

(1) Number of Pages..... 94
 (2) Date of repair..... 1-2-67
 (3) Initials of the Referencer..... [Signature]

MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue. DEPARTMENT

G.O. No.	<u>1303.</u>	☒ Press
B.F. No.		☐ Mis.
Dated	<u>10-10-1874</u>	<u>196</u>

Not to be folded or roughly handled

Read the following papers:—

No. 112. From J. GROSE, Esq., Secretary to
Acting Secretary to Government, Revenue
No. 1,347.

I AM directed to call the attention of Government to the procedure under Act II. of 1864 (Madras) in selling land in regard to Form No. 7 (Sale Notice of Lands) as modified in Standing Order No. 17 of 1871.

2. In G. O., 13th September 1871, Petition in a certain petition case, stated that there is nothing in Act II. of 1864 which warrants the withholding possession from a purchaser after he has paid the deposit of 15 per cent. In certain circumstances the delay in giving possession might be a cause of serious damage to a bona fide purchaser; that Clause 2, Section 36, provides for inspection of the conditions of sale in the Sale Notice, but that these must be in conformity with the Act; that an appeal against irregularity, because a purchaser might not have the purchase-money, which cannot have been in the hands of the Collector, is allowed. They, in conclusion, suggested the amendment of the Sale Notice.

3. The Board thereupon issued Standing Order No. 17 of 1871, in which provision was made for the delivery of possession immediately on payment of the 15 per cent. deposit, i.e., immediately on the sale taking place. The condition of the old form of Sale Notice requiring the confirmation of the Collector was abrogated; but apparently by overlooking the fact that an appeal to the Collector in case of irregularity in the sale, was allowed to remain in force, the Board made for delivery of possession immediately on payment of the 15 per cent. deposit, i.e., immediately on the sale taking place. The condition of the old form of Sale Notice requiring the confirmation of the Collector was abrogated; but apparently by overlooking the fact that an appeal to the Collector in case of irregularity in the sale, was allowed to remain in force, the Board made for delivery of possession immediately on payment of the 15 per cent. deposit, i.e., immediately on the sale taking place.

4. In G. O., 29th February 1872, No. 359, the Board, in reply, observed that the Sale Notice. They referred to Standing Order No. 17 of 1871, in which provision was made for the delivery of possession immediately on payment of the 15 per cent. deposit, i.e., immediately on the sale taking place. The condition of the old form of Sale Notice requiring the confirmation of the Collector was abrogated; but apparently by overlooking the fact that an appeal to the Collector in case of irregularity in the sale, was allowed to remain in force, the Board made for delivery of possession immediately on payment of the 15 per cent. deposit, i.e., immediately on the sale taking place.

5. It follows that, if the instructions of Government are to be carried into effect, Clause 9 of Act II. of 1864 must now be rescinded; but before doing so the following observations:—First, as to delivery of possession, it is provided in Section 40; and from the terms of that section it is clear that the grant of a certificate is a condition precedent. And the old as well as the new form of Sale Notice provide that a certificate shall not be granted until the registry changed until the purchase-money is completed. It does not appear how the Collector is to put a purchase-money in possession otherwise than as provided in Section 40; and if he is to be put in possession, he must then get the sale certificate, and the registry changed.

6. It is evident that it cannot be intended that the certificate of sale and change of registry should follow immediately on the payment of the 15 per cent. deposit. Suppose this is done, and the balance not paid up, the land is sold, but the defaulting purchaser, armed with his certificate, could procure possession of the land by producing his certificate (Section 40). No damage would be done to the Government by allowing the purchaser to have his certificate till he completes his payments, if he does so.

7. Next as to the legality of allowing an appeal against irregularity, because a purchaser might not have the purchase-money, which cannot have been in the hands of the Collector, is allowed. They, in conclusion, suggested the amendment of the Sale Notice.

8. Now that sales have increased to such an extent, it is impossible for Tahsildars to supervise them closely; irregularities often occur, and have come before them, that the appeal to the Collector, the Board are of opinion that it is not merely such conditions as are laid down therein, but such as are not opposed to it.

Board of Revenue, to C. G. MASTER, Esq.,
Department, dated Madras, 4th June 1874,

to certain points connected with the procedure for arrears, and more especially with the Board's Standing Order No. 275 and

Department, Government, in connection with Sections 36 et seq. of Madras Act II. of 1864 a purchaser at a sale of land for arrears of revenue on the amount of his bid; that in certain circumstances the delay in giving possession might be a cause of serious damage to a bona fide purchaser; that Clause 2, Section 36, provides for inspection of the conditions of sale in the Sale Notice, but that these must be in conformity with the Act; that an appeal against irregularity, because a purchaser might not have the purchase-money, which cannot have been in the hands of the Collector, is allowed. They, in conclusion, suggested the amendment of the Sale Notice.

No. 17 of 1871, in which provision was made for the delivery of possession immediately on payment of the 15 per cent. deposit, i.e., immediately on the sale taking place. The condition of the old form of Sale Notice requiring the confirmation of the Collector was abrogated; but apparently by overlooking the fact that an appeal to the Collector in case of irregularity in the sale, was allowed to remain in force, the Board made for delivery of possession immediately on payment of the 15 per cent. deposit, i.e., immediately on the sale taking place.

ment suggest that this clause should be amended. They, in conclusion, suggested the amendment of the Sale Notice.

ent are to be carried into effect, Clause 9 of Act II. of 1864 must now be rescinded; but before doing so the following observations:—First, as to delivery of possession, it is provided in Section 40; and from the terms of that section it is clear that the grant of a certificate is a condition precedent. And the old as well as the new form of Sale Notice provide that a certificate shall not be granted until the registry changed until the purchase-money is completed. It does not appear how the Collector is to put a purchase-money in possession otherwise than as provided in Section 40; and if he is to be put in possession, he must then get the sale certificate, and the registry changed.

et that the certificate of sale and change of registry should follow immediately on the payment of the 15 per cent. deposit. Suppose this is done, and the balance not paid up, the land is sold, but the defaulting purchaser, armed with his certificate, could procure possession of the land by producing his certificate (Section 40). No damage would be done to the Government by allowing the purchaser to have his certificate till he completes his payments, if he does so.

the Collector, the Board are of opinion that it is not merely such conditions as are laid down therein, but such as are not opposed to it.

at that it is impossible for Tahsildars to supervise them closely; irregularities often occur, and have come before them, that the appeal to the Collector, the Board are of opinion that it is not merely such conditions as are laid down therein, but such as are not opposed to it.

*Proceedings of the Madras Government, Revenue Department,
10th October 1874.*

9 to remain in Form 7, is often used, and has prevented much hardship and injustice. The Board think that the clause may remain, but if Government consider this impossible under the existing law, the Board think the law should be altered. If the clause is abrogated, the sole remedy left to the injured man will be costly litigation, and the harm thus done will be far greater than any which can arise from the purchaser's knowing that his purchase may possibly be cancelled. If the law is altered at all, the Board think an appeal within thirty days should be allowed to the Collector in every case, including that in which the purchaser pays down the purchase-money in full directly the sale has taken place.

No. 113. Proceedings of the Board of Revenue, dated 6th July 1874, No. 1,704.

Read the following letter from R. W. BALOW, Esq., Collector of the Chingleput District, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Sydapet, 25th June 1874, No. 290.

REFERRING to my letter, dated 17th August last, No. 347, and the Board's Miscellaneous Proceedings thereon, dated 2nd instant, N 3,639, I have the honor to request a reply to my paragraph 5, in which I have asked for an authoritative opinion as to whether revenue sales involving patent irregularities, such as selling more lands than necessary, or those not entered in the defaulter's putta, etc., can be cancelled when no appeal has been preferred. There are several Arzees pending disposal, in which irregularities of the kind referred to have been brought to my notice by Tahsildars, and I am unable to dispose of them, pending the receipt of Board's orders.

The Board resolve to submit this letter to Government, with the request that Government will take it into consideration at the same time as the Board's letter to Government, dated the 4th June 1874, No. 1,347.

2. In that letter, the Board have expressed a strong opinion in favor of allowing an appeal to the Collector when land is sold or arrears of revenue. The fact stated by the Collector of Chingleput, that he has several reports before him requesting that sales may be cancelled in cases where no appeal has been preferred, because of patent irregularities, such as the sale of more land than was necessary (which is, or rather may be, illegal) and the sale of land not in the defaulter's putta (which is a mistake which drives the injured man to seek a remedy in harassing legal proceedings), convince the Board that the Collector should be allowed to interfere even when there is no appeal, as provided in the Board's original Circular Order on the subject.

