Revenue Department

Minutes of Consultation

27th April 1857

Back no 17 & 18

Order no 507 of 23rd April

517 1857

செப்பனிடுபவர் பெயர்
கே. வசுமதி
செப்பனிடுவதற்காக எடுத்துக் கொள்ளப்பட்ட நாள்
செப்பனிட்டு முடித்த நாள்
சரிபார்க்கும் அலுவலர் முன்னிலையில் ஆராய்ச்சி உதவி
கையொப்பம் கையொப்பம்

Fort Saint George, Revenue Consultation of 27th April 1858.

No. 17. Read the following letter from CLEMENT DALE, Esq., Government Pleader Sudr Udalut; to HENRY FORBES, Esq., Acting Secretary to Government; dated Madras 5th April 1858, No. 30.

SIR,

Para. 1. I have the honor to acknowledge the receipt of an Extract from the Minutes of Consultation noted in the margin, and to report for the information of the Right Honorable the Governor in Council that I have given the matter there referred to me very careful consideration, and that I regret to add I consider it impossible, as the law at present stands, to prepare a Puttah and Moochilka to embrace all the objects contemplated by the Board of Revenue in such form as may prevent legal difficulties being experienced hereafter.

M. C. 12th June 1857, No. 584, R. D.

2. In the preparation of the Puttah and Moochilka appended to the enclosure A, it has been attempted (as it appears to me) to engraft upon the Revenue system as existing in this country the permanence and stability of tenure, which property in England has assumed.

3. It appears to me this has not been attained; and I foresee that if the forms proposed are adopted, much difficulty is likely to ensue; attended probably with litigation of a very doubtful character. It was decided by Lord Lyndhurst in the case of "Freeman against Fairlie" that (in Bengal) "the Puttah is nothing more than a fiscal Regulation introduced for the "purpose of collecting the tribute to which the land is subject. That in establishing a title to "land the Puttah is not necessary; that it forms no part of the title", in other words that it conveys no estate to the holder or party named in it. I am of opinion that the Puttah prepared by the Revenue Board, retains the same characteristics. The Puttah given in evidence in Freeman and Fairlie was certainly different in form from that now prepared by the Board of Revenue, but in my opinion, although the latter is somewhat lengthened, its effect is really the same; and that no estate known to the law passes to or vests in the party named in the Puttah. The Puttah commonly in use assimilates closely to a tenancy from year to year, with an understanding that the tenancy shall be renewed each year, and doubtless "so long as the quit rent is paid" the Holder by a suit in equity might restrain the Honorable Company from disturbing him in his possession of the Premises "made over to him" (if any such attempt were made). I do not refer to any rights which (under the proposed arrangement) might vest in an Alience, mortgagee or sub-tenant, because it is clearly intended that no rights should vest in them by assignment or mortgage, &c., until such alience, mortgagee or sub-tenant has signed a fresh Moochilka. It is well known that the practice of the Honorable Company has been, not to disturb holders of land so long as the quit rent is paid, and such doubtless will continue to be the practice; but a mere assurance of that nature, is not such a title as a party under agreement to sell could force an unwilling purchaser to accept, except under special conditions; to illustrate my meaning, suppose A takes one or more lots and builds valuable Warehouses or buildings, subsequently A or his representatives wish to dispose of the Premises, and agrees with B to sell them to him for a given sum, but does not bind B to accept this Puttah as the root of his title. Afterwards B repents of his bargain; he thinks he has given too much, or from many other circumstances which are of daily occurrence in business, and refuses to complete his purchase. In my opinion A could not force B to a specific performance of his contract, and to complete his purchace, because he A really has no title to the premises. It may be remarked that Government have nothing to do with such a state of circumstances, and need not forestall difficulties of that nature, or provide for such contingencies, so long as people are willing to take the Puttah; and that all that Government has to look at is securing the quit rent or Revenue; but in reply, it may be contended that it is of equal (if not greater) importance that in professing to give to parties an interest in land, such a title shall be conferred on the grantee, as will ensure to him the right of dealing with the property, and will enable him to reap the fruits of any labor or outlay he might expend, and that this principle is the more worthy of consideration, in cases where a premium is to be paid to Government, in addition to the yearly quit rent; it may also be remarked that although natives may be induced to expend money on such titles, parties who know any thing of titles as established in England would never do so, nor would they be likely to succeed in making the property available, for increasing their capital by borrowing money on mortgage.

4. Believing that Government desire to give such a Document as will give a title that will enable parties to deal with it, and thus to promote the outlay of capital labor in the permanent improvement of the proposed new Pettahs, I will proceed to point out some of the objections that present themselves to the proposed Puttah and Moochilka.

5. The Puttah recites, that the holder having paid the "prescribed premium" and bound himself to pay the quit rent, and to abide by the rules in force or hereafter to be "enacted" the lot marked ( ) is made over to him.

