were no sunnuds granting the land in question, and among other reasons, that the Decree of the Weyoor District Moonsiff against the Zemindar in 1825, on which the Plaintiff laid stress, was not binding on them. With their Proceedings of the 20th May 1858, No. 1823, the Board of Revenue submitted copy of the Decree passed by the Civil Court in favor of the Plaintiff, and recommended that the case might be put into the hands of the Government Pleader, in order that he might move the Sudr Udalut for a review of judgment. The case was accordingly referred* to the Government Pleader.

* *E. M. C. 29th May* 1858, *No.* 712.
,, *22nd July* 1858, *No.* 1019.
,, *7th Aug.* 1858, *No.* 1094.

2. In his letter of the 19th August 1858, recorded above, Mr. Dale glances at such points of the case as have attracted his notice; and on the idea that, as purchasers of the estate, the Government have undertaken the liabilities of the vendor, he sums up that it is for their consideration, whether it is desirable to appeal from the Court of Masulipatam.

3. It seems from the Extract from the Board's Proceedings under date the 8th Instant, that the time allowed for the appeal has expired but had it been otherwise on a careful consideration of all the circumstances connected with this case, the Government would not have been disposed to appeal from the Decree of the Civil Court of Masulipatam in suit No. 105 of 1855. The Plaintiff will therefore be placed in possession of the land sued for, with its mesne profits from the date on which payment of the allowance of 120 Rs. was discontinued, on the issue of the usual process for the execution of the Decree by the Masulipatam Court.

4. At the same time, the Government think it proper to state most explicitly, that the course which they have now taken, is not to be regarded as a precedent to be followed on future occasions, nor as affecting the power of Government to resume and assess to the revenue Enam lands, without the interference of the Courts of law. The Government would have been unwilling to continue further litigation in the present instance, because on reconsideration, they are led to think that the course which they adopted in reference to the defence of the original action, was not that which should have been taken. The Government had purchased the Goodoor estate at public auction when sold for arrears of revenue, and on entering on possession of the property, proceeded, not in the capacity of a simple purchaser, but in virtue of the paramount power inherent in them as the Government, to investigate the titles of alleged rent free tenures according to the provisions of Regulation XXXI. of 1802. In the exercise of this power they were not obnoxious to the interference of the Civil Court. The proper defence to

Fort Saint George, Revenue Consultation of 28th September 1858.

the suit would therefore have been a demurrer to the jurisdiction of the Court. As this was not pleaded at the time, the Government would not have put it in as a ground of appeal; but would reserve the plea to be urged in the event of any more actions of the same character being instituted. It is further to be understood that this course is not to be held as invalidating the power of enquiring into the title of this in common with other Enams whenever a commission may be issued for that purpose.

5. Meanwhile, they resolve to communicate these observations to the Board of Revenue, and to the Government Pleader in reference to his letter recorded above, and especially to para. 3 of it.

(Signed) T. PYCROFT,
Chief Secretary.

For Orders

Revenue Department No 1323.

From the Govt. Pleader Sudr Adalut 19th Augt 1858.

Refers to M.b. of 29th May 1858 No 712 Revenue Depart.

It appears Govt. purchased the Goodoor Estate &c. — Opinion that the Honble Company have taken the Estate subject to all the liabilities to which the Vendor was liable in respect of that Estate & that as Purchasers the Regulations referred to are not applicable — offers Opinion on the construction to be put upon Decree in C.S. No 859 of 1824 — Opinion Honble Company must pay the 30 Paydas or queit upon land — Points out error in Decree in C.S. No 105 of 1855 &c.

Short Note the Opinion of the Pleader is of much value

He fails to distinguish between the Company as purchasers of an insolvent estate & the Company as the ruling power deciding on the validity of a Grant

The Courts have no jurisdiction in the latter case

The first point for decision is the validity of the Grant.