3. It may be doubted whether in the case abovementioned the injured man would have come to the notice of the Board in which the man did not know of the injury until after the period allowed for appealing had expired.

4. The arguments for giving the Collector the power to remedy hardship and injustice in sales of this kind within a month from the date of sale are as applicable when no appeal is made as when an appeal is made.

No. 114.

MINUTE BY HIS

It would seem clear that we are bound to bring our Orders and Notices issued under the Act of 1864 into conformity with its provisions.

2. Whether the Regulation or Notice issued under the Act, I cannot say. If it is not, I was myself under the impression that it would appear that the appeal is obtained

BY THE GOVERNOR.

ing our Orders and Notices issued under the Act of 1864 into conformity with its provisions.

is to say, that the Board of Revenue ought to be inconsistent with the provisions of the Act. I understand now to be in force, and under which I inadvertently, is or is not inconsistent with the law. I was myself under the impression that it would appear that the appeal is obtained under an "inadvertent" order of the Board

*Proceedings of the Madras Government, Revenue Department,
10th October 1874.*

of Revenue. I agree with the Board that there is no provision in the Act enabling the Board of Revenue or Government to make any purchase, which shall have the force of law either by way of enlarging or restraining its provisions. These last are, I think, quite clear.

27th June 1874.

(Signed) HOBART.

No. 115.

MINUTE BY THE HON. J.

SIM, C.S.I.

ON further consideration I think possession of money has been paid. The deposit of 15 per cent. The Collector cannot give the purchaser a

2. As to whether possession shall be given whether time shall be allowed for appeal to the sale can take place without at least a clear month defaulter to challenge the arrear or object to the ought never to occur. I fear the appeals to the Collector be so numerous that delivery will be delayed indefinitely.

24th June 1874.

(Signed) J. D. SIM.

No. 116.

MINUTE BY THE HON. W.

BINSON, C.S.I.

I HAVE no objection to a reference to the letter and spirit of the law in the matter. Board of Revenue or Government to make any purchase, which shall have the force of law either by way of enlarging or restraining its provisions. These last are, I think, quite clear.

2. The sale of land at public auction, under and without reserve of any kind, so far as the behalf is concerned; and this condition was, I believe, a grave evil which prevailed under the old practice of the Collector's tardy certification of each sale. The provision of the 15 per cent. is the earnest money of the Section 38 protects the auctioneer as respects the reject bids at discretion; while the penalty imposed on the purchaser.

3. The 15 per cent. is the earnest money of the Section 38 protects the auctioneer as respects the reject bids at discretion; while the penalty imposed on the purchaser.

4. The only remedy provided by law in purchase-money after a lapse of thirty days, is rescission of the contract.

5. The registration and certificate under Section 38 are not contingent on the payment of the balance. Nor can the fulfilment of this provision be a tort, because these steps—not the rescission of the contract by the Government, but the auction-purchaser seeking to set aside a resale to be fulfilled. A resale before the expiry of the period.

6. I have no doubt, therefore, that Clause 7 is not, I think, in accordance with the law, but in opposition to the law.

7. As to the alteration of the law so as to make it a tort, this should be brought forward by itself, and not as an incidental opinion in the last

130
2
ght to be" such an appeal. Why should the law be exceptionally different in the rest of India, be exceptionally different in the view of the Board and leave matters as they are.

officers, though I entertain no doubt as to the fact that there is no provision in the Act enabling the Board of Revenue or Government to make any purchase, which shall have the force of law either by way of enlarging or restraining its provisions. These last are, I think, quite clear.

provisions of Act II. of 1864, is outright rescission of the contract. The Board's reasoning in interpretation of Statute Law, and the law, but in opposition to the law.

7 must be expunged; for they are at variance with the provisions of the law and right paragraph 7 is not, I think, in accordance with the law, but in opposition to the law.

28th June 1874.

2. On the first question I entirely agree with the Board of Revenue. There is nothing in the law (Act II. of 1864, Madras) requiring possession to be given on payment of the deposit alone, nor prior to the passing of that Act as it is customary to do so. Section 36 prescribes the rules under which sales of immovable property shall be conducted. Its second clause requires the Collector to issue a notice specifying, *inter alia*, "the time, place, and conditions of sale;" its third clause requires the purchaser to deposit 5 per cent. of the purchase-money, which payment is liable to forfeiture if the remainder of the purchase-money be not paid within thirty days; its fourth clause prescribes that the land shall be resold at the expense and risk of the purchaser if he does not make the deposit. Nothing is said here of possession being given before full completion of the purchase, and, considering how minutely the Act details everything connected with these sales, it is unlikely, if the extreme, that such an important matter would have been omitted, had it been intended that immediate possession should be given. Section 38 is general in its terms and merely prescribes that "lands purchased at a public sale shall be registered in the name of the actual purchaser, who shall receive a certificate of sale signed and sealed by the Collector, which shall be produced by him to the Court as evidence of the fact of the purchase in all Courts." Now how can it be said that a Collector certify that the land sold has been purchased by a person before it is paid for, and how can a Collector certify that person has done all that is requisite to make it his own? He can see that the money has been paid in full because the purchaser can pay the full amount whenever he pleases and so obtain possession; while, in the case of the purchaser, I think it desirable that possession should not be given until the whole purchase-money has been paid, because the purchaser in the interval may injure the land by one side and the defaulting ryot on the other. The principle in these transactions are Government land, the purchaser can only buy what the Government creditor to sell, and he must make his own improvements, provided, of course, these are not opposed to the interests of the principals, permits the mutual interests of the principals, permits the terms and conditions of the principals. I cannot conceive what possible cause of complaint there could be that possession will only be given on payment of the purchase-money.

5. Independent of this, everything that ham
reduces its value and so injures the defaulter. I
aside by the Courts on application made within six
further subjected to the delays and uncertainties o
will buy land, and the Government and the defau
ation of its value. I need hardly say that such
appeal to the Collector is inexpensive, can do th
right of appeal to the Courts. In appealing to Co
to lose, and we may be sure the privilege will be fr

6. We cannot have two tribunals,—the Coll and of the two I infinitely prefer the Court to the (the principle adopted in this Presidency since) as much as possible to the Civil Courts, to be the not only of very careful deliberation, but th showed that the appellate jurisdiction of the (generally a useless and often a machievous form in 1864, and Revenue officers were left to take th time being secured to the defaulter. I believe powers to Collectors after sale will be decidedly in

8th September 1874.

MINUTE BY THE HON. W

There are, as Mr. Sim observes, two points at
of a revenue sale in passing immediate possession
can lie to the Collector in respect to such a revenue
of his subordinates and confirm or otherwise the s

body and effective transfer of land
ough now when a sale may be set
the sale; if the purchaser is to be
mediate appeal to the Collector, few
suffer by the consequent depreci-
soon be very numerous; for an
no harm, and does not void his
ters have all to gain and nothing

Court,—to try the same matter ;
 cases of this nature, believing that
 the administration of justice
 a. The present law was the result
 of lengthened experience, which
 Board in cases of this nature was
 is, therefore, designedly abandoned
 as, of their own acts ; due notice and
 consequence of restoring appellate
 before appreciate the measure.

Collector of Chingleput as arguments
frame a law as to render mistakes
otor sees that the Land Register is
is proscribed by the law are observed
disregard or disobey its clear injunc-
he still rarer when, as I trust will soon
ot in an efficient condition, and entrust
dars as is the case now. The know-
illage is so intimate that the sale of
an absentee will be impossible save by

NSON, C.S.I.

the matter before us, viz., (1) the effect
prohaser; and (2) whether an appeal
the has any power to review the action

Proceedings

On the second point the change would be prejudicial to the Government are not permitted the last paragraph of

As to the first point the Board of Revenue and my by "conditions of sale," and down; for I fail to see in what ment in full, if not equitable by the law. It has passed for owner, and the thing sold

However, this is a pur Général. I would do so with in the draft.

10th September 1874.

No. 119.