6. The Holder does not so bind himself by the Puttah, and the instrument by which he does bind himself (viz. the Moochilka) is not a counterpart of the Puttah; nor is it recited or referred to in the Puttah, or identified as the instrument by which the holder binds himself. More-

over, the Puttah is not signed by the holder, but is handed over to him and remains in his possession; if therefore a holder were sued for rent due on his lot, the Moochilka is the only instrument whereby the holder has bound himself to pay the quit rent, and the sole evidence whereon the action would have to be supported; on that instrument alone being put in as evidence it would disclose an engagement entered into without consideration, and according to the laws of evidence no Oral Testimony could legally be admitted to explain the terms of the engagement or supply the deficiency.

7. Similar observations apply to the recital of the holder having bound himself to abide by the rules in force, in the event of the Government suing to enforce a forfeiture for breach of any of those rules.

8. I collect that those rules have been passed by His Lordship in Council; and that they have not received the sanction of the Legislature; nor am I aware that the rules have been passed under any Legislative enactment, vesting a power in this Government to pass such rules. Should I be mistaken however I would suggest the propriety of referring in the rules to the Act under which they have been passed; and the existence of such a power would make a material alteration in the course to be pursued.

9. With regard to the rules "hereinafter to be enacted," I would solicit His Lordship's attention to the fact that the Puttah is silent as to authority by whom such rules are to be enacted; the power of legislation not being now vested in Government, I apprehend no Court would construe the sentence quoted, to mean rules which may be hereafter passed by the Governor of Madras in Council; the Moochilka adopts different phraseology (an objectionable course in 2 Instruments which ought to be construed together) for there the holder engages to abide "by all the rules in force now or hereafter in the said village" which might lead to the conclusion that the framers contemplated a wider scope for the framing of rules that solely by the Governor in Council.

10. As at present framed the Puttah and Moochilka are so loosely worded, that very great embarrassment must ensue should they become the subject of litigation and that point be raised.

11. I entertain a very strong opinion, that the course pursued in England in similar cases is the best, and in the long run the most satisfactory, viz. to lease the lands for long terms at a low rent. It is a tenure which the Law recognises, and is well understood; the considerations for the granting the lease and for the convenants, &c., by the lessee are expressed in one deed, whereby the evidence of the contract and the remidies of each party is complete, the lessor may impose any terms he deems desirable, and on the lessee covenanting to fulfil those terms, he is bound; the landlord ensures uniformity in building, and stability of structure; he can ensure such Regulations being observed, as he may consider desirable for promoting his own interests, and for furthering those of the whole body of his tenants, such a practice has been in existence for more than a century in England; and was pursued in this Presidency at the end of the last, and commencement of the present century, I believe now the practice has gone into disuse in this Presidency, except in Military Cantonments; why it was not pursued I do not know, but a lengthened experience in England has proved that it is a very beneficial practice, and while the Landlord's Estate and income are thereby immediately improved with the certainty of great reversionary gains, millions are expended by tenants and prove to them a most remunerative undertaking, at the same time promoting the outlay and circulation of capital with the attendant employment of labor. This course is not only pursued in London, but in all parts of the country where new towns are springing up daily, and land in the neighbourhood of Railway stations is not the exception. Considering the advantages of that practice, I was preparing a form of lease for submission to his Lordship in Council, but on looking at the directions conveyed to me, I observed a specific course was required, I therefore desisted from completing the lease.

12. For the reasons previously detailed, I consider that the land should be conveyed in the same instrument as contains the covenants by the holder, and I have prepared a deed in the enclosed form. I would remark that I have prepared this from the form of a deed which I prepared as Honorable Company's Solicitor in 1845; and which was settled by Mr. George Norton then Advocate General.

13. When printed, the accompanying form will appear a concise Document.

14. I would advise that in every case two of these forms should be (when completed by duly filling up the blanks) sealed with the Company's Seal; and duly executed by the Feoffee. Thus making both parts originals, one part being retained by Government, and carefully preserved, while the other part should be handed to the Feoffee.

15. It does not appear to me that any other observations are required for the guidance of the officers entrusted with the carrying out the orders of Government; but if thought desirable I shall do myself the honor of drawing up any directions that may be deemed by His Lordship in Council to be desirable.

16. If His Lordship in Council should approve of the form I have the honor to submit, I would suggest that all the rules, contained in the enclosure A, need not be inserted in the Schedule. I would also suggest that those rules might be remodelled with reference to the form

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Fort Saint George, Revenue Consultation of 27th April 1858.

submitted, and that on a sale being made, each purchaser should be required forthwith to sign a Memo. at the foot of a copy of the rules acknowledging himself the purchaser of lot ( ) on the terms embodied in those rules.

