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MADRAS RECORD OFFICE.

Government Records.

Revenue Department.

G. O. (Printed).

Dated 7-5-1898.

No. 262

Original

Revenue (1898) Department.

CURRENT No. 1230

G.O. No. 2537. 5.28

From The Inam Commissioner
Madras.

Order

R.C. No. 878 of 1896

Dated 10 February 1898

Received 12 "

Registered 12 "

Enclosures 9 & 11.

Spare copies

SUBJECT.

Reporting on the opinion of the Acting Advocate General in regard to the revision of the Title Deed issued for the Inam village of Melapatta, Pattuk-kottai Taluk, Tanjore Dist.

Regd. 9 Feb 1898

BACK PAPER

G.O.	No.	Department.	Date.
	431		

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Report on Cir. 878 of 1896

From

The Honourable Mr. H. M. Winterbotham,
Ag. Inam Commissioner.

To

The Secretary to Government,
Revenue Department,
Madras.

Madras, 10 February 189

Sir,

With reference to Govern-
-ment Order No. 431 Mis, dated
27 January 1898, the enclosures
to which are returned as direct-
-ed, I have the honour to report
that the presumption of the
Acting Advocate General in
para 2 of his opinion appears
to be correct. In the Pattukottai
Taluk
T

-alnk alone (to which the Inam
nder reference belongs) twelve
instances have been found in
which the Inam Register shews
an Inam as Personal, whereas
the Quit Rent Register exhibits
it as Religious or Charitable.
The explanation is no doubt that
which the Acting Advocate
General in para 2 suggests.

2 In some instances the
Inam Register contains the
following remark in the
Inam Commissioner, Mr Taylor's
handwriting: —

"The grant being originally

a

a personal one though subse-
-quently alienated for a religious
object, the Inam must be
confirmed at one-eighth quit-
-rent"

3 Nothing whatever is forth-
-coming in the records to
evidence in any of the above
cases that there was a resump-
tion (either express or implied)
on behalf of Government
and a regrant as suggested
by the Acting Advocate-
General in para 3 of his opinion.

4

4. As between Government and the Mutt, or its alienees, it appears clear that the grant should be regarded, and hereafter treated, as a Personal one to which Government has no reversionary right. As the guardian of the present head of the Mutt is unwilling to accept a revised Title Deed it would seem sufficient merely to correct the Quit Rent Register with reference

reference to this correspondence, of which parties interested may be furnished with a copy.

I have the honour to be,

Sir,

Your most obedient servant

Ag. Inam Commissioner.

Read letter from the In
Commissioner, R.C.No.878 dated 10
February 1893 (C.No.1750).

- * -

N O T E .

The paper read above rel
to the title deed granted for the
village of Kolapettu in the Pattuko
tai taluk, Tanjore district.

The facts of the case are
briefly as follows.-

In 1828 the Inam Commissioner
granted to the Manager for the time
-ing of the Agora Siva Ohari Matha
title deed in which the village of
Kolapettu was recognised as a religious
endowment inam held for the support
the Matha and the inam was confirme
to the Manager and his successors --
"subject to the existing quit-rent o
Rs.281 per annum to be held without
interference so long as the condition
of the grant are duly fulfilled". It
having come to light that the Matha

Title deed.
Flag A

evision of the title deed alleging --
hat the inam was a religious and not
personal grant and that a reference
o the records produced before the Inam
ommissioner at the time of the inam -
ettlement would prove it. As accord-
ng to the Inam register no documents
ere produced to prove that the lands
ere originally granted for the sup-
ort of the Mattam, the Collector ---
ointed out that the objection put for-
ard by the Inamdar for the revision
f the title deed was not valid. The
nam Commissioner agreeing with the -
Collector submitted the case for the
rders of Government.

Thereupon the Government observ-
d as follows.- "The proposal to mo-
ify the terms of the religious ser-
vice inam deed already granted and is-
sue in lieu thereof a personal inam
eed would, if approved, only have the
ffect of conferring greater power on
he Inamdar over the inam than he pos-
esses at present. If so it is not --

Inam Commissioner's letter R.C.No 878/96.
& 12 June 1897
Flag F.

Gp. No 3889 & 26 July 1897.
Flag H.

clear why the Inamdar should object
the proposal. The point should be ex-
plained to him and his further wishes
in the matter should be ascertained &
communicated to Government". Vide G.O
No.3889 dated 26th July 1897.