ORDERS

Land Revenue. No.

sold for arrears of revenue payment by him of the prescribed be deferred until the full amount this a "condition of sale" under

(2.) Whether an appeal to

2. His Excellency the Advocate-General on both the

ernment, Revenue Department,
er 1874.

policy-sound; and I agree with Mr. Sim that any would, therefore, inform the Board finally that a question under any circumstances, and I would

so explicit. I do not take the same view as the, viz., that the effect of the sale can be suspended is incomplete until the full purchase-money is paid in the land is in the interval between sale and purchase who has fulfilled all conditions stipulated and the Government has not become the occupant risk of the purchaser.

and should be referred at once to the Advocate-General as to the merits of the questions as appears

(Signed) W. ROBINSON.

10th October 1874, No. 1,303.

THERE are two questions involved in this correspondence, viz:—

(1.) Whether in the case of lands to be given to the purchaser immediately on of 15 per cent. of the purchase-money, or can purchase-money shall have been paid, by making 36 of the Act (II. of 1864, Madras).
Director against such sales shall be allowed.
Council resolves to request the opinion of

extract.

(Signed) C. G. MASTER
Acting Secretary to Government.

Members of Government.

To the Government Solicitor, with

C. No 4050 of 1874

6/10/83

G. O. 10th October 1874 No. 1398.

Dated October 10th

Encl.

To
THE GOVERNMENT SOLICITOR.

Govt. of 1874
REVENUE.

At II. of 1864 (Madras) - Regarding the
Advocate-Generals opinion as to whether in the
case of lands sold for arrears of revenue under -
possession must be given to the purchaser im-
mediately on payment of the deposit, or after the
payment of the full amount of the purchase-money,
and whether an appeal to the Collector against
such sales shall be allowed.



No. 1,347.

From J. GROSE, Esq., Secretary to the Board of Revenue,
To C. G. MASTER, Esq., Acting Secretary to Government, R. D.

SIR,

I AM directed to call the attention of Government to certain points connected with the Procedure under Act II. of 1864 (Madras) in selling land for arrears, and more especially with regard to Form No. 7 (Sale Notice of Lands) as given in Board's Standing Order No. 275, and modified in Standing Order No. 17 of 1871.

2. In G. O. 13th September 1871. Petition Department. Government. in connection with a certain petition case, stated that there is nothing in Sections 36 *et seq.* of Madras Act II. of 1864 which warrants the withholding possession from a purchaser at a sale of land for arrears of revenue after he has paid the deposit of 15 per cent. on the amount of his bid; that in certain circumstances the delay in giving possession might cause serious damage to a *bona fide* purchaser; that Clause 2, Section 36, provides for insertions of conditions of sale in the sale notice, but that these must be in conformity with the Act; that the delay is not intended to provide for appeal against irregularity, because a purchaser might bar appeal by completing the payment of the purchase-money, which cannot have been intended. They, in conclusion, suggested the amendment of the Sale Notice.

3. The Board thereupon issued Standing Order No. 17 of 1871, in which provision was made for delivery of possession immediately on payment of the 15 per cent. deposit, *i.e.*, immediately on the sale taking place. The condition as to the sale requiring the confirmation of the Collector was abrogated; but apparently by oversight Clause 9 of the old form, which provided for an appeal to the Collector in cases of irregularity, and for the sale being conditional on the order on such appeal, was allowed to remain in the form.

4. In G. O., 29th February 1872, No. 359, Government suggest that this clause should be cancelled. The Board, in reply, observed that the requisite alterations had been made in the Sale Notice. They referred to Standing Order No. 17 of 1871, but again failed to observe the force of Clause 9 which had been allowed to remain.

5. It follows that, if the instructions of Government are to be carried into effect, Clause 9 must now be rescinded; but before doing so the Board direct me to submit the following observations:—First, as to delivery of possession, it is not mentioned in Act II. of 1864 till Section 40; and from the terms of that Section it is clear that the grant of a certificate is a condition precedent, and the old as well as the new forms of Sale Notice provide that a certificate shall not be granted nor the registry changed until the payment of purchase-money is completed. It does not appear how the Collector is to put a purchaser in possession otherwise than as provided in Section 40; and if he is to be put in possession when he pays the 15 per cent., it follows that he must then get the sale certificate, and the registry must be changed.

6. It is evident that it cannot be intended by the Act that the certificate of sale and change of registry should follow immediately on the payment of the 15 per cent. deposit. Suppose this done, and the balance not paid up, the land might be re-sold, but the defaulting purchaser, armed with his certificate, could procure possession from any competent Court merely by producing his certificate (Section 40). No damage is done to the purchaser by refusing to give the certificate till he completes his payments, if he knows that this will be done before he makes his bid.

7. Next as to the legality of allowing an appeal to the Collector. The Board are of opinion that Government are competent to prescribe as conditions of sale not merely such conditions as are "in conformity with the Act" as stated by Government, *i.e.*, as laid down therein, but such as are not opposed to it.

8. Now that sales have increased to such an extent that it is impossible for Tahsildars to supervise them closely; irregularities often occur; and the Board are satisfied, from papers which have come before them, that the appeal to the Collector, provided inadvertently by allowing Clause 9 to remain in Form 7, is often used, and has prevented much hardship and injustice. The Board

1303
5

5/1

5/2

5/3

PROCEEDINGS OF THE BOARD OF REVENUE, dated 6th July 1874.

Read the following letter from R. W. BARLOW, Esq., Collector of the Chingleput District, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Sydapet, 25th June 1874, No. 290:—

REFERRING to my letter, dated 17th August last, No. 347, and the Board's Miscellaneous Proceedings thereon, dated 2nd instant, No. 3,639, I have the honor to request a reply to my paragraph 5; in which I have asked for an authoritative opinion, as to whether revenue sales involving patent irregularities, such as selling more lands than necessary, or those not entered in the defaulter's putta, etc., can be cancelled when no appeal has been preferred. There are several arzees pending disposal, in which irregularities of the kind referred to have been brought to my notice by Tahsildars, and I am unable to dispose of them, pending the receipt of Board's orders.

THE Board resolve to submit this letter to Government with the request that Government will take it into consideration at the same time as the Board's letter to Government, dated the 4th June 1874, No. 1,347.

2. In that letter, the Board have expressed a strong opinion in favor of allowing an appeal to the Collector when land is sold for arrears of revenue. The fact stated by the Collector of Chingleput, that he has several reports before him, requesting that sales may be cancelled in cases where no appeal has been preferred, because of patent irregularities, such as the sale of more land than was necessary (which is, or rather may be, illegal,) and the sale of land not in the defaulter's putta (a mistake which drives the injured man to seek a remedy in harassing legal proceedings), convince the Board that the Collector should be allowed to interfere even when there is no appeal, as was provided in the Board's Original Circular Order on the subject.

3. It may be doubted whether in the second case above mentioned, the injured man would not be certain to appeal, but many instances have come to the notice of the Board in which the injured man was absent at the time, and did not know of the injury until after the period allowed for appealing had expired.

4. The arguments for giving the Collector the power to remedy hardship and injustice in sales of this kind, within a month from the date of sale, are as applicable when no appeal is made, as when an appeal is made.

(A true Copy and Extract.)

(Signed) J. GROSE,
Secretary.

To the Acting Secretary to Government, Revenue Department.

Copy to Collector of the Chingleput.

Exd. A. Grubert.

think that the clause may remain, but if Government consider this impossible under the existing law, the Board think the law should be altered. If the clause is abrogated, the sole remedy left to the injured man will be costly litigation, and the harm thus done will be far greater than any which can arise from the purchaser's knowing that his purchase may possibly be cancelled. If the law is altered at all, the Board think an appeal within thirty days should be allowed to the Collector in every case, including that in which the purchaser pays down the purchase-money in full directly the sale has taken place.

I have the honour to be,

Sir,

Your most obedient servant.

J. Grose

Secretary.

REVENUE BOARD OFFICE,
Madras,
4th June 1874.

To the Acting Secretary to Government, Revenue Department.

Exd. F. R. Bantleman.

FROM THE SECRETARY TO THE BOARD OF REVENUE,
TO THE ACTG. SECRETARY TO GOVERNMENT, R.D.
Dated 4th June 1874.
Received 11 June 1874.
JUNE.
No. 1,347.
Arraers of Revenue Recovery Act II. of 1864 (Madras).—Attention of Government called to certain points connected with procedure under — in selling land for arrears of revenue, and more especially with form of Sale Notice of lands as given in Board's Standing Order No. 275, and modified in Standing Order No. 17 of 1871.

