M.R.O. 14—13,000—27-6-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 712 Press Mis.

479, 480

Dated 26 3 1887.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 26th March 1867.

No. 429. Read the following Proceedings of the Board of Revenue, dated 20th March 1867, No. 1,725.

Read the following letter from the Government Pleader, to the Secretary to the Board of Revenue, dated 11th March 1867, No. 49 :—

1. I have the honor to acknowledge the receipt of the Proceedings of the Board of Revenue, under the date and number noted in the margin.

21st February 1867, No. 1,100.

2. As regards the request contained in the second paragraph, I do myself the honor of observing that it is an unusual, and would be a very objectionable, course if generally adopted. In compliance, however, with the Board's request, I forward the fair transcript of the letter which I have prepared to the address of the Right Honorable the Secretary of State in Council, but in doing so, I beg to be most distinctly understood that my compliance with the request is not to be treated as a precedent, whereby I or my successors or the other Law Officers of Government may be at all bound.

3. If the Board should consider any suggestions desirable for more clearly elucidating the case for the consideration and guidance of the law advisers in England of the Secretary of State, I shall have much pleasure in considering any they may offer. I request, however, they may be made on separate paper with reference to my paragraphs; for the time at which I contemplate embarking for England is drawing so close, and my establishment is so much engaged, that if marks or observations be made on the transcript, I may experience a difficulty in getting another copy made before I embark.

4. In ALL cases that come before me, I am solicitous of receiving all suggestions that can be made by persons conversant with the subject. It is obvious, such suggestions to be of service should be made before I have to act in the matter; if made after a proceeding in Court they naturally become useless, and if made after pleadings, or a letter to the Secretary of State is prepared, suggestions so made entail very considerable additional labor, and commonly are not of the same utility as if made previously to such preparation, when the whole subject is under review, and the suggestions can be considered with all the facts and surrounding circumstances of the case, whereas if made afterwards it is seldom that time can be spared to go again minutely through all the papers, and thus the thread becoming disjointed discrepancies are apt to arise. In the present case my instructions were peculiarly deficient, and I labored under great difficulties in consequence. When Mr. Brett attended in Court, I gathered from observations made by him from time to time that he did not take the same view of the case as I did, and that he would have wished it put differently. Unfortunately I had not been favored with his views before I went into Court further than as contained in the Proceedings of the Board of the 3rd of May 1866; and in Court, while the case was going on, I was unable to gather from his observations what his precise views were, and with the object of embodying such views in my letter to the Secretary of State, I solicited him to favor me with a statement to that effect. The result was the Proceedings of the Board of the 30th of July 1866, No. 5,220, which was very little more than a recapitulation of the proceedings since the institution of the Original Suit, all of which I had before me, and with which I was fully conversant; the only new matter, as it appears to

me, was contained in the 19th paragraph, and of this information I have availed myself by referring to Government for the detail. I had long previously to the 30th of July 1866, formed my own opinion on the case, and the arguments by which alone it could be supported, but it was to afford full opportunity for the subject being most fully canvassed that I made the request I have mentioned.

5. For the reason mentioned in paragraph 3, I have to solicit the immediate attention of the Board to the matter, as it is of importance I should close and despatch my letter before I resign my office.

ENCLOSURE No. 1.

ABSTRACT.—Letter from Government Pleader, to Secretary of State for India.

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1. The Board have to thank Mr. Dale for allowing them to see his letter to the address of the Right Honorable the Secretary of State in Council. Their object was simply to submit, for Mr. Dale's consideration, any remarks that might occur to them after perusing the draft of his letter.

2. The Board regret to find from paragraph 4, that Mr. Dale was dissatisfied with the way in which his instructions in this case have been prepared. They certainly intended, when drafting their Proceedings dated 3rd May 1866, No. 3,133, to state in full detail the grounds on which they questioned the correctness of the Judgment passed by the High Court, and in their subsequent Proceedings, dated 3rd July 1866, No. 5,220, they prepared a precis of the whole proceedings expressly for Mr. Dale's use, believing that this would be the best mode of carrying out the instructions of Government, to the effect that the Government Pleader should take the necessary steps, in communication with the Revenue Board, for preferring an appeal to the Privy Council.—(*Vide* Government Order, dated 15th June 1866, No. 1,466.)

3. In the latter Proceedings, the Board intentionally recapitulated all that had taken place in the suit, but they also clearly indicated (as in paragraph 17) on what ground they thought it advisable to contest the decision passed on the special appeal; and if their views as to the merits of the case and the rights of Government were not stated so fully as Mr. Dale wished, they would gladly have entered into further explanations, had Mr. Dale only expressed a desire that they should do so. They are not aware that he ever applied to the Collector or to the Board for the translations to which he refers in paragraph 16.

4. The Board have now no new suggestions to make, but they wish to point out that the Revenue authorities have never taken up the ground on which Mr. Dale places the question in issue in paragraph 34 of his letter. Their view is, and always has been, that the Government from motives of charity remitted a portion of the land revenue in favor of the Agraharumdars, and that it was quite within the power of Government to revoke such a concession, and to charge the Agraharum lands with the ordinary rates of assessment, when they saw reason for so doing. The Board have expressed their views on that point very explicitly in paragraphs 2, 3, and 4 of their Proceedings, dated 3rd May 1866; and again, in paragraph 17 of their Proceedings, dated 3rd July, they distinctly stated that, in their opinion, the intended

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appeal should be made to rest mainly on the fact that the Government was dealing with an Inam, or a mere charitable assignment of the land revenue, when they resumed the Agraharum. In their view of the case this kind of grant on the revenue is in reality one of those Inams, or alienations of revenue, which fall under the provisions of Regulation IV. of 1831, and hitherto it has never been disputed that if the terms under which such Inams were granted are not performed, the Government have it in their power to assess the lands at the usual and ordinary rates.—(*Vide* Mr. Dale's remark on this subject in paragraph 39 of his letter.)

