

Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 82

DATED 7th January 98

[Despatch Abstract.]

Forwarding ^{for transmission} to the Registrar. High &
a Memorandum explaining the changes proposed
the Draft Bill for amending Act II of 1886.

CURRENT No. 10168
4962

BACK PAPERS.

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

FURTHER PAPERS.

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



From

The Registrar,
High Court of Judicature,
Calcutta.

Endorsement. No. 2505 of 24-11-97.
Order

Transferred to the Rev.
Sgt. for favour of early
compliance.

Reference No. 2440/97.

Dated 22nd November 1897.

Received 23rd } November 1897
Registered 23rd }
Enclosures 25

Spare copies

Atk. 24/11/97
As Under-Secretary.

For orders

No statement of Objects and Reasons has as yet been prepared. The draft Bill reasons for amending the Act as proposed in the draft Bill are contained partly in the notes under G.O. 845-6-10-97 and partly in a note prepared in the Records office, which has been returned to it. It will take some considerable time to prepare a note from these materials explaining the proposed alterations. May the Registrar be informed accordingly.

SUBJECT.

Requesting to be furnished with 5 copies of the statement of Objects and Reasons or other information as to the objects desired by the framers of the Bill to further amend the Act II of 1864.

23/11/97

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.
	Civ 10998		7/18/97.

It must take more than 3 days to submit a draft.

8.2 2/10/11

A draft note showing the changes proposed to be made in Act II of 1864 is submitted as directed. It is put up below this current and the two referred to in the note are put up at the bottom of the file.

2. a draft G.O. is submitted below for approval.

G.O. No. 8247 7th January 1898.

A memorandum explaining the changes proposed in the draft Bill for amending Act II of 1864 is forwarded as requested for transmission to the Registrar, High Court.

6/11/98

Judicial Dept
To the Registrar,
with Memorandum
High Court

KD
3/12/97

17/10/97

Current No. 4962

Ref. on Cur. No. 3140/97.

High Court of Judicature,
Madras, 22nd November 1897.

From

D. W. G. Cowie, Esquire,
Registrar of the High Court of Judicature, Madras.

To

The Under Secretary to the
Government of Madras, Judicial Department.

Sir,

With reference to G.O., R. No. 1573, Judicial, dated 26th October 1897, communicating G.O., No. 345, Revenue, dated the 6th idem, referring for very early remarks, draft of a Bill to further amend Madras Act II of 1864, I am directed to request that you will be good enough to furnish me with 5 copies of the statement of Objects and Reasons or any note on clauses or other information as to the objects desired by the framers of the Bill.

I have the honor to be,

Sir,

Your most obedient servant,

D. W. G. Cowie

Registrar.

Note for the Secretary

The following explanation is submitted with reference to the H. H.'s remarks on the margin of the memorandum below:-

(1) The papers were put in an urgent pad as the judicial dept transferred the High Court's requisition for "early compliance" and as the current was marked urgent.

(2) A Draft order was put up - please see back side of the docket sheet of the current & ^{approved by the Secretary}

(3) It is not understood how the paper re: contagious disease of live stock got mixed up with the file.

KD
4/11/98

H. H.

Please see above.

Apparently the memo got to the top of the file & the H. H. mixed the files in the current docket.

J. B. 5/1/98

Print memorandum
soon and des 50 pps
to High Court as early
as practicable

I have found it
now.

J. B.
6/1/98

117
O. No. 10, 189.

RECEIVED DU.

Section 47 of Act II of 1891 (Madras) states that "all lands produced to sale on account of arrears of revenue shall be sold for all such arrears." This provision is to be understood to mean that such arrears on lands were extinguished by a sale only when the arrears, for the recovery of which the sale was held, had accrued on the lands sold. Owing to the difficulties, however, of obtaining a record of payment for each individual field, it was held that a sale of land for arrears of revenue due in respect of that village, the sale was free of encumbrances. The view was taken by the High Court in the judgment reported in T. L. S. 2, Vol. 180. 2. There was, however, a doubt as to whether in order to extinguish encumbrances, it was necessary that the lands sold should be included in the village under which the arrears had accrued. This doubt has been set at rest by the High Court. (T. L. S. 13, Vol. 187, 177). The High Court observed "no doubt it is for the benefit of the rate."

I don't quite understand why this has been sent to me in a cover, marked "urgent", after the communication of the 10th day.

I have no objection to the communication of the memo to the High Court, if that is meant; but no draft order to that effect is put up. And what have the papers about contagious diseases of live stock, to do with the matter which are in the files, to do with the matter?

21/12/97

Yours Enclain please
30/12/97

C. 18/12/97
R. 22/12/97
C. 27/12/97
R. 27/12/97

portion of a holding, on which the arrears had not actually accrued, will still be subject to encumbrances, and the only procedure prescribed for sales for arrears of revenue is that contained in section 4, which provides that the land shall be sold free of all encumbrances. The word "holding" appears to have been used in the above judgment in the sense of all lands held by the defaulter whether comprised in one estate or not.

3. After careful consideration the Government has arrived at the conclusion that the ruling of the High Court is not only according to what the law is, but according to what it ought to be. As the local authorities have interpreted the law differently, it has been thought desirable to amend it and make it ~~clear~~ clear. The opportunity is taken to remedy certain defects in the Act, which have been pointed out from time to time.

4. The points which have been taken into consideration are as follows:-

When land is sold for an arrears of revenue:-

(1) if the revenue ~~is~~ due on land, the sale shall be free of all encumbrances ~~unless~~ the land is situated, that is, whether in the village or in the town, in which the arrears ~~are~~ accrued or otherwise, and

(2) if the revenue is of an

other description, only the right, title and interest of the defaulter should be sold.