Revenue 1874. Sept 1874.
Board of Revenue,
MADRAS.

Proof corrected p 7

No. 114.

MINUTE BY HIS EXCELLENCY THE GOVERNOR.

It would seem clear that we are bound to bring our Orders and Notices issued under the Act of 1864 into conformity with its provisions; that is to say, that the Board of Revenue ought to issue no Orders or Notices which can be said to be inconsistent with the provisions of the Act.

2. Whether the Regulation or Notice which I understand now to be in force, and under which there is an appeal to the Collector "provided inadvertently," is or is not inconsistent with the Act, I cannot say. If it is not, I would most certainly retain it. If it is, I would alter the law. I was myself under the impression that there was a legal, i.e., statutory appeal to the Collector, but it would appear that the appeal is obtained only under an "inadvertent" order of the Board of Revenue. I agree with the Board that there "ought to be" such an appeal. Why should our ryots, whose property is sold up to an extent unknown in the rest of India, be exceptionally excluded from such an appeal? Practically, I presume that no difficulty will arise from leaving "Clause 9" where it is. If so, I would certainly acquiesce in the view of the Board and leave matters as they are.

27th June 1874.

(Signed) HOBART.

Not a
Table

198

1874.

Board of Revenue
MADRAS.

PROCEEDINGS, 6TH JULY 1874, No. 1,704.

Encl.

Received

JULY.

No. 1,704.

Sales of land for arrears of revenue.—
Letter from Collector of Chingleput requesting an authoritative opinion as to whether sales involving patent irregularities, such as selling more lands than necessary, or those not entered in defaulter's putta, etc., can be cancelled when no appeal has been preferred, submitted to Government for consideration with Board's letter, dated 4th June 1874, No. 1,347.

Proof

No. 115.

MINUTE BY THE HON. J. D. SIM, C.S.I.

On further consideration I think possession should not be given until the full purchase-money has been paid. The deposit of 15 per cent. is merely to prove the *bona fides* of the purchaser. The Collector cannot give the purchaser a title till ~~then~~ *he has paid the*

2. As to whether possession shall be given when the purchase-money has been fully paid or whether time shall be allowed for appeal to the Collector, I prefer the former course. No sale can take place without *at least* a clear month's notice; this is quite enough to enable a defaulter to challenge the arrear or object to the sale. As to irregularities in the sale they ought never to occur. I fear the appeals to the Collector, if his confirmation be essential, will be so numerous that delivery will be delayed indefinitely. The Act provides no appeal to the Collector.

24th June 1874.

(Signed) J. D. SIM.

the full purchase money.

W.S. / 27.10

G. Co. 89-1303 8/10 Oct. 74

No. 116.

MINUTE BY THE HON. W. ROBINSON, C.S.I.

I HAVE no objection to a reference to the law-officers, though I entertain no doubt as to the letter and spirit of the law in the matter. There is no provision in the Act enabling the Board of Revenue or Government to make any bye-laws, forms of notice, or conditions of purchase, which shall have the force of law either by way of enlarging or restraining its provisions. These last are quite clear. *I think,*

2. The sale of land at public auction, under the provisions of Act II. of 1864, is outright and without reserve of any kind so far as the Collector or the auctioneer authorised in that behalf is concerned; and this condition was, I believe, deliberately introduced to remove the grave evils which prevailed under the old practice (lawful or otherwise) of awaiting the Collector's tardy ratification of each sale. The provision cannot be too firmly insisted on.

3. The 15 per cent. is the earnest money of the contract of sale and purchase. Clause 5 of Section 36 protects the auctioneer as respects the *bond fides* of the bidder, and enables him to reject bids at discretion *and* the penalty security against subsequent breach on the part of the purchaser. *while*

4. The only remedy provided by law in event of nonpayment of the balance of the purchase-money after a lapse of thirty days is resale under Clause 4 of Section 36. *1*

5. The registration and certificate under Section 38 are not contingent on the payment of the balance. Nor can the fulfilment of this provision of the law be delayed without incurring actionable tort, because these steps—not the receipt of the balance—are indispensable to the completion of the contract by the Government. I think that it would be a good plea by an auction-purchaser seeking to set aside a resale to show that the provisions of Section 38 had not been fulfilled. A resale before the expiry of thirty days would be illegal I conceive.

6. I have no doubt, therefore, that Clause 9 of Form 7 must be expunged; *for they are*

7. *I think,* It is at variance with the provisions of the law and rights of the purchaser. The Board's reasoning in paragraph 7 is not in accordance with the rules of interpretation of Statute Law, and the clause which they defend is not only not in conformity with but in opposition to the law.

8. As to the alteration of the law so as to allow an appeal to the Collector in every case of sale, this should be brought forward by itself with the argument *pro* and *con* and instances of the hardship, etc. We cannot deal with this great subject on an incidental opinion in the last paragraph of the Proceedings which are directed to other considerations. *I am opposed to any*

26th June 1874.

(Signed) W. ROBINSON.

agitation of the subject

Proof Vol 27/10 109

MINUTE BY THE HON. J. D. SIM, C.S.I.

THERE are two questions involved in this correspondence, *viz.*, first, whether in the case of lands sold for arrears of revenue possession must be given to the purchaser immediately on payment by him of the prescribed deposit of 15 per cent. of the purchase-money, or may and should be deferred until the full amount of purchase-money shall have been paid; second, whether an appeal to the Collector against such sales ~~shall~~ be allowed. shn

2. On the first question I entirely agree with the Board of Revenue. There is nothing in the law (Act II. of 1864, Madras) requiring possession to be given on payment of the deposit alone, nor prior to the passing of that Act was it customary to do so. Section 36 prescribes the rules under which sales of immovable property shall be conducted. Its second clause requires the Collector to issue a notice specifying, *inter alia*, "the time, place, and conditions of sale;" its third clause requires the purchaser to deposit 15 per cent. of the purchase-money, which payment is liable to forfeiture if the remainder of the purchase-money be not paid within thirty days; its fourth clause prescribes that the land shall be resold at the expense and risk of the purchaser if he does not make the deposit, or if, having made it, he does not pay the balance of the purchase-money within thirty days. Nothing is said here of possession being given before full completion of the purchase, and, considering how minutely the Act details everything connected with these sales, it is unlikely, in the extreme, that such an important matter would have been omitted, had it been intended that immediate possession should be given. Section 38 is general in its terms and merely prescribes that "lands purchased at a public sale shall be registered in the name of the actual purchaser, who shall receive a certificate of sale signed and sealed by the Collector, which shall be conclusive evidence of the fact of the purchase in all Courts." Now how can it be said that a property is purchased before it is paid for, and how can a Collector certify that the lands sold belong to a person before that person has done all that is requisite to make it his own. I can see no hardship in withholding possession until the purchase-money has been paid in full, because the purchaser can pay the full amount whenever he pleases and so obtain possession; while, in the interest of the defaulter, I think it desirable that possession should not be given until the whole of the purchase-money has been paid, because the purchaser in the interval may injure the land or make away with standing crops, *etc.* The principals in these transactions are Government on the one side and the defaulting ryot on the other; the purchaser can only buy what the law, in the mutual interests of the principals, permits the creditor to sell, and he must make his purchase on the terms and conditions of the principals, provided, of course, these are not opposed to law. I cannot conceive what possible cause of complaint a purchaser can have if, being informed before a sale that possession will only be given on completion of the purchase, he bids for and buys the land. This seems to me a perfectly proper and reasonable arrangement and in no way repugnant to anything expressed or implied in the Act; and I would, therefore, instruct the Board to have it inserted in the Sale Notice as one of the "conditions of sale" permissible under Clause 2, Section 36 of Act II. of 1864. ital 25

3. On the second question I differ from the Board. The law (Section 59) provides a distinct tribunal for the decision of appeals against illegal sales, and the Government cannot create another tribunal for the same purpose as a condition of the sale. Such a course would be repugnant to the manifest intent of the law that grievances should be redressed by the ordinary civil tribunals of the country, and any decision or order passed by a Collector could be challenged in the Courts by either defaulter or disappointed purchaser.

