5-3-06.

Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 2519

DATED 15th June

[Despatch Abstract.]

Referring to the Advocate General for form of opinion letter from the Collr. of Vizagapatam soliciting orders relative to the procedure to be adopted in the recovery of the arrears due from the Mirasidars of the Mirasi estate.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Ms. 543 98							

O/18 4,000—1-7-97.

Revenue (1898) Department.

CURRENT No. 3134

Order

From

The Ag. Collector & Guardian
Vizianagram Samasthanam
Vizianagram
No. 330 Vizagapatam Dist.

Dated 18 Apl
Received 26 "
Registered 27 "
Enclosures 5
Spare copies.

SUBJECT.

Soliciting the orders of Govt. in the matter of the recovery of the arrears of rent due by the ryots of Merangky estate.

BACK PAPERS.

G.O.	No.	Department.	Date
I.L.R.	VI	Madras	
	VI	Madras	
	14	Madras	

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Samasthanam Revenue Office

No 203. Vizianagram 14th February 1898

From,

H. W. Gillman Esquire,

Ag. Collector and Guardian,

Vizianagram Samasthanam.

To,

W. O. Horne Esquire,

Collector, Vizagapatam District

Vizagapatam.

Sir,

With reference to the delivery of the charge of China Merangky Estate of this Samasthanam, I have the honor to state that the Vizianagram Circle Surveyor sent to Parvatipore to take delivery of the same from the Deputy Tahsildar, Parvatipore, reports that one Behara Suryanarayana Patrudu is intriguing with the ryots and instigating them not to execute mutchilakas, nor pay the rents due, and that he has succeeded in getting Kadapas of one village executed in his favor. He represents to the ryots that he is acting under the authority of a registered lease granted to him by this Samasthanam, this is of course untrue. He never attempted to assert such a claim during the several years that the Estate has been under

your,

your management. I therefore request you will be good enough to direct the Deputy Tahsildar, Parvatipore to see that the ryots attempts to do mischief are put a stop to at once, and that we are placed in peaceful possession of the whole Estate without any interference on the part of the above named Surya Narayana Patrudu.

Further, I shall also be obliged by your ordering the Deputy Tahsildar to transfer to this Samasthanam each individual lease executed to him by the ryots for the current Fasli so as to enable us to proceed under the Rent Recovery Act for the collection of Revenue.

I have the honor to be,

Sir,

Your most obedient Servant,

(Sd) H. O. Gillman

Ag. Collector & Guardian

Vizianagram Zamindary.

/True copy/

H O Gillman

Ag. Collector and Guardian

Vizianagram Zamindary

Memo regarding transfer of Kadapas & Vizianagaram Estate.

1. Act II of 1864, Sec 34 simply states that as soon as the arrears is realized the attachment should be withdrawn and the accounts rendered by the defaulter.

(2). It is significant that no provision is made in the act for the Collector doing anything to enable the defaulter to recover any arrears for past years or balance of any rents for the year during which attachment is withdrawn, in case the attachment is withdrawn in the middle of the year.

3. Even before Act VIII of 1865 was enacted the provisions regarding Landlords' duties & exchange or dispense with cowles and Kadapas with their tenants, and their inability to collect rents otherwise, were very stringent as would appear from the provisions of Regulations (vide Sec 14 Regulation XXV of 1802, Secs 3 to 38 of Reg XXVII of 1802, Reg XXVIII of 1802, Reg XXX of 1802, Reg IV of 1822, and Sec 2, 3 and 9 of Reg V of 1822. The case law on the subject is to be found in V Madras at 34, 6 Madras at 170, 14 Madras at 445. I.L.R.s

(4). And yet the Legislature made no provision

provision for any transfer of leases of the port now under consideration.

5. The Collector is no trustee for the defaulter and the Collector in taking up the Estate takes it up not on behalf of the defaulter but for himself for the realization of peishcush.

(6). In the present case when the Collector took up the Estate the Registered Proprietor was the Ex-Zamindar and the Maharajah of Vizianagram has obtained a decree for the same, subsequently Patnudu claims as a lessee here for the Vizianagram Estate and whatever the result of this litigation might be, he will have ground to complain that the Collector has played into the hands of Vizianagram Estate and this will involve the Collector in unnecessary litigation.