The amendment is carried out by the definition of holding in section 4(1) of the Draft Bill and by the revised sections 42 and 52.

5. To take of the Draft Bill in the order of sections:

Section 4 is proposed to be amended to read: "4 of the Act and ^{to simplify} the definition of 'arrears of revenue'."

6. Section 4. The ~~definition~~ definition of "public revenue" in section 4 of the Act only states that water-tax is included in the term; but it is necessary to amend it in order to make the effect of a sale of land for an arrears of revenue, that the same are included under land revenue. Section 4(1) has accordingly been amended.

7. ~~Proviso to section 4(1)~~. The definition of revenue due on land includes the items which, though connected with ~~land~~ land, cannot be recovered by the sale of the particular piece of land with which ^{they are} connected. They are therefore excluded. They will be re-included under section 52 of the Act as ~~other revenue~~ ^{from the definition}.

8. Section 5. Section 5 of the Act has been amended so as to read as follows: "The High Court in I. L. S. 8 of 191-2 after careful consideration held that the land should be sold free of all encumbrances."

meant the
revenue

the proposed section.

Sec. 2. Section 2 of the Act ^{will}
refers only to 'revenue due upon land, ~~which~~

revenue will be left out as not being
revenue due upon his land, and it may
be collected by a defaulter that there
is no collection in the Act for such

the words "due upon his land" in line 2 of the section.

It is proposed to make it applicable to other revenue.

It is inserted after the word "revenue".

the word "or otherwise" added after

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

"his land".

seal of clause (1) of section 19 of
the Act. The framers of the Act per-
haps presumed that the moneys collected
by each process server would be paid
to him. But as a matter of fact, this
has never been done. Process fees are
collected according to certain rates,
when processes are served by special
batteries, and constituted into a
fund, from which ^{these} fees are paid = fixed
salaries.

13. Sec. 12(2). In 1880 the then Govt.
pleader pointed out that the revenue
properly referred to in section 12(2) ^{of the Act}
was capable of actual seizure. The sec-
tion as drafted allowed of the defaul-
ter's revenue property generally be-
ing sold, but this was to be for the
benefit hereinafter provided. But the
subsequent sections provide only for
the sale of property distrained, and
no process ^{for the} attachment of debts or
choses-in-action of the defaulter is
provided by the Act. The Board re-
commended and the Government agreed that
the Act should be amended in this par-
ticular. The clauses ^{proposed to be added} have been taken
with certain alterations from the Ci-
vil Procedure Code. (vide sections 269,
272, 273 of Act VIII of 1882.)

14. Sec. 13. This makes a mere verbal
alteration.

15. Sec. 14. The proposed addition
has been taken from section 269 of the
Civil Procedure Code.

16. Sec. 15. The proposed addition

not available

6
... from sections 300, to
... of the Civil Procedure Code.

18. Sec. 13. The amendment in section
... of the Act follows that in section
... of the same. (vide para 11 above).

19. Sec. 14(1) Section 37 of the Act
permits the tender of "the full amount
of the arrears of revenue" etc. But it
is doubtful whether they include the
arrears which accrued between the date
of the sale notice and of the sale and
for which a demand notice has not been
issued; and whether the sale of land
should be stayed when the latter arrears
are not tendered. The proposed amendment
is intended to make this point clear;
and a similar amendment is proposed to
be carried out in section 42 also.

(vide section 15¹⁶ of the Draft Bill.)

20. Sec. 14(2). It has been held that
the word "sale" occurring in the proviso at
the end of section 37 of the Act in-
cludes a re-sale and that it is open
to the defaulter to tender payment of
the arrears up to sunset on the day pro-
ceeding ~~the~~ re-sale ^{of his land.} This is made clear
by the proposed explanation.

21. Sec. 15. A good deal of corres-
pondence has taken place on the subject
of the confirmation of sales for arrears
of revenue. It was at length settled
after consultation with the Deputy In-
spector General that under section 3 of the
Act of 1892 District officers
shall exercise the powers of the Col-

vol. 1, p. 1.

lector and that in such cases their
acts were subject to the fullest super-
-intendence, control and revision by
the Collector. It is proposed to ex-
body this ruling in the Act to prevent
any further ^{uncertainty} in the matter and
to lay down also rules as to when li-
-tigation begins to run in each case.
21. Sec. 16. The amendment of section
42 of the Act has already been adverti-
sed to. ~~It is only~~ ^{it is only}
necessary ^{to explain the addition of} the last
sentence of the proposed section 42.
This section, if amended as suggested,
will apply only to items of revenue
due on land; but there are certain
items in pattahs, such as fishery, rent,
which are not arrears due on land.
Hence if a distinction should be made
between sales ~~from~~ free of, and subject
to, encumbrances, it will be necessary
to have two pattahs one for revenue
due on land and the other for other
revenue. As this will greatly increase
work, it is proposed to meet the diffi-
culty by the following simple expedi-
ent, viz., to insert a statutory li-
-tigation at the end of section 42 to
the effect that any payments made by
defaulters shall be credited first to
revenue other than revenue due on land.
If there be any arrears under a pattah
it must, under these circumstances, be
an arrears of revenue due on land;
hence all sales for arrears under a
land revenue pattah will be free of

97 8/21/97

15

N.

When given for copying _____
 When copied _____ } 189
 When examined _____
 When signed _____

READ AGAIN G.O., No. _____ DATED _____
 189

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DITTO

PAPERS NOT FILED UP, BEING WANT FOR DESPATCH
 IN ORIGINAL

N.B.—

A = Copy in full.
 B = Not to be copied.
 P = Copy abstract only.
 Q = Copy heading only.