17. I return the Enclosure A as requested.

THIS INDENTURE made the day of in the year of Christ
18 BETWEEN THE HONORABLE THE EAST INDIA COMPANY of the one part, and
of in the East Indies of the other part, WITNESSETH that in consideration of the sum of Rupees of lawful money of British India already paid to the said Company by the said
(hereinafter referred to as the said Feoffee). They the said Company by these Presents Do grant alien Enfeoff and confirm unto the said Feoffee and his heirs All that piece of land situate in the Village of in the district of
in the East Indies bounded on the North side thereof by
On the East by
On the South by
And on the West by
Containing Ground be the same little more or less, and which with the several abuttals, boundaries, measurements and dimensions is delineated and described in the plan drawn in the margin hereof Together with all the appurtenances thereto belonging, and all the estate right and title at law and in equity of the said Company therein or thereto TO HOLD the said Hereditaments and premises unto the said Feoffee, his heirs, personal representatives and assigns for ever *But subject* nevertheless to the payment of the yearly rent or sum of Rupees Annas and Pice to be yearly issuing and paid out of and charged and chargeable upon the said land Hereditaments and premises herein before described, and to the performance of the covenants on the part of the said Feoffee his heirs, executors, Administrators and personal representatives hereinafter contained, and the said Company do hereby for themselves their successors and assigns covenant with the said Feoffee his heirs personal representatives and assigns that they the said Company their successors and assigns will at all times hereafter upon every reasonable request and at the costs and charges of the said Feoffee his heirs personal representatives or assigns make do and execute such further and other lawful acts deeds and assurances as by the said Feoffee his heirs personal representatives and assigns shall be reasonably required. And the said Feoffee doth hereby for himself his heirs Executors Administrators and personal Representatives covenant with the said Company their successors and assigns in manner following (that is to say) that he said Feoffee his heirs Executors administrators personal representatives or assigns will from time to time and at all times for ever hereafter well and truly pay unto the said Company their successors and assigns the said rent or yearly sum of Rupees Annas and Pice hereby reserved upon the day of in each and every year. *And further* that in case the said rent or yearly sum of Rupees Annas and Pice or any part thereof shall at any time hereafter be in arrears or unpaid then and so often as the same shall happen it shall be lawful for the said Company their successors and assigns to proceed in the manner prescribed by any law now in force, or which at any time hereafter may be in force within the Presidency of Madras for the recovery of Revenue due and in arrear or if the said Company their successors or assigns shall so think fit it shall be lawful for them to enter into or upon all and every of the said land hereditaments and premises hereinbefore described or into or upon any part or parts thereof and to distrain for the same rent or yearly sum or for so much thereof as shall be so in arrear and for all costs and charges occasioned by the non-payment thereof and to sell such distress and distresses in like manner as for rent reserved by lease or common demise *Provided always* and these presents are upon this express condition that if the said rent or yearly sum hereby reserved or any part thereof shall be behind or unpaid by the space of 30 days next after the day or time of payment whereon the same ought to be paid as aforesaid (and whether the same be lawfully demanded or not) or if the said Feoffee his Heirs Executors Administrators or personal Representatives shall in any manner fail to conform to and abide by all and every the Rules lately passed by the Right Honorable the Governor of Fort Saint George in Council, a copy whereof is contained in the Schedule hereunder written, or shall in any manner fail to conform to and abide by all and every such other rule or rules as may at any time hereafter be passed by the Governor of Fort Saint George for the time being in Council Then and in all and every or any of such cases or on any repitition of such failure it shall be lawful to and for the said Company their Successors or Assigns into and upon all and every the said Land Hereditaments and premises hereby granted or any part thereof in the name of the whole to re-enter and the same again to have hold re-possess and enjoy as in their former estate and right and then and from thenceforth these presents and all the Estate and Interest hereby granted shall cease and determine and be utterly void to all intents and purposes whatsoever any thing herein contained or any law or custom to the contrary thereof in any wise, notwithstanding *And* the said Company Do hereby appoint
to be the attorney of them the said Company to enter into and upon the premises hereby granted

or some part thereof in the name of the whole and to give and deliver unto the said Feoffee Seisin of the said premises or some part thereof in the name of the whole To hold unto the said Feoffee his heirs personal representatives and assigns for ever. In witness whereof The Right Honorable the Governor of Fort Saint George in Council acting for and on behalf of the said Company hath hereunto affixed the common seal of the said Company and the said Feoffee hath hereunto subscribed his hand and affixed his Seal the day and year first above written.

The schedule to which the foregoing Indenture refers.

A.

Here enter the Rules.

C. DALE,
Government Pleader.

A.

Signed Sealed and Delivered by the above named at aforesaid (where Stamps are not in use) in the presence of

Received from the above named the sum of being the amount above mentioned as having been by him paid } Rs.

Collector of the Zillah of

Be it remembered that on the day of 18 the within named by virtue of the letter of attorney within contained did enter into and upon the within mentioned premises and take and have full and peaceable possession and seisin thereof and afterwards the like full and peaceable possession and seisin thereof for them the said East India Company and in their name did deliver to the within named

To hold unto him his heirs personal representatives and assigns for ever according to the tenor and effect of the within written Indenture in the presence of us.

No. 18. ORDER THEREON, No. 517; dated 23d April 1858.

Ordered to be communicated to the Board of Revenue for their guidance.