4. But even if the law were otherwise, I should strongly deprecate the measure as unnecessary for the protection of the defaulter and inexpedient on general grounds. The Collector is bound by law (Section 25), before attaching a landed estate, to serve a written demand on the defaulter, "specifying the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear * * * and the time allowed for payment." If the amount due be not paid accordingly or satisfactorily assured, the Collector then proceeds to attach or to manage the property, of both of which measures (Sections 27 and 29) notice must be given to the defaulter; and, finally, before the lands can be sold, notice of the intended sale

has to be given (Section 36, Clause 2) for "one month at least". The defaulter has thus ample notice of the demand against him and ample time to dispute it if it is erroneous, and even to postpone the sale by giving security under Section 26. I do not see what more is needful for his protection, or what is to prevent a Collector in the interval between demand and sale disposing of appeals or staying the sale until they are disposed of. It seems to me unreasonable in the extreme to allow a defaulter to remain quiescent for some six weeks while his property is being attached and put up to sale, and then when it actually has been sold to come forward with an appeal.

5. Independent of this, everything that hampers the speedy and effective transfer of land reduces its value and so injures the defaulter. It is bad enough now when a sale may be set aside by the Courts on application made within six months of the sale; if the purchaser is to be further subjected to the delays and uncertainties of an appeal to the Collector, few will buy land, and the Government and the defaulter will both suffer by the depreciation of its value. I need hardly say that such appeals will soon be very numerous; for an appeal to the Collector is inexpensive, can do the appellants no harm, and does not void his right of appeal to the Courts. In appealing to Collectors defaulters have all to gain and nothing to lose, and we may be sure the privilege will be freely exercised.

6. We cannot have two tribunals,—the Collector and the Court,—to try the same matter; and of the two I infinitely prefer the Court to the Collector in cases of this nature, believing that the principle adopted in this Presidency since 1802, of confining the administration of justice as much as possible to the Civil Courts, to be the only sound one. The present law was the result not only of very careful deliberation, but the fruit of past lengthened experience, which showed that the appellate jurisdiction of the Collector and Board in cases of this nature was generally a useless and often a mischievous formality. It was, therefore, designedly abandoned in 1864, and Revenue officers were left to take the consequences of their own acts; due notice and time being secured to the defaulter. I believe the general consequences of restoring appellate powers to Collectors after sale will be decidedly injurious, and therefore deprecate the measure.

7. I attach very little weight to the cases cited by the Collector of Chingleput as arguments in favor of the Board's proposal. It is impossible so to frame a law as to render mistakes and even abuses absolutely impossible. But if the Collector sees that the Land Register is properly kept up, and that the plain and simple formalities prescribed by the law are observed by his subordinates, and makes an example of those who disregard or disobey its clear injunctions, such cases will be of very rare occurrence. They will be still rarer when, as I trust will soon be the case, we place the village establishment of the district in an efficient condition, and entrust the collection of the revenue to them instead of to Zillalars as is the case now. The knowledge of the village-officials of all connected with their village is so intimate that the sale of lands which do not belong to the defaulter or even those of an absentee will be impossible save by design.

8th September 1874.

(Signed) J. D. SIM.

a inter-
mediate

Con
seq

Proof

12

No. 118.

MINUTE BY THE HON. W. ROBINSON, C.S.I.

THERE are, as Mr. Sim observes, two points at issue in the matter before us, *viz.*, (1) the effect of a revenue sale in passing immediate possession to the purchaser; and (2) whether an appeal can lie to the Collector in respect to such a revenue sale, ~~or~~ ^{and} he has any power to review the action of his subordinates and confirm or otherwise the sale.

On the second point the law is clear, and its policy sound; and I agree with Mr. Sim that any change would be prejudicial to every interest. I would, therefore, ~~on further consideration~~, inform the Board finally that the Government are not prepared to reopen this question under any circumstances, and I would omit the last paragraph of the draft.

perhaps,

As to the first point the law is not so explicit. I do not take the same view as the Board of Revenue and my Honorable Colleague, *viz.*, that the effect of the sale can be suspended by "conditions of sale," and that the contract is incomplete until the full purchase-money is paid down; for I fail to see in whose legal possession the land is in the interval between sale and payment in full, if not equitably in that of the purchaser who has fulfilled all conditions stipulated by the law. It has passed from the defaulter, and the Government has not become the occupant or owner, and the thing sold is standing at the risk of the purchaser.

However, this is a purely legal question, and should be referred at once to the Advocate-General. I would do so without any such reasoning as to the merits of the questions as appears in the draft.

10th September 1874.

(Signed) W. ROBINSON.

G. G. No 1303 & 10 Oct 74

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 6th July 1874.

Read the following:-

N^o 290.

From R. W. Barlow Esq^r
Collector of the
Chingleput District.

To J. Grose Esq^r
Secretary to the Board of Revenue
Madras.

Sir,
Referring to my letter dated 17th #
August last N^o 347, and the Board's
Miscellaneous Proceedings thereon dated
2nd Instant N^o 3639, I have the honor to
request a reply to my para 5 in which
I have asked for an authoritative
opinion as to whether revenue sales in-
volving patent irregularities, such as
selling more lands than necessary, or
those not entered in the defaulter's
puttah

puttah ^{1/2} can be cancelled when no
appeal has been preferred. There are
several argees pending disposal, in
which irregularities of the kind referred to,
have been brought to my notice by

Tahsildars, and I am unable to dispose
of them pending the receipt of Board's
orders.

Chingleput District } I have ^{1/2}
Collectors' Office. } Signed, R. W. Barlow
Saidapt. 25th June 1874. } Collector.

The Board resolve to submit
this letter to Government with the request
that Government will take it into con-
sideration at the same time as the Board's
letter to Government dated the 4th June 1874,
No 1347.

In that letter the Board have
expressed a strong opinion in favour
of allowing an appeal to the Collector
when land is sold for arrears of Revenue.
The

18
The facts stated by the Collector of Chingle-
put that he has several reports before
him requesting that sales may be cancelled
in cases where no appeal has been pre-
ferred because of patent irregularities
such as the sale of more land than was
necessary (which is or rather may be illegal)
and the sale of land not in the Default-
er's puttah (a mistake which drives the
injured man to seek a remedy in
harassing legal proceedings) convince
the Board that the Collector should be
allowed to interfere even when there is
no appeal as was provided in the
Board's original Circular Order
on the subject.

It may be doubted whether in the
second case above mentioned, the injured
man would not be certain to appeal,
but many instances have come to the notice
of

15
of the Board in which the injured man
was present at the time and did not know
of the injury until after the period allowed
for appealing had expired.

The arguments for giving the Collector
the power to remedy hardship and injustice
in sales of this kind within a month from
the date of Sale are, as applicable when
no appeal is made, as when an appeal
is made.

(True copy & Extract)

J. Grose
Secretary

To The Secy. Secretary to Government
Revenue Department.

E. M. Hughes
C. of S. D. D. D.

It would seem clear
that we are bound to
bring our orders and
Notices issued under the
Act of 1864 into conformity
with its provisions, that
is to say that the Board
of Revenue ought to issue
no orders or notices which
can be said to be incon-
sistent with the provisions
of the Act.

Whether the Regulation
or Notice which I under-
stand now to be in
force and under which
there is an appeal to
the



No. 2274.
Revenue 1874. Department
Secretaries of the
Board of Revenue

Dated 6th
August 1874.
Recd 17th July 1874.

Del. 1903 - 10 Del. 1874

Letter of Secy for Revenue
of Revenue - Letter from
Collector of District regarding
cancellation of - on appeal
— submitted to Government
with request that it may be
taken into consideration
along with Board's letter
of 13th July 1874.

113.

13th July 1874. 13th July 1874.
C 13th July 1874. 13th July 1874.

The Collecta "provided
inadvertently," is or is
not inconsistent with
the Act I cannot say.
If it is not, I would
most certainly retain
it. If it is, I would
alter the law. I was
myself under the im-
pression that there
was a legal i.e. Statutory
appeal to the Collecta,
but it would appear
that the appeal is
obtained only under
an "inadvertent" order
of the Board of Revenue.
I agree with the Board
that there "ought to be"
such an appeal. Why
should

17
should our Ryots, whose
property is sold up to an
extent unknown in the
rest of India, be excep-
tionally excluded from
such an appeal? Practically
I presume there is no difficulty
will arise from leaving
"Clause of" where it is.

If so, I would certainly
acquiesce in the view of
the Board, and leave
matters as they are.

S^d/H^c
27 June 1874.

No 3567
Revenue 1874 Depo

Minute by
H. E. the Governor.