Flag H.

In compliance with this order i
was reported by the Collector that th
guardian of the head of the Mattam (a
minor) objected to the revision of the
deed for the reasons

(1) that he intended to file Civil --
suits for recovering possession of
the inam lands from the present en-
-joyment on the grounds that the --
inam was a religious one and that
the alienation was invalid, and

(2) that the evidence to support the
intended suit would be lost if the
proposed alteration of the terms
of the title deed so as to make -
the inam a personal grant had been
carried out.

Collector's letter 2 & 19 Oct '97
Ref on C. No 742/97.
Flag G

The Inam Commissioner submitted
the Collector's letter with the follow-
-ing

Inam Commissioner's
endorsement & 16 Nov '97
Ref on C. No 878 & 879/1896.
Flag J.

following remarks.-

Paras 2 to 4 of Endorsement of the Inam Comr. 3/10 November 1897 Flag J.

" X X X In the Inam regis- ter the inam was treated as personal - and confirmed in the name of the Natta on a quit-rent of 1/8th assessment -- which, combined with the existing jodi of Rs.178-15-9 thereon, amounted to -- Rs.181. But in issuing the title deed the inam was treated as a religious - service inam the title deed also im- poses a quit-rent which is not imposed on religious service inams except on account of some defect in the title of the holders. In the absence of proof of any such defect the imposition and levy of the quit-rent supports the Inam register which treats the inam as per- sonal.

There are two contending parties in the case - one being the head of the Nattan in whose name the title deed was issued and the other being the persons at present in enjoyment by virtue of - purchase at a Court sale. The party in whose name the title deed was issued -

relies on the title deed and objects to its revision as a personal inam ti tle deed X X X. The present occu- pants, on the other hand, rely on the Inam register and object to the re- cumption of the inam on the ground -- that at the time of the inam settle- ment it was dealt with as a personal inam and enfranchised by the imposi- tion of a quit-rent and that absolute power of alienation was thereby con- ferred on the trustees.

It has to be decided whether - the Inam register or the title deed should prevail. As this is a question which is likely to be contested by re sorting to litigation, it seems ad- visable to take legal opinion before coming to any conclusion in the mat- ter".

G.O. No 6127 Dt 27 November 97 Flag L

The papers were accordingly forwarded to the Hon'ble the Advocate General for opinion. As regards the question whether the title deed al- ready issued can be revised, the ----

Para 1 of the Advocate General's opinion dt 22 December 1877. Flag S.

dvocate-General expressed the opi-
ion that the Inam register and the
itle deed corresponded to the judg-
ent and decree of the Civil Courts,
hat it was competent to the Inam Com-
issioner either of his own motion or
nder the direction of Government to
evoke a title deed already granted
hich was at variance with the Inam
register and issue a fresh title deed
in conformity with the register and
earing the same date as the title
eed which was revoked and that "in
analogy also to the principle of law
(vide Section 31 of the Specific Re-
lief Act) applicable to the rectifi-
cation of contracts and other instru-
ents between private parties, the
Inam Commissioner would be entitled
to rectify a title deed which owing to
a mistake does not express and carry
out what was really intended".

Act I of 1877.

In regard to the question whe-
ther the inam under consideration
should be treated as personal or re-
ligious

Para 1 of the opinion.

religious grant be observed as follows

"There can be no doubt that the in
ther (at the time of the Inam settle-
ment) was a part of the endowment of
the Mutt and held in trust for religi-
ous and other charitable purposes of
the Mutt but within the purview of th
inam rules and for the purposes of the
inam settlement the question is not --
whether at the time of the settlement
the inam was in fact a religious en-
dowment but whether it was originally
conferred by the State or some-body -
acting on behalf of the State with or
without authority as a Devadaya, Dhar
madaya or other charitable endowment
or whether it was conferred as a per-
sonal inam. Though the inam
was admittedly an endowment of the
Mutt at the time of the inam settlem
it was adjudged in the Inam register
as having originally been a personal
inam and in the possession of one A
manathien in 1603 and to have subse-
quently come into the possession of

10 16

the head of the Mutt by alienation. - Whether such alienation was by way of gift to the Mutt as was probably the - case or by way of purchase with the -- funds of the Mutt, in either case the character of the inam tenure would not be altered but the inam would only be converted into trust property held for the charitable purposes of the Mutt. As personal inam it was subject to a jodi of Rs.178-15-9 and though under its original tenure it was inalienable and therefore liable to resumption -- from the hands of the alienee yet under rule 7 of the inam rules the Government waived its right of resumption and allowed the alienee the benefit of rule 5 applicable to personal inams. X X X X. Accordingly the inam in question was enfranchised as a personal inam under rule 7 by the imposition of a 1/8th quit-rent amounting to Rs.34-0-3 in addition to the then --- existing jodi of Rs.178-15-9. The title deed therefore ought to have been ---

19 11

issued treating the inam as a personal inam and not as a Dharmadayam or religious inam".

page 1 of the Opinion dated 22 December 1897. Flag M.