(Signed) H. FORBES,
Acting Secretary to Government.

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This Indenture made the day in the year of Christ 18 Between The Honorable The East India Company of the one part and

of in the East Indies of the other part Witnesseth that in consideration of the sum of Rupees of lawful Money of British India already paid to the said Company by the said (hereinafter referred to as the said Feoffee) They the said Company by these Presents Do grant alien Enfeoff and Confirm unto the said Feoffee and his heirs All that piece of land situate in the Village of in the district of in the East Indies bounded on the North side thereof by on the East by on the South by and on the West by Containing ground be the same little more or less and which with the several abuttals boundaries measurements and dimensions is delineated and described in the plan drawn in the Margin hereof Together with all the appurtenances thereto belonging and all the Estate Right and Title at Law and in Equity of the said Company therein or thereto To hold the said Hereditaments and Premises unto the said Feoffee his heirs personne representes and Assigns for Ever But subject nevertheless to the payment of the Yearly rent or sum of Rupees Annas and Pie to be Yearly Going and paid out of and Charged and Chargeable upon the said Land hereditaments and premises hereby described and to the performance of the Covenants on the part of the said Feoffee his Heirs Executors Administrators and perso

Representatives hereinafter contained And the said Company do hereby for themselves their Succeſsors and Aſsigns Covenant with the said Feoffee his heirs personal Representatives and Aſsigns that they the said Company their Succeſsors and Aſsigns will at all times hereafter upon every reasonable request and at the Costs and Charges of the said Feoffee his Heirs personal Representatives or Aſsigns make do and Execute such further and other lawful acts deeds and Aſsurances as by the said Feoffee his Heirs personal Representatives and Aſsigns shall be reasonably required. And the said Feoffee doth hereby for himself his Heirs Executors Administrators and personal Representatives Covenant with the said Company their Succeſsors and Aſsigns in manner following (that is to say) That he said Feoffee his Heirs Executors Administrators personal Representatives or Aſsigns will from time to time and at all times for ever hereafter well and truly pay unto the said Company their Succeſsors and Aſsigns the said Rent or Yearly Sum of Rupees Annas and Pice hereby Reserved upon the Day of in Each and Every Year. And further that in case the said Rent or Yearly Sum of Rupees Annas and Pice or any part thereof shall at any time hereafter be in Arrear or unpaid then and so often as the same shall happen it shall be lawful for the said Company their Succeſsors and Aſsigns to proceed in the manner prescribed by any Law now in force or which at any time hereafter may be enforce within the Presidency of Madras for the Recovery of Revenue due and in Arrear or if the said Company their Succeſsors or Aſsigns shall so think fit it shall be lawful for them to Enter into or upon all and every of the said Land Hereditaments and Premises hereinbefore described or into or upon any part or parts thereof and to distrain for the same Rent or Yearly Sum or for so much thereof as shall be so in Arrear and for all Costs and Charges occasioned by the non payment thereof and to sell and dispose such distreſs and distreſses in like manner as for Rent Reserved by Law

or Common demise Provided always and these presents are upon this
Expreſs Condition that if the said Rent or yearly Sum hereby reserved or
any part thereof shall be behind or unpaid by the space of 30 days next
after the day or time of payment wherein the same ought to be paid as
aforesaid (and whether the same be lawfully demanded or not) or if the
said Proffee his Heirs Executors Administrators or personal Representatives
shall in any manner fail to conform to and abide by all and every the
Rules lately paſsed by the Right Honorable The Governor of Fort
St. George in Council, a Copy whereof is contained in the Schedule
hereunder written, or shall in any manner fail to conform to and
abide by all and every such other Rule or Rules as may at any time
hereafter be paſsed by The Governor of Fort St. George for the
time being in Council then and in all and every or any such cases or
on any Repitition of such failure it shall be lawful to and for the
said Company their Succeſsors or Aſsigns into and upon all and
every the said Land Hereditaments and premises hereby granted or any
part thereof in the name of the whole to reenter and the same again
to have hold Repoſsess and Injoy as in their former Estate and Right
and then and from thenceforth these presents and all the Estate and
Interest hereby granted shall cease and determine and be utterly
void to all intents and purposes whatsoever anything herein
Contained or any law or Custom to the Contrary thereof in anywise
notwithstanding And the said Company Do hereby appoint

to be the attorney of them the said Company to enter into and upon
the premises hereby granted or done part thereof in the name of the
whole and to give and deliver unto the said Proffee Seisin of the
said premises or some part thereof in the name of the whole To
hold unto the said Proffee his heirs and Aſsigns for ever In
witneſs whereof The Right Honorable The Governor of
Fort St. George in Council acting for and on behalf of the said
Company hath hereunto affixed the Common Seal of the said
Company and the said Proffee hath hereunto subscribed his hand

and affixed his Seal the day and Year first above written

The Schedule to which the foregoing Indenture refers

A
Here Enter the Rules- 68 A

Signed Sealed and Delivered by the above named at aforesaid (where Stamps are not in use) in the presence of

Received from the abovenamed the sum of Rs being the amount above mentioned as having been by him paid.