Dated 27 June 1874

QO 10th October 74 No 1303

Sale of land for arrears
of revenue

114

G.O., 10th October 1874, No 1303

On further consideration
I think possession should
not be given until the
full purchase money
has been paid. The deposit
of 15 per cent is merely
to prove the bona fides
of the purchaser. The
Collector cannot give the
purchaser a title till
then.

As to whether possession
shall be given when the
purchase money has
been fully paid or whether
time shall be allowed
for appeal to the Collector.

I prefer the former course.

No sale can take place,
without at least, a clear
month's notice, this is

quite enough to enable a
defaulter to challenge the
arrear or object to the sale.

As to irregularities in the
sale they ought never to
occur. I fear the appeals

to the Collector, if his con-
firmation be essential,

will be so numerous that
delivery will be delayed
indefinitely. The Act
provides no appeal to the
Collector.

Sd / J. D. S.

24 June 1874

No 3565
Revenue 1874 Sept
Minute by the
Hon. J. D. Sullivan C.S.I.

Dated 24 Jan 1874

G.O. 10th October 1874 No 1303.

Sale of land for
purposes of revenue

115

G.O. 10th October 1874, No 1303



No 116

20
I have no objection
to a reference to the Land
Officers, though I understand
no doubt as to the letter
and spirit of Law
in the matter. There is
no provision in the Act
enabling the Board of
Revenue or Government
to make any bylaws,
forms of notice or conditions
of purchase, which
shall have the force
of Law either by way of
enlarging or restraining
its provisions. These
last are quite clear.

The sale of land
at public auction under
the

The provisions of Act II of 1864 is outright - and without reserve of any kind so far as the Auctioneer is authorized in that behalf is concerned. And this condition was, I believe, deliberately introduced to remove the grave evils which prevailed under the old practice (lawful or otherwise) of awaiting the Auctioneer's tardy ratification of each sale. The provision cannot be too firmly insisted on.

The 15 per cent is the Earnest money of the Contract of sale and purchase - Clause 57 Section 36 protects the Auctioneer in respect to the bona fides of the bidder & enables him to

to reject bids at discretion - the penalty - security against subsequent breach on the part of the purchaser.

The only remedy provided by Law in event of non-payment of the balance of the purchase money after a lapse of 30 days is rescission under clause 45 of the Act.

The registration and Certificate under Sect 38 are not contingent on the payment of the balance. Nor can the fulfilment of this provision of the Law be delayed - without incurring action at law - because these - not the receipt - of the balance steps are indispensable to the completion of the Contract by the Government. I think that it would be

be a good plea by
injunction purchase
looking to set aside
a resale, to show that
the provisions of section 30
had not been fulfilled
2 resales before the
supervision of today would
be illegal. ~~Now~~

I have no doubt
therefore that Clause 9
of Form must be impugned.
It is at variance with
the provisions of the Law
and rights of the purchaser.
The Board's reasoning
in Para 7 is not in
accordance with the
rules of interpretation
of Statute Law and the
clause which they defend
is not only not in conformity
with but in opposition
to the Law.

As the alteration
of the Law is so distant
an

an appeal to the Collector
in every case of sale,
this should be brought
forward by itself
with the argument pro
con & instances of the
hardship &c. we cannot
deal with this great
~~subject~~ in an incidental
opinion in the last
para of the Proceedings
which are directed
to other considerations.

26/6. M. Robinson
74

N^o 3566

Revenue 1874 Sept

Minute by the
Hon. W. Robinson. C.S.I.

Dated 26 June 1874

G.O. 10th October 74 No 1303

Sale of land for arrears
of revenue -

116

G.O. 10th October 1874, No 1303

There are 2 questions involved
in this correspondence - viz
1. Whether in the case of lands
held for arrears of revenue, the
Tesser must be given to the
purchaser immediately on pay-
ment by him of the prescribed
deposit of 15% of the purchase
money - or whether it should be
deferred until the full amount of

Subordinates and
Confirms or otherwise
to Sale. On

If purchase money shall have
been paid - 1st whether an ap-
peal to the Court against such sales
shall be allowed.

On the first question I am
truly agree with the U.S. of V.S.
There is nothing in the Law (Act
II of 1864. Madras) requiring first
session to be given on payment
of the deposit alone. nor prior to
the passing of the Act was it
customary to do so. Sect XXXVI
prescribes the rules under which sales

under of immovable property shall
be conducted. Its second clause
requires the Court to issue a notice
specifying the *inter alia* "the time
place & conditions of sale". its
third clause requires the purchaser
to deposit 15% of the purchase
money - which may want is liable
to forfeiture if the remainder of
the purchase money be not paid
within 30 days. its fourth clause
prescribes that the land shall
be sold at the highest bid & 25%
of the first purchaser if he does not
make

Subordinates and
Confirms or otherwise
to Sale. on

116

the debt or if having made
it, he does not pay the balance
of the purchase money within 30 days.

Nothing is said here of possession
being given. He for the time being
of the ^{purchase} land - and considering how
minutely the Act details every
thing connected with these sales
it is unlikely in the extreme
that such an important matter
would have been omitted - and
it being intended that immediate
possession should be given. Sect 38

2/ is found in its terms
and merely prescribes
that "Land purchased at a
^{public} Sale" shall be registered in the
name of the purchaser in his title
receive a certificate of Sale signed
& sealed by the Clerk, which shall
be conclusive evidence of the fact
of the purchase in all Courts. Now
how can it be said that a
property is purchased & for it
is paid for - and has a
Certificate that the land sold
belong to a person before that person

Subordinates and
Confirms or otherwise
to Sale. on

the same all that is separate &
it make it his own. I can see
of his hands in with-holding for.
his session until the ^{purchase} money has been
paid in full. - because the
of a purchaser can pay the full
money - when ever he pleases &
it is his possession - while in
the interest of the defaulter!
think it desirable that possession
it shall not be given until the whole
of the purchase money has been
paid - because the purchaser in

the interest of the defaulter in the
land or money or any in the standing
crop &c. The principals in these
transactions are put on the one
side - and the defaulter on the
other - the purchaser can
only buy what the law, in the
interest of the principals
permits the defaulter to
sell - and he must sell in
pursuance of the terms & conditions
of the law principals in the sale
of goods that are not subject to

Subordinates and
Confirms or otherwise
the sale. On

and the pot. cannot
create another tribunal
for the same purpose. as
a condition of the sale. Such
a course would be taken pursuant
to the manifest intent of
the Law that persons and should
be addressed by the ordinary
Civil tribunals of the Country
and any decision or order
passed by a Cdr. could be
challenged in the Courts by either

the parties or in a printed
chapter.

But even if the Law were
other wise, I should strongly de-
precate the measure, as unnecessary
for the protection of the defaulter
and in the event of general
proceeds. The Cdr. is bound by
(§25) before attaching a landed
estate - to serve a written de-
mand on the defaulter "Speci-
fying the amount due, the estate
or land in respect of which it

Subordinates and
Confirms or otherwise
to Sale.

is claimed, the name of the
party in arrears ... and the time
allowed for payment, "which
~~shall be paid in the reference~~
^{amount due}
~~to the~~ If the money be not paid
accordingly
or satisfaction is made, the
Ct. then proceeds to attach
the property - of both
of which measures (Sect 27 & 29)
notice must be given to the de-
btor - and finally, before
the lands can be sold - notice
~~is given to the debtor~~ of
the intended sale has to be given

4/

29
(Sect 36. cl 2 & 3 for "one month
at least". I know from the law
that notice is a condition of the
demand against him - &
ample time to direct it -
if it is wrong - and then to
proceed to sell by giving security
under Sect 26 - I do not see what
more is needed but for his ^{protection} security.
or what is to prevent a sale
in this interval between demand and

116

Subordinates and
Confirms or otherwise
to Sale. on

of sale depending of a ³⁰ ~~few~~ or
staying the sale until they are
disposed of. It seems to me
reasonable in the extreme to allow
a defendant to ~~stand by~~ ^{remain in possession} for some
time after he has his ~~own~~ party is
being attached & put up to
sale - and then when it actually
has been sold to come forward
with an appeal.