(7). The Vizianagram Estate can get exchange Cowles and Kadapas for the current fasli as there is yet remaining 4 months for the Fasli to end.

(8). It does not seem to be therefore expedient that the Collector should transfer any cowles to the Vizianagram Estate.

(Sd) A. Sriyanarayana
Pleader

/True copy/

/True copy/
[illegible]
Asst Collector & Guardian
Vizianagram Zamindary.

(Sd). R. Sriniah
for Asst Collector.

No 663.

Visagapatam Collector's Office,
Dated 5th March 1898.

From,

W. C. Horne Esquire,
Ag Collector, Visagapatam.

To,

The Collector and Guardian
Visiam Agraharam Samasthanam

Sir,

In reply to your No 203 dated 4th February, I have the honor to say that neither I nor the Deputy Tahsildar can do anything in the matter of the claim of Bekara Suryanarayana Patrudu. The Deputy Tahsildar has handed over the Estate to your representatives and the matter is one purely between the Samasthanam and the person named above.

(2). As regards the transfer of the Kadapas, I have the honor to say that I have consulted the Govt Pleader in the matter and enclose copy of his opinion. It appears to me that the proper course to pursue on behalf of the Samasthanam would be to tender cowles for the current Fash to the ryots and to proceed under Act VIII of 1865 on each tender in the events of the ryots declining to accept them. I regret that

I,

1892
REGISTRY DEPARTMENT
Document No 2
Current No 5149

I am unable in view of this opinion, to do what you wish.

I have the honorable,
Sir,
Your most obedient Servant.
(Sd) R. Sooriakow
For Ag. Collector

/True copy/.

H. W. Tillekeratne
Ag. Collector and Guardian,
Vizianagram Zamindary.

Samasthanam Revenue office

No 270. Vizianagram 28th March 99

From

H. W. Gillman Esquire,

Ag Collector and Guardian

Vizianagram Samasthanam

To,

The Collector,

Vizagapatam

Sir,

I have the honor to acknowledge receipt of your letter Dis no 663 dated 6th Instant, declining to accede to my request to transfer the Cattapas executed by the ryots of China Muragi Estate during the period of your management and enclosing copy of your Government pleader's opinion on the legal questions involved.

(2) The points for determination is the position in respect to the defaulter, of a Collector who attaches and manages a property for arrears. The Govt pleader says that the Collector, in such a case, holds the property independently of the defaulter for the realization of the arrears. I am advised that the Collector while entitled to appropriate the revenue derived from,

GOVERNMENT OF MADRAS
RECEIVED
1899

1899
RECORDS DEPARTMENT
Answered No.
Original No.

from the Estate, stands in the position of an Agent or trustee for the defaulter for its management.

(3). The Collector is bound by the provisions of Act II of 1864, to provide for the management of the attached property by appointing an Agent whose duty it is to collect the rents due or accruing and to furnish the collector with regular accounts. These accounts are open to inspection by the defaulter, at all reasonable times and the defaulter is entitled to damages for acts injuring him or the Estate.

(4). I cannot imagine how the position of the Collector can be considered to be that of an independent land holder, or how it can be distinguished from that of a trustee or agent. No doubt the act fixes the responsibility of management on the agent to some extent, but whereas, in the present instance, the agent appointed by the Collector is a subordinate of his own, I think any Court would attach the responsibility of an injury caused by an order of the Collector to the Collector and not to the Agent.

(5). For instance, you have refused to transfer, transfer to me the engagements entered into by the ryots in the past faslies during the management. Assuming for a moment, as you say, that the Govt is independent of the defaulter, the defaulter would not be able to enforce these engagements, and he would also fail in suits for unpaid arrears of past faslies for the reason that he had not himself tendered pattas within those faslies. It is not equitable that the defaulter should be unable to recover these arrears to which he is entitled, and I consider that his remedy would lie against Government for refusing to give him the authority to recover.