Collector of the Zillah of

Be it remembered that on the day of 18 the within named by virtue of the Letter of Attorney within contained did enter enter into and upon the within mentioned Premises and take & have full and peaceable possession and Seisin thereof and afterwards the like full and peaceable possession and Seisin thereof for them the said East India Company and in the name did deliver to the within named
To hold unto him his heirs and Assigns for ever According to the tenor and Effect of the within written Indenture in the presence of us.

Dated 18

The East India Company

— to —

Draft.

Draft Conveyance of Premises at.

R 511/58.

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Encls: A.

Where the land is waste and belongs to Government.

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1 The limits of the proposed town shall be marked off by boundary stones.

2 Streets shall be laid out at convenient distances and when practicable generally at right angles to each other the main streets to be 24 feet, the Secondary streets 18 feet and the 3rd class 12 feet wide in the road way a further spaces of 15 feet on each side of a main, and 12 on each of other streets being reserved in all cases for drains, avenues, and foot paths, no street lane or passage shall under any circumstances be less than 15 feet wide.

3 Suitable sites to be reserved in Convenient places for bazars wells, Police, Pharmahs &c.

4 The spaces available for private dwellings shall be divided into

into lots of 1 ground each 60 + 40 feet, but any number of lots may be taken by one individual.

5 A suitable space to be reserved free from all buildings round each Railway station.

6 The lots will be divided into 3 classes according as they are situated on 1st 2d & 3d class streets or possess other advantages of site &c.

7 The lots shall be subject to an annual Quit rent of Rupees 1/2 1 1/2 per ground and a premium, before being made over of Rupees 3. 2. 1 per grounds according to class.

8 Purchasers of lots will be required to sign an agreement to pay the annual Quit Rent regularly and to Conform to the rules 6 to 20.

9 Proprietors of lots are to Commence building on them within 6 months and to complete the same within one year after receiving possession

but holders of several Contiguous lots are not required to build on each lot of 1 ground provided that any Vacant space be enclosed by a wall not less than 4 feet high.

10 Proprietors are to Construct private drains of suitable Capacity from their buildings and yards into the street drain and to Conform to the general rules.

11 No stables Cow houses manure heaps &c to be allowed between any house and the public street.

12 No Sub division of any lot permitted if it would reduce the extent of each division below 1 ground.

13 No verandah or structure to project over the said Spaces of the Streets.

14 The buildings on each main Street to have tiled or terraced roofs no thatched roofs to be allowed within the limits of the pettah.

15 No offensive trade such as tanning &c to be allowed except in localities

localities previously determined. Dung hills cesspools &c. which may prove a nuisance to the neighbours to be removed on the written requisition of the Magistrate or the nuisance to be otherwise abated to his satisfaction. Drains to be kept clean and free from accumulation of offensive matter and duly repaired when necessary.

16 A permanent puttah will be granted for each lot.

17 Holders of lots are at liberty to alienate them in any way they please, but in the event of their absolute transfer by sale, gift or bequest the new proprietor must sign the agreement required by Rule 8 and Register himself as Proprietor in the Collectors Office.

18 Arrears of Quit Rent will be realized under the General Regulations in the same manner as arrears of Lands Revenues.

19 Suitable sites will be set a part for burial and burning grounds

grounds for different sects and no other localities are on any account to be resorted to for such purposes.

20 The Breach of any of the above rules shall render Proprietors subject to the future of their lots with the buildings thereon or at their option to such fine as the Magistrate may impose and the immediate fulfilment of the rules infringed.

21 Proprietors are responsible for the Quit Rent and for the due observances of the Rules by their Tenants and Mortgagees.

Puttah

A. B. having paid the prescribed premium Rupees —/ and bound himself to pay the annual Quit Rent of Rupees —, and to abide by the Rules in force or hereafter to be enacted the lot (or lots) marked —— in the Township of— is (or are) hereby made over to him.

So long as the said Quit Rent is regularly paid and the Rules above referred to duly observed, the said

said Lot / or Lots / is / or are / his / property and he is at liberty to alienate mortgage or sub rent it (or them) in / any way he / pleases, / provided always that the / party to whom it (or they) shall be transferred mortgaged or rented / shall bind himself to Conform to the rules in all respects.

Mooshilka

I ——— A. B——— do hereby engage to pay the regulated Quit Rent Rs. — on my lots of ground in the Village of ——— on or before the 30th. June of each year to abide by all the rules in force now / or hereafter in the said Village and to submit to all the penalties / prescribed on breach / of any of the said rules.

(Signed) I. D. Sinn
Acting Secretary

Enclosure. 517/12

Where the land is waste and belongs to Government.

