M.R.O. 14 -5,450—22-10-25.

# MADRAS RECORD OFFICE.

---

## Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2641 Press ~~Mis.~~

139—140

Dated 7— 11— 1867.

***Not to be folded or roughly handled***

*Proceedings of the Madras Government, Revenue Department, 7th November* 1867.

No. 139. Read the following Proceedings of the Madras Government in the Judicial Department:—

Passing orders on papers relating to certain proceedings taken by Mr. Gompertz, Assistant Superintendent, Revenue Survey, in a case disposed of by him under Act XXVIII of 1860. } (Here enter 30th October 1867, No. 1,723.)

No. 140. ORDER THEREON, 7th November 1867, No. 2,641.

Miscellaneous.

Communicated to the Board of Revenue and to the Director of Revenue Settlement.

(True Extract.)

(Signed) F. H. WILKINSON,
*Acting Under Secretary to Government.*

To the Board of Revenue,
,, the Officiating Director of Revenue Settlement, } With Procs. Judicial Dept., No. 1,723.

Fxd. S. T. Augustin.

*Proceedings of the Madras Government, Judicial Department,*
*30th October* 1867.

Read the following papers :—

No. 275. From T. A. N. CHASE, Esq., Magistrate of Kurnool, to the Chief Secretary to Government, Fort Saint George; dated Nundial, 19th August 1867, No. 67.

I have the honor to lay the following case before Government, with the view of obtaining the opinion of the Advocate General on the point regarding which a doubt exists.

2. Dr. Andrews, the Superintendent of the Jail, asked me if the Warrant* issued to him by Mr. Gompertz, of the Revenue Survey, to confine two villagers of Chintalayapally for fourteen days, was legal or not.

* Copy forwarded.

3. I wrote to Mr. Beaumont, Deputy Superintendent of Revenue Survey, and asked under what authority his Assistant, Mr. Gompertz, acted. Mr. Beaumont (copy of whose letter I enclose) quotes Section 4 of Act XXVIII of 1860, and though he is aware (since I brought it to his notice) that Act II of 1839 was repealed by Act XVII of 1862, considers that the definition of Act II of 1839 (repealed) still holds good as far as Section 4 of Act XXVIII of 1860 is concerned.

4. I cannot agree with him, and consider that, Act II of 1839 being repealed, the whole of the last clause of Section 4 of Act XXVIII of 1860, commencing " and with a like alternative," &c., is also repealed, and that, consequently, if the Officers of the Revenue Survey fine ryots under that Section, they must levy their fine, as a Magistrate would do, under Section 61 of the Criminal Procedure Code, and that they have at present no power of imprisonment at all.

5. I think (but this is beside the subject) that Mr. Gompertz has acted with unnecessary severity, for the village of Chintalayapally is more than 70 miles from Kurnool, and to send two persons, in charge of his peon (as he verbally told me) that distance, in default of paying a fine of 3 Rupees, besides fourteen days' imprisonment in the Jail at Kurnool, when the Sub-Jail at Coilgoontla was close at hand, and simply because he wanted (as he again verbally told me) to make an example, inclines me to believe that Mr. Gompertz' temper is such as to unfit him to have any Magisterial powers of imprisonment conferred upon him.

---

To the Keeper of the Civil Jail at Kurnool.

Whereas Madi Santivadu and Madiga Shingaragadu of Chintalayapally, in the Coilgoontla Taluq, have been fined three (3) Rupees each for non-attendance for survey purposes when duly called on under Section 4 Act XXVIII of 1860, with an alternative of 14 days' imprisonment, and whereas the said sum has not been paid, and the said Madi Santivadu and Madiga Shingaragadu have been ordered to be imprisoned for 14 days, you are hereby required to receive the said Madi Santivadu and Madiga Shingaragadu into your custody, and carry the aforesaid order into execution according to law; should the fine be at any time paid, the prisoners to be at once released.