(6). There can be no doubt that the minor Maharajah of Vizianagram is entitled to the arrears of rent due to the defaulter. The late Maharajah of Vizianagram purchased the Estate and paid nearly all the arrears of peishcush due upon it up to the date of his purchase. Subsequently, the Zamindar of Merangky refused to act up to the terms of the sale and also failed to pay the arrears of peishcush due. The Collector therefore took possession of the Estate under Act II of 1864.

The,

The position of the Zamindar of Merangky is that of a trespasser in law. The late Maharajah could not take any steps for mutation of names in the Register of landed Estates in the Collector's office immediately after the sale as the Estate sold to him was a portion of an undivided Estate. When possession was demanded by him at the time of the partition, the Collector refused to give it to him because the vendor raised some disputes about the validity of the sale-deed. In consequence of this dispute, the late Maharajah was obliged to file a suit in the District Court, Visagapatam which was decided in his favor. Thus, the late Maharajah and his representative the present Minor Maharajah are entitled to all the Collections from the Estate from the date of purchase, whosoever might hein possession of the Estate. But the rent collected from the Estate have been utilized by the Collector for arrears of peishcush under a Statutary provision.

As regard the money, the present Maharajah has to recover it from the trespasser and others concerned. But as regards the arrears of rent left uncollected, the present maharajah

is,

is entitled to collect them as he stands in the shoes of the vendor and defaulter from the time of the sale prior to the date of default irrespective of the fact that no possession followed his sale-deed previous to, or, at the time of and in default in the payment of the peishcush due.

(7). Under these circumstances, I have the honor to enquire whether you will order the transfer of all Cattapas executed by the Vizna Merangky Estate rysts to the Deputy Tahsildar or whether you still adhere to your opinion already expressed.

I have the honorable,
Sir,
Your most Obedient, Servant,
(Sd). V. Ananthakow
Head manager
for Asst Collector and Guardian
Vizianagram Zamindar

/True copy/

Asst Collector and Guardian
Vizianagram Zamindary

No 1109.

Vizagapatam Collector's Office.
Dated 4th April 1898.
Dispatched. 6th April 1898.

From,

W. O. Horne Esquire,
Ag. Collector,
Vizagapatam.

To, The Collector and Guardian,
Vizianagram Samasthanam.

Sir,

"In reply to your No. 2 yd dated 28th march 1898, I have the honor to say that I regret I am unable to comply with your request."

I have the honor to be,
Sir,
Your most obedient Servt,
/sd/. R. Gowri da Row.
For Collector.

/True copy/.

H W Reeman
Ag Collector and Guardian,
Vizianagram Samasthanam

1898
Inward No. 4
Outward No. 3134
57 3/

Samastanam Revenue Office
Vizianagram 18th April 1898.

№330.

10

From,

M. W. Gillman Esquire, I. C. S.
Ag Collector and Guardian,
Vizianagram Zamindary.

To,

The Revenue Secretary,
to the Government, Fort Saint George,
Madras.

GOVERNMENT OF MADRAS
REVENUE DEPARTMENT

Sir,

In October 1893 the late Maharajah of Vizianagram purchased 1/4 share of the Estate of Merangky in this District which belonged to one S. Jagannadha Raju Garu. The latter did not however put the Maharajah in possession of this 1/4 share - known as Chenia merangky Munda, in accordance with the terms of the sale-deed, and the Maharajah had in consequence to sue him for possession in the District Court. The suit was decided in the Maharajah's favor in 1897.

(2). But during the pendency of the suit, the Zamindar, Jagannadha Raju Garu, fell into arrears in the payment of peishcush with the

8
SECTIONAL NUMBER
Number in Section 5
Date of Receipt 24/4/98

result that the Collector of the District took over management of the Estate under §28 of the Revenue Recovery Act. This was in 1894, and the Collector continued to manage the Estate till January 1898, when he handed it over to the Collector and Guardian of the Zamindary by virtue of the District Court's decree.

(3). I have asked the Collector of the District to transfer to me the engagements executed by the ryots to him, or to the agent appointed by him to manage the Estate for the current as well as the past fasles to enable me to take steps for the recovery of arrears due by the ryots.