1 The limits of the proposed town shall be marked off by boundary Stones.

2 Streets shall be laid out at convenient distances as the / practicable generally at right angles to each other. the main Street to be 24 feet - the Secondary Street 18 feet - and the 3d class 12 feet wide - in the hood way, / a further Space of 15 feet on each side of a main and 12 on each of other Streets being reserved as all cases for drains, verandahs and foot paths. no Street land or passage shall under any Circumstances be less than 15 feet wide -

3 Suitable sites to be reserved in convenient places for bazars, wells, Police Thanas &c &c.

4. The Space available for private dwellings shall be divided into lots of 1 ground each, or 60 × 60 feet, but any number of lots may be taken by one individual.

5 A Suitable Space to be reserved free for all buildings round each Railway Station -

The

6. The lots will be divided into 3 classes according as they are situated on 1st 2d or 3d class streets, & pipposes other advantages of Site &c.

7. The lots shall be subject to an annual Quit Rent of Rupees 1½. 1. ½ per Ground, and a premium before being made over of Rupees 3. 2. 1 per Ground, according to class.

8. Purchasers of lots will be required to sign an agreement to pay the annual Quit Rent regularly, and to conform to the rules 6 to 20.

9. Proprietors of lots are to commence building on them within 6 months, and to complete the same within one year after receiving possession, but holders of several contiguous lots are not required to build on each lot of 1 ground, provided that any vacant space be enclosed by a wall not less than 6 feet high.

10. Proprietors are to construct private drains of suitable capacity from their buildings & yards into the street drain, and to conform to the general rules.

11. No stables, Cow houses, manure heaps

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heaps, &c. to be allowed between any house and the public street.

12. No subdivision of any lot permitted, if it would reduce the extent of each division below 1 ground.

13. No verandah or structure to project over the side spaces of the streets.

14. The buildings on each main street to have tiled or terraced roofs, no thatched roofs to be allowed within the limits of the pettah.

15. No offensive trade such as tanning &c. to be allowed, except in localities previously determined. Dung hills, cesspools &c. which may prove a nuisance to the neighbours to be removed on the written requisition of the Magistrate, or the nuisance to be otherwise abated to his satisfaction. Drains to be kept clean and free from accumulation of offensive matter, and duly repaired when necessary.

16. A permanent pattah will be granted for each lot.

17. Holders of lots are at liberty to alienate them in any way they please, but on the event of their absolute transfer by sale, gift or bequest, the new proprietor must sign the agreement required by Rule 8

collecting the revenue to whom such is to

5. and] register himself as Proprietor in the Collector's Office.

18. Arrears of Quit Rent will be realized under the General Regulations in the same manner as arrears of Land Revenue.

19. Suitable sites will be set apart for burial and burning grounds for different Sects, and no other localities are on any account to be resorted to for such purposes.

20. The Breach of any of the above rules shall render Proprietors subject to the forfeiture of their lots with the buildings thereon, or at their option to such fine as the Magistrate may impose, and the immediate fulfilment of the rule infringed.

21. Proprietors are responsible for the Quit Rent and for the due observance of the Rules by their Tenants and Mortgagees.

Pullah.

A. B. having paid the prescribed premium (Rupees _____) and bound himself to pay the annual Quit Rent of Rupees _____, and to abide by the Rules in force or hereafter to

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be enacted, the Lot (or Lots) marked _____ in the Township of _____ is (or are) hereby made over to him.

So long as the said Quit Rent is regularly paid and the Rules above referred to duly observed, the said Lot (or Lots) is (or are) his property, and he is at liberty to alienate, Mortgage or Sub-rent it (or them) in any way he pleases, provided always that the party to whom it (or they) shall be transferred, Mortgaged or rented, shall bind himself to conform to the Rules in all respects.

Moochilka.

I _____ A. B. _____ do hereby engage to pay the requested Quit Rent Rupees _____ on my lots of ground in the Village of _____ on or before the 30th June of each year, to abide by all the Rules in force now or hereafter in the said Village, and to submit to all the penalties prescribed on breach of any of the said Rules.

Acting Secretary

Collector and Magistrate to whom the rents is to

No

In an Extract from the Proceedings of the Board of Revenue to the Offg Secretary to Government Revenue Department Dated 8th April 1857. Nº 1020.

Enclosure A.

511/58.

R. No 298

20 Aug 58

15/8/57

Rec'd Nov 4. 1780

My Dear Col. Fales

I am sorry to observe
by a Letter from the Secretary of
Congress that a Copy of Letter
& receipt of the 26th of Sept
prepared and Dispatched, but
for reasons stated in my
Letter I did not forward
it. I do not Suppose any thing
but that your Seal of
Office was Lock prepared & some
mistake Lame Corry to have
been put into Cypher the

collecting the Tribute to which the land is liable

No. 30

517

17

From Clement Dale Esquire Government Pleader Sudr Udalut

To Henry Forbes Esquire Acting Secretary to Government

Madras 5th April 1858

Sir,

Para 1. I have the honor to acknowledge the receipt of an Extract from the Minute of Consultation noted in the margin and to report for the information of the Right Honorable the Governor in Council that I have given the matter there referred to me very careful consideration and that I regret to add I consider it impossible as the Law at present stands to prepare a Puttah and Moochilka to embrace all the objects contemplated by the Board of Revenue in such form as may prevent legal difficulties being experienced hereafter.