(Signed) H. GOMPERTZ,
*First Asst., Revenue Survey.*

Camp Venturla,
*5th August* 1867.

From W. BEAUMONT, Esq., Deputy Superintendent, No. 2, Revenue Survey, to the Magistrate of Kurnool; dated Kurnool, 16th August 1867, No. 289-88.

With reference to your letter, No. 128, of 14th instant, I have the honor to state that Mr. Gompertz committed the two villagers of Chintalayapally, in the Coilgoontla Taluq, to Jail, under the powers vested in him by Government in the *Fort Saint George Gazette* of 23rd December 1864, page 1036.

2. With all due deference it seems to me that Act XXVIII of 1860 is in no way affected by the repeal of Act II of 1839, which was repealed by Act XVII of 1862, and that Act II of 1839 is referred to in Act XXVIII merely to define the mode of procedure in cases of individuals being committed to Jail in default of payment of fines inflicted on them.

3. Mr. Gompertz, I fancy, in his warrant sent with the prisoners, should have mentioned in it "simple imprisonment."

---

Before disposing of the legal question raised in the foregoing letter, the Government desire to afford Mr. Gompertz an opportunity of offering any explanation he may have to make with reference to committing two ryots, who were fined under Act XXVIII of 1860, to be imprisoned for fourteen days in the Zillah Jail, at a distance of 70 miles, when the Sub-Jail at Coilgoontla was close at hand. Colonel Priestley will be requested to call upon Mr. Gompertz to submit to him any explanation he may have to offer, and will forward the same, with his remarks to Government.

FORT SAINT GEORGE,
*2nd September* 1867.

(Signed) F. BRANDT,
*Under Secy. to Govt.*

*To the Superintendent, Revenue Survey.*

---

No. 276. From Lieutenant Colonel F. J. B. PRIESTLEY, Superintendent, Revenue Survey, to the Acting Chief Secretary to Government, Fort Saint George; dated Chepauk, 3rd September 1867, No. 1712-46.

I have the honor to acknowledge the receipt of a letter and enclosures, from the Magistrate of Kurnool to your address, with docket, directing me to call upon Mr. Gompertz, Assistant Superintendent, Revenue Survey, for an explanation of his having committed two ryots to the Kurnool Jail, and have addressed Mr. Beaumont, the Deputy Superintendent, Revenue Survey, accordingly.

2. I beg to submit, with reference to the legal question on which Mr. Chase proposes to obtain the opinion of the Advocate General, that it can hardly be termed a doubtful point, having already been disposed of in the Order of Government, dated 1st February 1864, No. 173.

---

Proceedings of Government, Revenue Department.

Read the following letters :—

From R. E. MASTER, Esq., Officiating Director of Revenue Settlement, to the Secretary to Government, Revenue Department, Fort Saint George; dated Madras, 8th December 1863, Nos. 1502-83.

I have the honor to forward an original letter with enclosures (to be returned) from the Deputy Director of Revenue Settlement, Trichinopoly, and to request that the opinion of the Government Law Officers may be obtained on the question raised by the Magistrate of Tinnevelly.

4th December 1863, No. 122.



2. It appears that the Assistant Director of Revenue Settlement in Tinnevelly imposed fines on certain ryots, and in default of payment sentenced them to imprisonment under Section 4, Act XXVIII of 1860. Mr. Silver considers that as Act II of 1839, which is quoted at the end of the Section abovenamed, has been repealed by Act XVII of 1862, imprisonment can no longer be awarded under that Section, and is of opinion that the sentence should have been passed under Section 67 of the Indian Penal Code.

3. I do not myself see how the repeal of Act II of 1839 can affect Section 4, Act XXVIII of 1860. The former enactment is quoted merely to define the mode in which the fine is to be commuted. The authority for awarding the imprisonment is derived, not from it, but from Section 4, Act XXVIII of 1860. As far as I am able to judge, Section 67 of the Penal Code is applicable only to fines imposed under the provisions of that Code by a Magistrate or Criminal Court. In the present instance, the fines are imposed by an Officer who is not a Magistrate, under the authority of a special law. As, however, the question has been raised, it is desirable that it should be authoritatively settled.