If the Petr has a bona fide right to the money allowed it will be recognized & Land given in lieu

But the onus probandi lies on Petrs. Surely there can be no question as to Candy. The answer shd demur to the suit & plea it in my opinion. But on this point Mr Morehead is the best judge WG

In respect to the jurisdiction it is too late now to plead in Abatement It should have been done in the Lower Court besides in their order of the 28th April 1856 para 3 - the Court - Costa that they can not deny the jurisdiction of the Court -

I should like to see the decree - which is not in the bundle

Vell

Sam J Opinion that defendant has a most unjudicious take -

The plea put forth of his putting the Crown - is plainly worthless - it had been rejected in a dozen cases like Bukaree ++ Rejection of Crown dated Early 1807 - a dozen which have been accepted by the Court before, & for the Govt this 2 putting it candidly no shadow of merit exists -

Mr Galeed had relinquished it, that the 120 rupees were paid in lieu of it - but

L. Lyell to him but gives no reason & still that he can not believe

such to be the case

The immediate cause of action - was the party refusing to accept - his part of payment - a piece of land - the plea urged being that it was not a fair equivalent that if money was not the view, a demand was made for the restoration of the land, they alleged had been surrendered for this money payment -

annoyed at this, demand by the Collector accumulative demand - on the refusal tuition of the suit - the Govt denied the that they had before consented - pleading that as an act of grace they were disposed to deal liberally but that the claimants had no right or title to the money or the land - to put into Court with such a plea was annoying of the Govt - and the decree of the Court has dealt justly with it, as far as dispossession of the suit on its merits goes -

but Sam J Opinion that the Govt erred when they pleaded - that the Crown Grant was a bad one - This was a bar for Crown to decide & it was not a matter for the Court

to deal with -
The case is a very awkward one
but I think the Court should allow
Isley on the plea that the Court
had no jurisdiction - ~~Stat 2 Geo~~
Stat 4 & 5 Wm IV cap 82 of 17 - not being able
call & which it is presumed was
the last - decided by the Judges his
warrant - for discovery of the case
what the Lords may say to
it - because of the case -

In regard to the claim I am clearly
of opinion that the Court should
pay the 120 - unless the Claimants
are willing to accept land - which
would be liable as the case now
is I doubt if they will do

Wolfe

We had better do this, then, but I think
Mr Moorhead is in error in assuming the
Colrs Registry of Grants to be a record Office

The

of the validity of the titles
any person may register their
titles and no inquiry is made -
or at least in case of fact ever
has been made into the validity or
otherwise of the documents registered
Wolfe

Suits for the recovery
enam land attached
Goodoor Pagoda in

No. 1291 R.D.

Extract from the Minutes of Consultation
Under date the 22d September 1858.
Read the following papers.

From Govt. Pleader Sudr Moulut (Here enter 19th Aug. 1858 No. 90.

Extract from the Pro. of the Board of Rev. (Here enter 8th September 58 No. 3402)

The foregoing papers have reference to a cause, O.S. No. 105 of 1855, decided in the Civil Court of Masulipatam against the Collr of the District & the late Special Assistant, the suit having been brought by the trustee of the Madavaswamy Pagoda at Goodoor, for the payment with four years arrears of an annual allowance of 120 Rs, or the restoration of the original Enam, which he averred the Pagoda once possessed, and in lieu of which the said allowance had been paid. The circumstances connected with the institution of the suit by the trustee, and the grounds on which

Well

its defence was ordered on the part of the Govt officers, are detailed in Extracts from Minutes of Consultation dated 28th April 1856, No. 427, and 29th Augt 1856, No. 912, and in the papers recorded therein. It is needless therefore to refer to them at length in this place; but the case may be briefly stated.