M/6 12th June 1857 & No 584 Revenue Department

2. In the preparation of the Puttah and Moochilka appended to the Enclosure A it has been attempted (as it appears to me) to engraft upon the Revenue System as existing in this Country the permanance and stability of tenure, which property in England has assumed

3. It appears to me this have not been attained; and I foresee that if the forms proposed are adopted, much difficulty is likely to ensue; attended probably with litigations of a very doubtful Character. It was decided by Lord Lyndhurst in the case of Freeman against Pasrlie that (in Bengal) "the Puttah is nothing more than a "fiscal Regulation introduced for the purpose of "collecting the Tribute to which the land is subject

that in Establishing a Title to land the Puttah is not necessary that it forms no part of the Title" in other words that it conveys no Estate to the Holder or party named in it. I am of opinion that the Puttah prepared by the Revenue Board retains the same characteristics. The Puttah given in Evidence in a Freeman -v- Fairlie was certainly different in form, from that now prepared by the Board of Revenue, but in my opinion, although the latter is somewhat lengthened, its Effect is really the same; and that no Estate Known to the Law passes to or Vests in the Party named in the Puttah - The Puttah Commonly in use assimilates closely to a Tenancy from Years to Year, with an understanding that the Tenancy shall be renewed each year, and doubtless long as the Quit Rent is paid" the Holder by a suit in Equity might restrain the Honorable Company from disturbing him in his possession of the Premises made to him" (if any such attempt were made) I do not see to any rights which (under the proposed arrangement) might vest in an Alienee a Mortgagee or Sub Tenant, because it is clearly intended that no rights should vest in them by Assignment or mortgage &c. until such Alienee Mortgagee or Sub Tenant has signed a fresh Mochulka - It is well Known that the practice of the Honorable Company has been, not to disturb Holders of Land so long as the Quit Rent is paid, and such doubtless will continue to be the practice; but a Mere assurance of that nature, is not such a Title as a Party under Agreement to sell could force an unwilling Purchaser to accept, except under special conditions: To illustrate my meaning, Suppose A. takes one or more Lots and builds valuable Warehouses or Buildings Subsequently A. or his Representatives wish to dispose of the Premises, and agrees with B to

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to sell them to him for a given sum, but does not bind B to accept this Puttah as the Root of his Title - Afterwards B. repents of his bargain; he thinks he has given too much, or from many other Circumstances which are of daily occurrence in business, and refuses to complete his purchase In opinion A could not force B to a Specific performance of his contract, and to complete his purchase, because he really has no Title to the Premises - It may be remarked that Government have nothing to do with such a State of Circumstances, and need not forestall difficulties of that nature, or provide for such Contingencies, so long as people are willing to take the Puttah; and that all that Government has to look at is securing the Quit Rent or Revenue; but in reply it may be contended that it is of Equal (if not Greater) importance that in professing to give to Parties an Interest in land, such a Title shall be conferred on the Grantee, as will Ensure to him the right of dealing with the property, and will Enable him to reap the fruits of any labor or outlay he might Expend, and that this principle is the more worthy of Consideration, in cases where a Premium is to be paid to Government, in addition to the Yearly Quit Rent; It may also be Remarked that although Natives may be induced to Expend money on such Titles, Parties who Know anything of Titles as Established in England would never do so, nor would they be likely to succeed in making the property available, for increasing their Capital by borrowing Money on Mortgage.

4. Believing that Government desire to give such a Government as will give a Title that will Enable parties to deal with it, and thus to promote the outlay of Capital and labor in the permanent improvement of the proposed New Puttahs

I will proceed to point out some of the objections that present themselves to the proposed Puttah and Moochilka.

5. The Puttah recites, that the Holder having paid the prescribed premium and bound himself to pay the Quit Rent, and to abide by the Rules in force or hereafter to be enacted the lot marked ( ) is made over to him;

6 The Holder does not so bind himself by the Puttah, nor the Instrument by which he does bind himself (viz: the Moochilka) is not a Counterpart of the Puttah, nor is it recited or referred to in the Puttah, or identified as the Instrument by which the Holder binds himself. Moreover the Puttah is not signed by the Holder, but is handed over to him and remains in his possession. If therefore a Holder were sued for Rent due on his Lot, the Moochilka is the only Instrument whereby the Holder has bound himself to pay the Quit Rent, and the sole Evidence whereon the action would have to be supported, on that Instrument alone being put in as Evidence it would disclose an Engagement entered into without Consideration, and according to the Laws of Evidence no Oral Testimony could legally be admitted to Explain the terms of the Engagement or supply the deficiency.

7. Similar observations apply to the recital of the Holder having bound himself to abide by the Rules in force, viz the Event of the Government suing to enforce a forfeiture for breach of any of those Rules.