4. Even should it be decided that I am correct in supposing that, notwithstanding the repeal of Act II of 1839, imprisonment may still be awarded under Section 4, Act XXVIII of 1860, in commutation of a fine imposed under the same Section, it will nevertheless I think be advisable, in the contemplated amendment of the Act, so far to modify Section 4 as to avoid in it any allusion to the repealed Act II of 1839.

---

From CLEMENT DALE, Esq., Government Pleader, Madras, to the Secretary to Government, Revenue Department, Fort Saint George; dated Madras, 31st December 1863, No. 171.

I have the honor to acknowledge the receipt of the Proceedings of Government under the date and number noted in the margin.

12th December 1863, No. 2272, Revenue Department.

2. In Dwarris' Treatise on Statutes, it is stated "relative words in an Act of Parliament "(words of reference in a subsequent Statute) will make a thing pass as well as if it had been "particularly expressed in the Act itself: *verba illata inesse videntur.* Clauses of reference, "incorporating provisions of former Statutes take effect as fully as if they had been repeated "and re-enacted in the body of the latter Act with relation thereto." I cannot find there has been any decision arising in a case where, as in the matter referred to me, the former Statute containing the words referred to has been repealed, probably because a doubt as to the effect of such repeal upon the subsequent Statute has not been raised. I am of opinion, notwithstanding the repeal of Act No. II of 1839, that, under Section 4 of Act No. XXVIII of 1860, the same powers now exist, as though the words of Act No. II of 1839 referred to had been repeated and re-enacted in Act No. XXVIII of 1860.

3. I do not think, however, that in any proceedings Act No. II of 1839 should be named. I am of opinion that the proper mode would be to refer to Act No. XXVIII of 1860.

4. I return the original papers forwarded to me.

---

*Order, 1st February* 1864, *No.* 173.

Communicated to the Acting Director of Revenue Settlement, with reference to his letter of 8th December last, No. 1502-83. Copies of the correspondence will also be sent to the Revenue Board.

(True Extract).

(Signed) C. G. MASTER,
*Dy. Secy. to Govt.*

---

No. 277. From Lieutenant Colonel F. J. B. PRIESTLEY, Superintendent, Revenue Survey, to the Chief Secretary to Government, Fort Saint George; dated Kurnool, 30th September 1867, No. 1865-52.

In submitting, as directed in your Memorandum of the 2nd instant, the accompanying original letter from Mr. Gompertz, First Assistant Superintendent, Revenue

Survey, explaining the circumstances under which he committed two ryots to the Kurnool Jail, I have the honor to state that the apparently disproportionate alternative of 14 days' imprisonment in default of payment of the fine inflicted (Rupees 3) had attracted my attention, and, on the 20th of August last, I had remarked on it in a Memorandum* to the Deputy Superintendent under whom Mr. Gompertz is employed. Mr. Gompertz, in his reply, has convinced me that he acted from no caprice, but with due deliberation and consideration of the circumstances of the case.

* No. $\frac{1608}{63}$.

2. In neglecting to make himself acquainted with the rules regarding the class of Jail in which imprisonment according to duration ought to be carried out, Mr. Gompertz appears to blame, and I shall take steps to prevent similar occurrences arising from ignorance of the rules and regulations on the part of Survey Officers; but with the opinion expressed by the Magistrate of Kurnool on his fitness for being entrusted with powers under Act XXVIII of 1860, and of which Mr. Gompertz, I think with reason, complains, I beg, with all deference, to state that I do not concur. On reference to the record of cases taken cognizance of by this Officer since first invested with authority under it (a period of 3 years), I find that, except in the two cases now under consideration, he has never inflicted a heavier fine than two Rupees, and to that extent in two instances only. I trust I may be permitted to say that the powers under this Act have been hitherto exercised with temper and judgment by the Survey Officers, to whom they have been entrusted, and very frequently under circumstances of annoyance and obstruction unknown to, and therefore unappreciated by, Officers of other Departments.