~~as follows~~ The Madavaswamy Pagoda enjoyed a money allowance of 120 Rs a year from the Zemindar of Soodoor up to Fasly 1206, when the estate reverted to Govt. In Fasly 1207, the allowance was stopped pending enquiry; and on a report from Mr. Ballard, Special Asst to the Collr in the investigation of Inam tenures, Govt passed an order continuing this and some other allowances, pending a general enquiry into all encums and other alienations on the ground that they had been based on land encums, and directed that instead of money payments, land to an equal value should be given. This order dissatisfied the Trustee, and he sued the Govt to recover the original enam. Govt ordered the defence of the suit, as it appeared to them that there were no summuds granting the land in question, and among other reasons, that the decree of the Moyoor District Moonsiff against the Zemindar in 1825, on which the plaintiff based, was not binding on them. With their Proceedings of the 20th May 58, No. 1823, the Board of Revenue submitted copy of the decree passed by the Civil Court in favor of the plaintiff, and recommended that the case might be put into the hands of the Govt Pleader, in order that he might move the Sudr Udalut for a review of judgment. The case was accordingly referred to the Govt Pleader.

2 In his letter of the 19th August 58, recorded above, Mr. Dale glances at such points of the case as have attracted his notice; and

† E. M. C. 29th May 58, No. 712.
22d July 58, No. 1019.
7th Augt 58, No. 1094.

on the idea that, as purchasers of the estate, the Govt have undertaken the liabilities of the vendor, he sums up that it is for their consideration, whether it is desirable to appeal from the Court of Masulipatam. The Board, with their Proceedings also recorded above, simply forward the Collr's letter reporting that the time allowed for appeal has expired.

3 — It seems from the Extract from the Board's Proceedings under date the 8th instant that the time allowed for the appeal has expired but had it been otherwise on X

X On a careful consideration of all the circumstances connected with this case, the would not have been disposed Govt have resolved not to appeal from the decree of the Civil Court of Masulipatam in Suit No 105 of 1855. The Plaintiff will therefore be placed in possession of the land sued for, with its mesne profits from the date on which payment of the allowance of 120 Rs was discontinued, on the issue of the usual process for the execution of the decree by the Masulipatam Court.

4 — At the same time, the Govt think it proper to state most explicitly, that the course which they have now taken is not to be regarded as a precedent to be followed on future occasions, ~~as affecting~~ not as affecting ~~obviously any discussion of the~~ principle as to the power of Govt to resume and open to the investigation lands, without the interposition would of the Courts of Law. The Govt have been unwilling to contribute unwilling to abstain from further litigation in the present instance, because on reconsideration, they are led to think that the course which they adopted in reference to the defence of the original action, was not that which should have been taken. The Govt had purchased the Sooloor estate at public auction when sold for arrears of revenue, and on entering on possession of the property, proceeded, not in the capacity of a simple purchaser, but in virtue of the paramount power inherent in them as the Government, to investigate the titles of alleged rent free tenures according to the

provisions of Reg XXXI of 1802.
In the exercise of this power
they were not obnoxious to the
interference of the Civil Court.
The proper defence to the suit
would therefore have been a de-
murrer to the jurisdiction of
the Court. As this was not plead-
ed at the time, the Govt will
~~assent~~ put it in as a ground
of appeal; but ~~will~~ reserve the
plea to be urged in the event
of any more actions of the
same character being instituted.
Meanwhile, they resolve to com-
municate these observations to
the Board of Revenue, and to
the Govt Pleader in reference to
his letter recorded above, and
especially to para 3 of it.

JP

3 Copies to the Bd of Rev & Govt Pleader — 1 — 1 — 1

would not have

It is further to be understood that
this course is not to be held as
invalidating the power of inquiring
into the title of this in common
with other Enams whenever a
commission may be issued for
that purpose.

Copy sent as Letter to E
of 8th November 1859 No. 62.

Revenue 1858 Departt.
Dy. to Cons: 28th Septr.

No. 1291
Extract Mins: of Cons:
Dy 22d September 58

Acco. of the Bd's Rev: Dy 12th Jany 60
Con. 98 vol

The Plaintiff in O.S.
No 105, on the file of the Civil
Court of Masulipatam,
to be placed in possession
of the land sued for agreeably
to the Decree of the Civil Court.

No 5 at 7.

17 Sept 1860