8. I collect that those Rules have been passed by His Lordship in Council; and that they have not received the sanction of the Legislature; nor am I aware that the Rules have been passed under any legislative Enactment, vesting a power in this Government to pass such Rules. Should I be mistaken

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however I would suggest the propriety of referring in the Rules to the Act under which they have been passed; and the existence of such a power would make a material alteration in the course to be pursued.

9. With regard to the Rules hereinafter to be Enacted I would solicit His Lordship's attention to the fact that the Puttah is silent as to Authority by whom such Rules are to be Enacted, The power of legislation not being now vested in Government, I apprehend no Court would Construe the Sentence quoted, to mean Rules which may be hereafter passed by the Governor of Madras in Council. The Moochilka adopts different phraseology (an objectionable Course in 2 Instruments which ought to be Construed together) for there the Holder engages to abide "by all the Rules in force now or hereafter in the said Village" which might lead to the Conclusion that the framers Contemplate a wider scope for the framing of Rules that solely by the Governor in Council.

10. As at present framed the Puttah and Moochilka are so loosely worded that very great Embarrassment must ensue should they become the subject of litigation and that point be raised.

11 I entertain a very strong opinion, that the Course pursued in England in similar cases is the best, and in the long Run the most satisfactory, Viz: To Lease the Lands for long terms at a low Rent. It is a tenure which the Law recognises, and is well understood; the Considerations for the granting the Lease and for the Covenants &c by the Lessee are expressed in one Deed, whereby the Evidence of the Contract and the Remedies of each party is complete

the

as contains the Covenants by the Holder: and I have prepared a Deed in the Enclosed form - I would remark that I have prepared this from the form of a Deed which I prepared as Honorable Company's Solicitor in 1845; and which was settled by Mr. George Norton then Advocate General.

13 - When printed, the accompanying form will appear a concise Document.

14 - I would advise that in every case 2 of these forms should be (when completed by duly filling up the blanks) sealed with the Company's Seal, and duly Executed by the Feoffee thus making both parts Originals, one part being retained by Government, and carefully preserved, while the other part should be handed to the Feoffee.

15 - It does not appear to me that any other observations are required for the guidance of the Officers Entrusted with the carrying out the Orders of Government: but if thought desirable I shall do myself the honor of drawing up any directions that may be deemed by His Lordship in Council to be desirable.

16 - If His Lordship in Council should approve of the form I have the honor to submit I would suggest that all the Rules contained in the Enclosure A need not be inserted in the Schedule - I would also suggest that those Rules might be remodelled with reference to the form submitted, and that on a sale being made, each Purchaser should be required forthwith to sign a Memo at the foot of a Copy of the Rules acknowledging

...e lessor may impose any terms he deems desirable, and ... the Lessee covenanting to fulfil those terms he is bound; ...e Landlord ensures uniformity in Building and Stability ... structure; he can ensure such Regulations being observed, ... he may consider desirable for promoting his own interests, ...ed for furthering those of the whole body of his Tenants — ...uch a practice has been in Existence for more than a ...entury in England; and was pursued in this Presidency at ...e end of the last and Commencement of the present Century, ...believe now the practice has gone into disuse in this — ...Presidency, Except in Military Cantonments, Why it was ...t pursued I do not Know, but a lengthened Experience ... England has proved that it is a very beneficial practice ... while the Landlords Estate and income are thereby ...mediately improved with the certainty of great ...versionary gains, Millions are Expended by Tenants ... prove to them a most Remunerative undertaking ... the same time promoting the outlay and Circulation ... Capital with the attendant Employment of Labor ... course is not only pursued in London, but in all parts ... the Country where new Towns are springing up daily, ... land in the neighbourhood of Railway Stations ... not the Exception - Considering the advantages of ...at practice, I was preparing a form of Lease for ...bmission to His Lordship in Council, but on looking ... the directions conveyed to me I observed a Specific ...rse was required I therefore desisted from completing ... Lease -

... For the reasons previously detailed I consider ...at the Land should be conveyed in the same Instrument

himself the Purchaser of Lot [ ] on the Terms Embodied in those Rules.

I/- I return the Enclosure A as Requested

I have the honor to be

Sir

Your most Obedient Servant

Govt. Reader

Revenue 1858 Sept. 1

By Telegraph 24th April

No. 571

From the Govt. Reader

Lieut. Kodaikanal

Madras 25th April 1858

Sir

Referring to the order of Govt. No. 512 Dated 21st Inst. No. 584 Madras Mail of 22nd Inst. I have the honor to forward herewith a Petition addressed to Government by Messrs. Robertson & Co. praying that the Sum of Rupees 2,000 may be remitted on account of the Revenue assessed upon their Estate of Perumalmalai for the current Fasly. on the ground of the loss sustained by them in consequence of the Failure of the Crops

I have &c.

Secretary to Govt.

Ordered to be communicated to the Board of Revenue for their information.

By Order &c.

23rd April 1858

Secretary to Govt.

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CJ Collyer Sept. 1858