---

From H. GOMPERTZ, Esq., First Assistant Superintendent, Revenue Survey, to W. BEAUMONT, Esq., Deputy Superintendent, Revenue Survey; dated Camp Coilgoontla, 9th September 1867.

I have the honor to acknowledge the receipt of your docket, No. 45, dated 6th instant, with its enclosures, one of them being a docket from the Superintendent, Revenue Survey, calling on me, as desired by Government, to explain why I sent two men to the Jail at Kurnool, instead of having them confined in the Coilgoontla Sub-Jail, which was nearer.

2. The call for this explanation is based on the last paragraph of a letter from Mr. Chase, the Collector of this District, in which he says that I "verbally informed" him of certain facts. I have the honor to inform you that the verbal information to which he alludes was given him in a private conversation at the band-stand, and though I am prepared to stand to anything I state, publicly or privately, I am not a little surprised that Mr. Chase should have made use of that conversation, and that, having used it, he has not (doubtless from forgetfulness) given it entire.

3. It is perfectly true that I told Mr. Chase that the two men were sent to Kurnool in charge of one of my peons, and I am not aware that any other mode of sending them was open to me. It it also true that I told him I thought an example necessary, but he seems to have forgotten the rest of the conversation, which was in substance as follows.

4. Mr. Chase asked me why I had sent two men into Kurnool, instead of confining them in in the Sub-Jail, as they were only to be imprisoned for 14 days, and there was an order that the Sub-Jails should be used for terms under a month. I replied that I was not aware of any such order, but, as there was one, I should, of course, carry it out in future; that I thought 7 days was the limit of the confinement in Sub-Jails, and I was glad that I had not been better informed sooner, as the particular case under notice was a very aggravated one, and I thought an example necessary, which would be far more effectually given by confinement in Kurnool than



by confinement in a Taluq Sub-Jail, which was not (and with good reason) nearly so much dreaded. After this, the conversation dropped.

5. Though I think I have stated enough to exonerate myself from any charge of indiscretion, it would perhaps be well to detail the circumstances of this case: they are as follows.

6. I received a report from the Deputy Surveyor in Chintalayapally (backed by bukeers from the village authorities) stating that none of the ryots of that village would attend for survey purposes, and that most of them would not even attend at the village Chavady to sign the notice which has to be served; and upon this report I summoned the ryots whose names were sent in by the village authorities. Before my peon returned, I received a second report to the same effect, with the addition that some few ryots had come to the Chavady, and demanded that the Ameen should read the Act empowering him to demand their assistance. A day or two after this, my peon returned, stating that he had served the summons, but that the men named in it had gone, and all refused to attend; he also brought a bukeer to this effect from the Reddi. The peon added that some of the men summoned had used foul and abusive language, but as the Reddi said nothing of this, I do not lay very much stress on it.

7. On receiving this report I proceeded to the village myself, and after a careful inquiry, imposed fines on certain ryots; the two sent to Kurnool were amongst the number, and I still venture to think that, had I had any discretion in the matter, that discretion would have been wisely exercised in carrying out my sentence in such a way that it would have the greatest effect in deterring others from the commission of similar offences.

8. In conclusion, I beg to be allowed to point out with the greatest respect that an appeal lies from my decision to the Superintendent, Revenue Survey, and to the Board of Revenue, but not to the Collector, of whom I am entirely independent. I cannot but think that the Collector has no power either to question my decisions, or to call on me for my authority (though, of course, as a matter of courtesy, any information he might want would always be at once afforded); but I should have taken no notice of this had he not thought fit to make certain injurious reflections on the manner in which I had exercised the powers Government have thought proper to entrust me with. The remarks of which I complain were made too without proper inquiry, and I trust that the explanation now given may convince Government that they were quite undeserved.