In the absence of this, every
thing that has been the ^{subject} of a
perfect transfer of land reduces its
value

value and to injure the defendant.
It is not enough now when a sale
may be set aside by the Court
on a ³⁰ ~~few~~ application made within 6
months of the sale - if the purchaser
is ~~not~~ ^{not} for the defendant to the
delay & uncertainty of an
appeal. ^{few} Other cases ^{under} will
buy land - and the ^{part} of the
defendant will be ^{lost} by
the depreciation of its value -
I need hardly say that these
appeals will ^{be} ~~be~~ ^{very} numerous for

Subordinates and
Confirms or otherwise
to Sale.

116

ality. It was then for despatch
a hand-drawn in 1864. and that
of officers have left to take the
consequences of their own acts.
The notice & time being so
conducive to the do further. I believe
the general consequences of re-
storing a better state of affairs
to the sale will be decidedly
in favour of the cause.
it - cate the measure.

I attach very little

12
weight to the cases cited by the
Colo. of ~~Hand~~ Ching Leant. as
arguments in favor of the 1864
proposal. It is impossible to
to frame a law as to render
mistaken. and even when
absolutely impossible. But
if the Colo. sees that the Land
Register is for by the act and
that the plan & the plan
formalities prescribed by the
law are observed by him in practice
and the law is as an example of
the who his report or his report is clear

Subordinates and
Confirms or otherwise
to Sale. in

116

in pin-stems in the color circle of
 very rare occurrence. They will
 be still rarer when, as I think
 will soon be the case - no place
 be the village establishment of the
 of District in an efficient condition
 and as to the collection of the
 that to them - instead of to follow
 as in the case now. The knowledge
 of the village officials of all
 connected in the train village is so
 in minute ~~particulars~~ that the sale
 of lands which do not belong to
 the defunct or ^{these} being of an absolute
 will be impossible to save by doing. 10.5.1874

116

4. 10. 10 October 1874, 50.1303

Subordinates and
 confirm or otherwise
 to sale. on

no 3568.

Revenue 1874 Sept

Minute by the
Hon: J. D. Sim. C.S.I.

Dated 8 Sept 1874.

G.O. 10th October 1874
No 1303

Sale of land for
areas of revenue

117.

G.O., 10th October 1874, No 1303

116

G.O., 10th October 1874, No 1303

There are a
Mr Sim observes two
points at issue in
the matter before us,
viz (1) the effect of a
Revenue Sale in passing
immediate possession
to the purchaser, and
(2) whether an appeal
can lie to the Collector
in respect to such a
Revenue Sale or he
has any power to review
the action of his
Subordinates and
confirm or otherwise
the Sale.

On the 2^d point - the
Law is clear and
its policy sound and
I agree with Mr. Linn
that any change would
be prejudicial to every
interest. I would
therefore on further
consideration inform
the Board finally
that the Government
are not prepared
to reopen this question
under any circumstances
and I would omit
the last para of the
Draft.

As to the 1st point.
The Law is not so explicit.
I do not take the
same view as the
Board of Revenue

and my Honorable
Maugue viz. that the
Effect of the Sale can
be suspended by
"Conditions of sale" and
that the Contract is
incomplete until the
full purchase money
is paid down, for I fail
to see in whose legal
possession
the land is in the
interval between sale
and payment in full,
if not Equitably in that
of the purchaser, who
has fulfilled all conditions
stipulated by the Law.
It has passed from
the defaulter and the
Government has not
become the occupant
or owner and the
thing

thing sold is standing
at the risk of the purchaser.

However this is a
purely legal question
and should be
referred at once
to the Advocate General.
I would do so without
any such reasoning
as to the merits of the
questions as appears
in the Draft.

10/9 W. Robinson

10356
Revenue 18/4 1874

Minute by the
Hon. W. Robinson, C.S.I.

Dated 10 Sept. 1874

GO 10 October 74 N 1303

Sale of land for arrears
of revenue

118

GO 10 October 1874 N 1303

Revenue 18/4 1874
Memo for Orders

Letter from Secy. B. of Revenue

Calling attention of Govt. to certain
points connected with procedure, under Arrears of
Revenue Recovery Act II of 1864 (Madras), in selling
land for arrears of revenue, and more especially with
form of Sale Notice of land, as given in B.S. Standing
Order N. 275, and modified in Standing Order N. 17 of 1871

H. E. 4 June 1874 N 1347

On for then Govt.
- to do as I think
provision should
not be given until
the full purchase
money has been
paid - The de-
bit of 15% is
merely to prove

138 B.S. N 4209 dated 22 Dec. 1871

the bona fides of
the purchaser - The

In circulating the
accompanying Proceedings of the
Board, attention is invited to the
following points:-

1. The Board themselves
concurred in the Government view
in 1871, and stated that immediate
possession by the purchaser
"appears to be contemplated by the
Act"

2. If the contrary was
intended, it would have been
distinctly stated, as in the case
moveable property.

3. The whole of

The said letter is, so to speak, a piece of special pleading intended to effect the retention of an appeal to the Collector, and yet that such right of appeal cannot be really secured, unless based on a special provision of the law, seems clear from the following -

The corresponding Bengal Act makes such provision in the sections given in the margin, and the Civil Procedure Code provides, in Section 256, that, within 30 days of a sale under a decree, application may be made "to set aside the sale on the ground of any material irregularity in publishing or conducting the sale," and then only is the sale to become absolute and a certificate to be granted to the purchaser.

Surely the framers of these Acts did not unadvisedly add to their labors and the length of the law! If the Govt. decide to have a section or clause added to the Act, providing 30 days for an

Order cannot be made in the purchase a little title than - As to the other process in the law, when the purchase money has been paid O. X 1 of 59.

25. It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act, if preferred to him on or before the fifteenth day from the date of sale, such appeal as in Sec 23 only, preferred to the District Officer as aforesaid for his opinion to the Court on or before the tenth day from the date of sale, and not otherwise, and the Court shall be competent in such case of appeal so preferred to annul any sale of the estate or share of an estate made under this Act, which shall appear to him not to have been conducted according to the provisions of this Act, awarding at the same time to the purchaser a payment from the proprietor of any moderate compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed the interest, at the highest rate of the current rate of interest, on the amount of the balance of purchase money during the period of the sale being retained in the Collector's Office, and the order of the Commissioner shall in such cases be final.

26. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to annul the passing of final orders in any case of appeal from a sale, and to suspend the sale to the District Officer, who, if they are caused, may recommend to the local District Officer to annul the sale; and the local District Officer may annul the sale and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

been fully paid or within three months shall be allowed for a second sale. The Collector prefers the former course -

The sale can take place, without at least, a clear month's notice - this is quite contrary to the principle of the law to challenge the arrears or right to the sale - As to irregularities in the sale, they may be liable to occur - I fear the appeals to the Collector, if they can form a star be established, will be too numerous, that delivery will be too delayed in the finality. The Act does not provide as a liberal, the Collector. J. P. S.

an appeal, then, by that time, the purchase money must have been paid, and no special provision in this sense can be required.

If, on the other hand, they do not think the appeal necessary, there will be no danger in the immediate issue of a certificate to the purchaser, who can always be ousted by a certificate of a

[Handwritten signature]

The for
 of so I wd.
 central
 as possible
 in the view
 of the Docu,
 I leave
 written as
 they are. W 27/6/70

that is to say that the
~~same~~ the No. of Occurrences
as yet to give no order
a notice which can be
said to be inconsistent
with the provisions of the Act

It ^{that} appears the appeal
is ~~not~~ obtained only
under an "inadvertent"

Order of the W. of Honour
I agree with the Board
that there ought to be such
an appeal. Colley should
be kept, whose property
is sold up to an extent
unknown in the rest of
India, he is exceptionally
excluded from the appeal.
Practically, however, there
will be no difficulty will arise
from leaving "Clause 9" where
it is. ~~It is, I think,~~

whether the Regulation which I
understand was to be in force
under which there is an appeal
to the Collector "provided
inadvisable," & it is not
consistent with the law.
I cannot say. If it is ^{not} I
must certainly return it.
If it is, I would alter the
law. I was myself under
the impression that there was
legal ^{that is} appeal to the Collector.
~~under the Regulation~~

I have feared the D^r J^r
might take for arrears of
income: but before the
Order is issued, respecting to
position an opinion on
the legal question, I think
it might ^{perhaps} be well to consult
the Advocate General.

J^r
6/7

I have had this matter

the force of law either by
way

- one of great importance
 - of retaining it & the Law
 - Maximian especially as
 there is a difference of
 opinion. It is not
 here merely on the point
 at issue as to the State
 of the existing Law - but
 as to the expediency or
 the use of applying the
 Law 7/7 M7

No.

