Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 3306

DATED 30th June 1897

[Despatch Abstract.]

Req^s the Govt. Pleader to prefer an appeal to the High Court against the judgment of the Dist Court of Salem in O.S. No. 18 of 1894.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No	Department.	Date.

FURTHER PAPERS.

G.O	No.	Department.	Date.	G.O.	No	Department.	Date.

Revenue (189) Department.

CURRENT No.

SECL GOVT MADRAS
25 MAY 97
REVENUE DEPT

From

The Board of Revenue, Land Revenue, Madras.

Order

No. 2284 Misc.

Dated 24th June 1897

Received

Registered

Enclosures

Spare copies

SUBJECT.

Submitting to Govt with remarks opinion of the Govt. Pleader Madras as to the advisability of preferring an appeal to the High Court against the judgment in O.S. No. 18 of 1894 on the file of the District Court Salem, re: cancellation of the revenue sale of the Kadapalli division of the Thalapatti Mitta

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

3,000
10-12-96.

REVENUE BOARD OFFICE. MADRAS.

Proceedings of the Board of Revenue

(Land Revenue)

No.2284 Misc.,dated 24th June 1897.

Read the following :-

1. letter from C.H.Mounsey,Esquire,Ag.Collector and District Magistrate of Salem,to the Secretary to the Commissioners of Land Revenue,Madras,No.1652/D,dated 29th March 1897.

2. letter from the same officer,No. 2004,dated 10th April 1897,and Reference thereon dated 23rd April 1897.

3. Also letter from E.B.Powell,Esquire,Government Pleader,Madras,to the Secretary to theBoard of Revenue, Land Revenue,No.465,dated 17th June 1897.

*copy attached.

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Resolution

Submitted to Government with reference to the correspondence ending with Government Order,No.556 Rev., dated 28th January 1897.

2. In its order Mis.No.847 Rev.,dated 26th February 1895,Government sanctioned the defence of the present suit and requested the Government Pleader,Madras,to appear at the hearing,in view to obtain an authoritative decision on the legal question therein involved ,viz:,whether,when a defaulter's estate or holding has once been attached for arrears,it is necessary to go through the formality of attaching it again for the arrears accruing subsequent to the date of the first attachment but prior to the date fixed for sale before the estate can be validly sold for the recovery of the entire arrears due up to the date of sale.

3. The District Judge has decided the suit against

Government on the grounds (1) that both according to the attachment and sale notices and according to Act II of 1864, the tender of the arrears for which the property sold had actually been attached was valid & (2) that the sale of the Kadapalli division was in contravention of the direction in the proviso to Section 44 which prohibits the sale of a larger portion of the estate than is absolutely necessary for the realisation of the arrears.

4. As the defence of the suit was sanctioned for the purpose of obtaining an authoritative ruling on the first of the points referred to in the preceding para and as the Government Pleader considers that the proviso to Section 44 of Act II of 1864 is only directory and that the sale of an unnecessarily large portion of an estate in arrears is not liable to cancellation under the Act, the Board requests that sanction may be accorded for presenting an appeal to the High Court on the grounds specified in the draft memo of appeal submitted herewith.

5. As the latest date for preferring the appeal is the 3rd proximo, the Board further requests that the orders of Government on these Proceedings may be communicated to the Government Pleader direct.

(True Extract)

W.Wodie
Ag. Secretary.

To

The Secretary to Government, Revenue Department, with 3 letters & Enclosures in original and the records of the case to be retd.

The Government Pleader.

The Collector of Salem, with ~~1 ltr~~. c/r of Govt Pleader's letter & Enclosure.

W.R.H.

The Hon. Mr Grose C. J. E.

7/(C.J.)/ 30/6/97

C. No 5353

G.O.N° 3306 of 30th June 1897

The Government Pleader will be requested to prefer an appeal to the High Court against the judgment of the Dt. Court of Salem in O.S. No 18 of 1894.

W 30/6/97.

W.R. 2/7/97

The Govt. Pleader with the records of the D. of Rent (Land Rent) Govt 30/6/97

Note

The legal question involved in the case was this: whether where a defaulter's estate or holding has once been attached for arrears, it is necessary to go through the formality of attachment again for the arrears accruing subsequent to the date for sale before the estate can

I can be validly sold for the recovery of the entire arrears due up to the date of sale." The Judge has held that subsequent attachment is necessary. It is thought that an authoritative ruling on the point should be obtained by preferring an appeal to the High Court.

Another point which was also raised in the case, viz, whether the proviso to section 46 of Act II of 1864 was merely directory or whether the sale of an unnecessarily large portion of an estate than is absolutely necessary for the realization of the arrears could be cancelled, has also been decided against Govt

30/6/17

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READ AGAIN G.O., No 189 DATED

GUARD No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT	A	A	A	A	A	A	A
LETTER OF GOVERNMENT.							
STATEMENT WITH DITTO.							
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.							

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