(4). The Collector, relying on the advice of his Government Pleader, has refused to order the transfer of the ryots' engagements or Muchilakas, asserting that he assumed management of the Estate merely to recover the arrears of peishcush due to Government and that he is in no way a trustee or agent of the defaulter for the management of the property — in fact that during his management he held the Estate independant of the defaulter.

(5). I beg to solicit the orders of Government in,

in this matter. If a Collector managing the Estate of a defaulter is in the position of an independent Landlord, the defaulter on resuming possession of the Estate, cannot recover from the ryots on their engagements to the Collector or the Agent appointed by him under the Act. It may perhaps be possible for the defaulter to tender pattas to the ryots for the fasli in which he resumes charge, but how is he to recover the arrears of past fasles during which the Collector has had charge? He will not succeed in Civil Suits for rent for want of the necessary engagements between him and the ryots for the fasli to which the arrears relate.

(6). Secs 23-34 of the Revenue Recovery Act (II of 1864) which regulate the management of an Estate on behalf of Government for arrears of Revenue, hardly seem to give a Collector the independent position claimed. It is true that he is perfectly independent in regard to the appropriation of the Revenue, but in regard to the management of the property, his position seems hardly to differ from that of an agent or trustee for the defaulter. In

the,

the present case the Maharajah or his representa-
tive as the owner to whom possession has been
delivered on release of the property from
attachment seems to be entitled to enforce
the engagements entered into between the
Collector and the ryots during the period
of management, and the Collector is, I submit,
bound to assist him in recovering his
just dues.

(7). The difficulty in dealing with the ryots
in the present case arises from the fact that
the Maharajah had not previously been in
possession of the Estate and that the ryots
are unwilling to allow to him as they favor the
Ex-Zamindar, and are being instigated
by his agents to oppose our claims.
Probably the reason that a Collector's
position as Manager of a defaulters' Estate
does not seem to have arisen before
is that the defaulter and the person
receiving possession after cessation of
management have been the same
individuals who would generally have
no difficulty in dealing with his ryots.

(8) I,

(8). I enclose copies of my letters to the
Collector and of his replies.

I have the honor to be,
Sir,
Your most Obedient Servant,
H. Newman
Ag Collector and Guardian
Vizianagram Zamindary

30

1898
REVENUE DEPARTMENT.
Diary No. 6
G.O. Current No. 5439

Letter from the Collector and Guardian of Vizianagaram

Zamindari No. 330 (Cno 3137)
18-4-98

To Secretary

The late Maharajah of Vizianagaram purchased in 1893 from one Jagannadha Raju a certain estate known as China Meranghi Kunda; but the estate could not be registered in the name of the Maharajah as it then formed a part of the undivided Meranghi Estate. When this Estate was subsequently partitioned, the Maharajah demanded possession of the portion sold to him, but the Collector refused to give it to him as the Vendor raised some disputes about the validity of the Sale deed. A suit had in consequence to be filed in the District Court which was decided in the Maharajah's favour in 1897. In the meantime Jagannadha Raju fell into arrears of peishcush, and the estate

estate was attached and taken under the management of the Collector in 1894 under Sec 28 of Revenue Recovery Act (II of 1864). The attachment was withdrawn only in January 1898 and the estate handed over to the Guardian of the Vizianagaram Zamindari by virtue of the decree of the Ct. Court. It does not appear from the papers that the Collector has made the necessary changes in the registry of the estate.

2. When taking possession of the estate, the guardian understood that one Behara Suryanarayana Patrudu who represented himself as the ~~holder of the estate~~ [a registered lessee of] holder of the estate was intriguing with the ryots and instigating them not to execute muchilikas nor pay the rents to the Vizianagaram people. Thereupon Mr Gillman wrote to the Collector of the district

district requesting him to put a stop to the man's attempts to do mischief, and to transfer to the Zamindari the engagements executed by the ryots for the current fasli so as to enable the Zamindari people to proceed under the Rent Recovery Act.