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the June 1874.

Read the following Letter from the
Secretary, Board of Revenue.

Calling attention of Govt. to
 certain points connected with procedure
 under the Act of 1864 (Madras) in selling
 land for arrears of revenue, and
 more especially with form of Sale
 Notice of Bonds as given in Board's
 Standing Order No. 275 and modified
 in Standing Order No. 17 of 1874.

H. E. 11 June 1874. N° 1347.

See
 J. S.
 M7
 217
 Subm
 notice in

Law either by way of sale
 or by way of mortgage

His Excellency the
 Governor in Council observes
 that there is no provision in
 Act II of 1864 enabling the
 Board of Revenue or Govern-
 ment to make any bye laws
 forms of notices or conditions
 of purchase which shall have
 the force of law either by
 way

But see Sect XXXVI
 cl 2. The Coll. Secy
 a notice containing
 inter alia the
 details of sale.
 The conditions
 cannot be

+ suggested the notice could be read
 in a notice a law

all 2'

№ 3.

The only remedy provided
by Law in event of non-pay-
ment of the balance of
purchase money

4.

no doubt that clause 9 of
Form 7 must be exchanged,
as being ^{unauthorised by} ~~an~~ assumed

John Brown's death and
the great number of
men who killed
and tried to
kill him in the
house of the
lawyer

* I think the absence of official
 records respecting the actual
 production performed a stronger
 reflection of ignorance in
 that case. Let the
 writer to keep the
 off-records the
 This point and

This point will be
carefully considered
& deliberated upon.
Fetched in 1864 -

L. O. S.

Laurel objection to the
discussion being raised by
the Board not to do so
But I add the new
script of the Declaration of
1776 that is applied to the
allotted.

4/ 2/7 1966 + vic
Ment

the law and the rights of the
Purchaser. The Board's
reasoning in paragraph 7
of their Proceedings is not
in accordance with the rule
of interpretation of Statute
Law, and the clause which
they defend is not only not
in conformity with, but in
opposition to, the Law.

5. As to the alteration
in the Law so as to allow of
an Appeal to the Collector
in every case of sale, ~~etc~~
~~Gov^t consider that such is~~
~~probably desirable, but before~~
~~committing themselves to a~~
~~decided expression of opinion~~
~~they desire that the Board~~
~~shall bring this question forward~~
~~with all the arguments for &~~
~~against it and adduce instances of~~
~~hardship which may have~~
~~occurred from an absence of~~
~~this provision.~~

CPH

First Draft

Revenue Department.

No.

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the July 1874.

READ the following Letter from the
Secretary, Board of Revenue.

Calling attention of Govt. to certain
points connected with procedure under
Arrears of Revenue Recovery Act II
of 1864 (Madras) in getting land for
arrears of revenue, and more especially
with form of sale notice of lands
as given in Board's Standing
Order N^o 275 and modified in
Standing Order N^o 177 of 1871.

H. E. 4 June 1874. N^o 1317.

I.O.S. }
See my minute. }

See further
minutes. I will
refer the point to work
the minutes) & the
advic. of 10/4

His Excellency the
Governor in Council observed
that there is no provision in
Act II of 1864 enabling the
Board of Revenue or Govern-
ment to make any bye-laws
forms of notices or conditions
of purchase which shall
have the force of law either
by way of enlarging or

C 30th June/74 R 6th July.

or restraining its provisions

2. A sale of land at public auction under the provisions of this Law, would therefore appear to be out-right, and without reserve of any kind.

3. The 15 per cent is the earnest money of the contract of sale and purchase. The only remedy apparently provided by Law in event of non-payment of the balance of purchase money after a lapse of 30 days is re-sale under Clause 4 of Section 35.

4. The Governor in Council does not consider that the registration and certificate under Section 38 are contingent on the payment of the balance and under this view of the case Clause 9 of Form 7 would have to be expunged as being unauthorized by the

the Law and at variance with the rights of the Purchaser. The Board's reasoning in paragraph 7 of their Proceedings does not seem to be in accordance with the rules of interpretation of Statute Law and the clause which they defend would appear to be not only not in conformity with, but in opposition to the Law.

5. On the legal bearing of this question however, the Governor in Council resolves in the first instance to consult the Advocate General.

6. As to the alteration in the Law, so as to allow of an appeal to the collector in every case of sale, the Board should bring this question forward with all the arguments for or against it, and adduce instances of hardship which may have occurred.

C. W.

Second draft

Revenue Department

N^o.

Proceedings of the Madras Government

Under date the September 1874

Read the following paper.

Pro. B^o of Rev.

Calling attention of Govt to certain points connected with procedure under Arrears of Revenue Recovery Act II of 1854 (Madras) in selling land for arrears of revenue, and to form of sale notice of lands as given in Board's Standing Order N^o 275 and modified in Standing Order N^o 17 of 1871

H.C. 4th June 1874 N^o 1317

Pro. of the B^o of Rev.

Subj. letter from Coll^r of Chingleput requesting an authoritative opinion regarding cancellation of sales of land for arrears of Revenue on appeal - with request that it may be taken into consideration along with Board's letter N^o 1317 of 4th June 1874

H.C. 6th July 1874

Minute by the R. H. the Governor H.C. 27th June 1874

Minutes by the Hon. J. D. Sim C.S. H.C. 24th June & 8th Sept 1874

Minutes by the Hon. W. Robinson C.S. H.C. 26th June & 10th Sept 1874

101

MR
11/10

I enclose that

There are two questions involved in this correspondence

Correspondence viz:

(1) Whether in the case of lands sold for arrears of Revenue possession must be given to the purchaser immediately on payment by him of the prescribed deposit of 15 percent of the purchase money or may and should be deferred until the full amount of purchase money shall have been paid.

by making this a "condition of sale" under Sect 36 of the Act of 1864.

(2) Whether an appeal to the Collector against such sales shall be allowed.

2. On the first point which involves a purely legal question His Excellency the Governor in Council resolves to request the opinion of the Advocate General.

3. As to the second the law is clear and after full consideration of the arguments adduced in the papers recorded above the Government resolve to inform the Board that they

both questions shall be submitted to the Adv^l General (with the Minutes of the Council of 1874) prepared the 2nd part

they are not prepared to re-open the question X5

Q.M.

Query. Are the Minutes of Members to be sent to the Advocate General as suggested in the Honble Mr. Robinson's note of 10th Sept 1874.

of the law is clear (as stated by the Honble Mr. Robinson, but who is double of the Adv^l of the Govt) - the law is not settled. It is settled. P. 1/10

Third draft

Revenue Department

N^o 1303

Proceedings of the Madras Government.

Under date the 10 October 1874.

Read the following papers

Letter from the Secretary
to the B^d of Rev.

Calling attention to certain
points connected with proceedings
under Arrears of Rev. Recovery Act II
of 1864 (Madras) in selling land
for arrears of Rev., and to form of
sale notice of lands as given in
Board's S.O. N^o 275 and modified
in S.O. of 1871

Pro. B^d of Rev.

Subs. letter from Col. A.
of Chingleput requesting an-
authoritative opinion regarding
cancellation of sales of land for
arrears of Rev. on appeal. with request
that it may be taken into consideration
along with B^d letter N^o 1347 of 4/6/74

Minute by the R. Hon. the

Minutes by the Hon. J. D. Sim

Minutes by the Hon. W. Robinson

H.C. 14th June 1874 N^o 1347

H.C. 6th July 1874 N^o 1704

H.C. 27th June 1874

H.C. 24th June & 8th Sept 1874

H.C. 25th June & 10th Sept 1874

There are two
questions involved in
this correspondence viz
(1) Whether in the case
of lands sold for arrears

of Revenue possessors
must be given to the
purchaser immediately
on payment by him
of the prescribed deposit
of 15 per cent of the
purchase money or can
be deferred until the
full amount of purchase
money shall have been
paid, by making this
a "condition of sale"
under Section 30 of the
Act (11 of 1864 Madras)

(2) Whether an appeal
to the Collr. against such
sales shall be allowed

2. His Excellency the
Governor in Council, please
to request the opinion of
the Advocate General
on both these points.

[Signature]

sent from Orders in Council
9/10/74
[Signature]

For the
Govt. solicitor with Minutes of
to be printed
of Govt. Dec 110 Nov 1874
as attached