5. As Mr. Dale has referred to one of the Members of the Board by name, (paragraph 29,) the Board may be permitted to explain that Mr. Brett, when present at the hearing before the High Court, dissented from Mr. Dale's views chiefly in respect to the one point now referred to, Mr. Brett believing that Mr. Dale when adverting to the supposed *contract* was making use of an argument which could not be sustained, and which was not in keeping with any instructions he had received from the Board. In fact the plaintiff's case was to the effect that the Government had entered into a certain contract with himself and the other shareholders severally, and to prove this particular point, he brought forward the Puttahs given to him and the other shareholders, as specifying the terms of this alleged contract; whereas the case for the Government has always been that the alienation of revenue in favor of the Government was only a charitable allowance, a mere concession during pleasure, and as such was resumable by the Government at their discretion.

6. In the same paragraph of Mr. Dale's letter, (paragraph 29,) blame is imputed to Mr. Brett for having omitted, when Collector of Salem, not only to put in the Hookumnamah as evidence, but to give any evidence at all to shew under what authority he acted. The Board desire to remark that Mr. Dale is in error on the latter point. That the Collector did furnish such evidence is made clear by the remarks of the Civil Judge in paragraph 10 of the appeal decree, in which the Civil Judge discusses the question whether the Collector had authority or not to act as he did, and refers to certain orders of the Government and the Board as fully establishing that he had such authority. The same point, with the evidence bearing on it, was also discussed in paragraph 7 of the Judgment in the Original Suit. It is true that the Hookumnamah was not filed as one of the defendant's exhibits, but the Board could scarcely be wrong in supposing that either the Sub-Judge or the Civil Judge might have called for that document, as the High Court subsequently called for it, if he had wished to see it. The remark of the Board, to which Mr. Dale seems to take exception, was simply that if the Collector had been required to produce "further" evidence, to prove that he was acting under the authority of Government, he might have been able to do so. Mr. Brett may have been the Officer who filed the necessary documents in the Sub-Court, but more probably he was absent on sick leave when this was done.

7. With regard to any other points in Mr. Dale's letter, the Board desire to notice three only, and those as briefly as possible.

8. In paragraph 16 Mr. Dale expresses his belief that the assessment on the village has "been really and in fact received from the several shareholders in parcels." The Board, however, are not prepared to allow that this was really the case. Mr. Dale does not state by whom they were so received. The jody or

quit-rent was no doubt credited in the Revenue accounts as a single item of revenue, and as such it must have been collected through the village officers.

9. The second point has reference to the views expressed by Mr. Dale as to the supposed, or possible, bearing of Regulation XXVII. of 1802 on the present case. The Board wish to state explicitly on what grounds the provisions of Regulation XXVII. are not, in their judgment, applicable to the case in question. In the first place, the Agraharum of Nikaraputty was not an assessed "estate" of the class referred to in Clause 1st, Section 11 of that Regulation; and, in the second place, the Government Officers did not propose or attempt to enforce payment of any revenue dues in arrears. The Board, therefore, deem it inadvisable to discuss the provisions of Regulation XXVII. of 1802, as though the course taken by the Government Officers was one to which that Regulation might in some sense or other have been deemed applicable. If the Collector had intended to enforce the payment of arrears of revenue, it might have been held that he was bound to conform to the provisions of that enactment, but the course actually followed by Government was to remit the past arrears, and for the future to charge the lands of the village with full rates of assessment.

10. The third point is connected with Mr. Dale's remarks in paragraphs 44 and 45. Mr. Dale observes, that Government, in the exercise of sovereign authority, might really have resumed the lands themselves. The Board wish to observe that the Government never exercised such powers; and that in the present case the State claimed no other rights or power than that of charging the plaintiff's lands with the ordinary revenue demand, or rate of assessment.

11. The Board return the letter which Mr. Dale has been kind enough to send them for perusal. They have no wish, now that his letter is ready for despatch, that Mr. Dale should be at the trouble of making amendments in the letter, even if he should see, from the Board's present remarks, that some modifications might be admissible; but if as they suppose their Proceedings, dated the 3rd May 1866, No. 3,133, and 30th July 1866, No. 5,220, are included in the record forwarded to the Secretary of State, they trust that Mr. Dale will have no objection to a copy of the present Proceedings being appended thereto.

No. 430. ORDER THEREON, 26th March 1867, No. 712.

Miscellaneous.

Ordered to be recorded.

(True Extract.)

(Signed) J. GROSE,
Under Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

Reported to England
27 March 1867 No 23 Para

Rev. 1867. Department.
Proceedings of Govt for March

No. 708

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 20th March 1867.
Received 23

No. 1,725.

Passing remarks with reference to letter of Government Pleader to address of Secretary of State for India, in connection with appeal made to Her Majesty in Council, from decision of High Court in Special Appeal No. 481 of 1864, regarding Neikaraputty Agraharum in Salem district.

A 429 & 430

RECORDED. 712

26 March 1867