3. The Collector on the advice of the Govt. Pleader has declined to comply with this request. The opinion of the Govt Pleader, as appears from his letter to the Collector, is that there is no provision in Act II of 1864 for the Collector's doing anything to enable the defaulter to recover arrears for past years a balance of rents during the year in which the attachment is withdrawn, that the Collector's assumption of the management of the estate is merely to recover arrears of peishcush and that he is in no way a trustee or agent of the defaulter. He also drew the attention of the Collector

Collector to the claim put forward by Suryanarayana Patrudu and expressed his opinion that if the engagements were transferred as requested by Mr Gillman, this man would have ground to complain that the Collector had played into the hands of the Vizianagaram estate and that it was therefore inexpedient to comply with Mr Gillman's request. The Guardian now comes up to Court for orders in the matter:—

4. It is true that Act II of 1864 does not provide for the transfer of engagements by the ryots when the Collector withdraws his management. But land is the defaulter or his transferee to recover arrears and balances due from the ryots. Woodman's digest refers to no case bearing on the point; but fairness and equity seem to require that the Collector should place the defaulter

defaulter or his transferee in a position to enable them to recover their just dues. They cannot recover arrears of rent from the tenants unless the Collector transfers the engagements as regards past years; as regards the current year. The Govt Pleader says that the ryots can enter into engagements with the ryots, but the latter may refuse seeing that they are already under engagements to the Collector.

5 If the view put forth in the previous para is correct, the Collector would be held responsible for any loss sustained, through his refusal, by the defaulter or his transferee; and it will not be safe for him to take up the position which he has assumed. As to the person to whom the engagements are to be transferred, it would seem that the Collector need recognize none but the registered proprietor and that they should be transferred to the person in whose

name the estate stands in the Collr's register.

RJ
2-6-98

Secy

It does not appear to be definitely stated anywhere that there are arrears of rent to be now recovered. When the Collr of Kolar attaches an estate for arrears of Revenue, it is submitted that he is responsible for taking every measure to collect each year rents in full & crediting them towards the arrears of revenue. As soon as the arrears of revenue are wiped off, the estate should be released from attachment. The Act does not seem to contemplate the possibility of the Collr realising only a part of the rents each year & often appears ~~appear~~ to provide for such a possibility only by regarding it as bad management.

Before coming to a decision on the question raised by Mr Gleiman, the Collr might be first asked to report whether any arrears of rent due from the tenants during the period of management remained unrealised at the time attachment was released & if so, why.

MG
8-6-98

H. M.

The view of the law taken in the above note is quite wrong. The Asst Collr in Virajpet has stated it quite correctly. The position of the Collr under as Manager under Act II of 1864 is that of a Statutory Manager appointed solely for the realization of the revenue. He has in no way the representation of the defaulter and is under no obligation to him. When he has collected the revenue due he is bound to close out

nan
reg
RS
2-6-

and to for from attach
the whole grain revenue
he is empowered to attach no
more than the arrear.

The Defendant executed
by the 2nd to the Collr. manager
an Irish mortgage to the Respdt
He cannot legally distrain or
attorn for them is no privity
of interest between the
Collr. manager and the proprietor
If the latter wants to realise
his debt he must tender
Petition and distrain on the
tenders as he can do under
the Act. The case in this way
never all rents not paid
to the Collr. or he can recover
thro. the Civil Court: or
the Rev. Court if he has
exchanged Petition & Schedule.
The matter first rise to a point
as to the position of the "Collector
of Veziamgram" but it has no
real bearing in this case
and need not be discussed.

4/6/98

Wrote 4/6/98.

I don't see how he can if any
arrear is due for fresh years. This
view of the law seems to be correct.
But if so there is a serious question
for a purely legal question & to
adv. Gen. and he asked for his
opinion.

6/6/98

Cuo 3137

Endorsement Nuc. no. 25 19/15-6-98.

Referred to the
Honble the Advocate General
for favour of opinion.

RS
11-6-98

13/6/98

(From orders)

To the Govt. Solicitor.

15/6/98

CS
10/6/98

When given for copying ——
When copied ——
When examined ——
When signed ——
} 189 .

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

CURRENT 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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