---

No. 278. ORDER THEREON, 30th October 1867, No. 1723.

In the first of the foregoing letters, the Magistrate of Kurnool requested that the opinion of the Advocate General might be obtained as to the legality of certain proceedings taken by Mr. Gompertz, a First Assistant Superintendent of the Revenue Survey, in a case disposed of by him under the provisions of Act XXVIII of 1860, in which he sentenced two villagers of Chintalayapally to be imprisoned, in default of paying a fine of 3 Rupees. Mr. Chase argued that, Act II of 1839 having been repealed, the whole of the last Clause of Section 4 of Act XXVIII of 1860 is also repealed, and that, if the Officers of the Revenue Survey fine ryots under that Section, they must levy such fines under Section 61 of the Code of Criminal Procedure. The Magistrate also pointed out that Mr. Gompertz had treated the villagers in question with unnecessary severity in sending them to the District Jail at Kurnool, a distance of upwards of 70 miles from their village, while there was a Subsidiary Jail at Coilgoontla close at hand, in which they could have been confined.

2. The Superintendent of Revenue Survey, having been directed to call upon Mr. Gompertz for explanation, has submitted a letter from Mr. Gompertz, in which he states that he was not aware that persons sentenced to more than 7 days' imprisonment could be imprisoned in a Subsidiary Jail, and defends the sentences passed by him on the ground that they were requisite as an example. Colonel Priestley

states that the apparently disproportionate alternative of fourteen days' imprisonment in default of payment of the fine inflicted had attracted his attention; that he remarked upon it; and that Mr. Gompertz, in his reply, has convinced him that he acted with due deliberation and consideration of the circumstances of the case. He considers Mr. Gompertz to blame in not having made himself acquainted with the rules regarding the class of Jail in which imprisonment for short periods should be carried out, and reports that he has taken steps to prevent similar occurrences arising from ignorance of rules and regulations by Survey Officers. Colonel Priestley adds that the powers under Act XXVIII of 1860 have been hitherto exercised with temper and judgment by the Officers of his Department, and frequently under circumstances of annoyance and obstruction unknown to Officers of other Departments.

3. The Governor in Council does not consider it necessary to refer to the Advocate General the legal point raised by the Magistrate of Kurnool. The question of the legality of the proceedings of Survey Officers under Section 4 of Act XXVIII of 1860 was raised in 1864, and the opinion of the Government Pleader was obtained thereon, and communicated to the Director of Revenue Settlement, and to the Board of Revenue. A copy of the Proceedings* of Government on the subject will now be furnished to the several Magistrates in the provinces.

* Dated 1st February 1864, No. 173.

4. The Governor in Council accepts Mr. Gompertz's explanation of the course taken by him in sending the two villagers to the District Jail, instead of the Subsidiary Jail. It appears that this was done by Mr. Gompertz in ignorance of the rules in force, and, as the error has been pointed out, the Government feel sure that it will not be repeated by any Officer of the Survey Department.

5. Mr. Gompertz, however, committed a further error in sending the villagers to Jail, without, in the first instance, enforcing the payment of the fine by the issue of a warrant of distress and sale of such property as might have been found.

6. From the report originally submitted by the Magistrate, the Government had reason to apprehend that these errors had not been due entirely to ignorance. As, however, adverting to Mr. Gompertz's explanation, it is possible that the Magistrate may in some degree have misunderstood what passed between himself and Mr. Gompertz, the Government accept the statement of the latter gentleman; but, under all the circumstances, they think it desirable that the Superintendent should take an early opportunity of transferring Mr. Gompertz to another District.

(True Extract).

R. Sewell

*Chief Secretary.*

To the Superintendent, Revenue Survey.
„ Magistrate of
„ Revenue Department.

Exd. J. H. Burns.