As to the effect of the proposed amendment of the title deed, he remarked:-

"If the deed had been issued enfranching the inam as a personal inam, it would have become the freehold and absolute property of the Manager of the Mutt for the time being only in the sense that the Government in consideration of the -- quit-rent then imposed, relinquished - such rights, by way of reversion or --- otherwise, as would have belonged to - Government in the absence of such enfranchisement X X X X. The title deed cannot of course enlarge the power of alienation which the owner of inam for the time being may have according to - the ordinary law of the land applicable to him. If the personal inam had been converted into a religious endowment and impressed with trust the general law would, notwithstanding the

cue of the title deed enfranchising
e inam, restrain its alienation by
e trustee for purposes other than -
ose necessary or beneficial to the
ligious institution X X X. In the
esent case the inam appears to have
en alienated subsequent to its en-
anchisement in 1882 to two persons
the predecessor of the Mutt X X X.
between the present head or Manager
the Mutt and the aliences it is, in
opinion, perfectly immaterial whe-
her the title deed was issued enfran-
hising the inam as a personal inam -
r the title deed was issued, as in --
ct it was, confirming it as a reli-
ious inam. Even in the former case -
he alienation would not be binding -
pon the present head of the Mutt un-
ess the alienation was made for a --
ustifiable purpose binding on the -
utt or the aliences have acquired -
rescriptive title by limitation. The
roposed amendment of the title deed
reating the inam as a personal one -

instead of as a religious inam would,
as between the present head of the --
Mutt and the aliences, neither preju-
dice the former nor benefit the lat-
ter. But as between the crown on the
one hand and the Mutt or its aliences
on the other, it will have an import-
ant bearing. Under the existing title
deed treating the inam as a religious
endowment the crown has a right of re-
version in the inam which should en-
title it to resume the inam if the con-
dition of the grant, viz. the appro-
priation of the proceeds of the inam
to the religious purposes of the Mutt
is not duly fulfilled. X X X. This re-
versionary right of the crown in Dha-
rmadevaru, Dharmadevaru and other cha-
ritable inams has in no way been af-
fected by the inam rules or the title
deed issued thereunder X X X. In the
case of a personal inam which has been
enfranchised and which either prior to
or subsequent to the enfranchisement
has been dedicated by the Inamdar to

12
14E 12

Mutt or other charitable institution,
he crown has no manner of reversion-
ry right and in the absence of an in-
by the donor
ication to the contrary, the doctrine
of cypres will be applicable to the en-
dowment if the institution ceases to
exist. But if there is anything to in-
dicate that the donor intended the en-
dowment towards the maintenance of the
particular institution and not any --
kindred or other charitable institu-
tion, it will, on the failure of the
particular institution revert to the
heirs of the donor as personal inam".

Para 2 of the opinion 22 Dec 47
Flag N pp 4-5.

The Advocate-General pointed out
that if the case now in question was -
the only instance in which by mistake
the title deed was issued treating a
as religious inam.
personal inam, the mistake could be -
easily and legally rectified, but that
his impression was that this mistake
was a general one in respect of all --
personal inams which, at the time of
the Inam settlement, formed a religi-
ous endowment as in the present case.

17
2:3 15.

He added "The mistake was evidently
due to the fact that under the general
law, the inam as public, charitable or
religious trust property being inalie-
nable, the Inam Commissioner erroneous-
ly thought that it would be a violation
of such law to issue a title deed
treating the inam as a personal one,
and that the issue of a title deed in
that form would confer an absolute po-
wer of alienation."

Para 3 of the opinion 5-5-Flag N.

The Advocate-General also put
one view of the case under which it --
might be possible to uphold the action
of the Inam Commissioner in issuing a
title deed treating the inam as a re-
ligious endowment, viz. that the inam
might be considered to have been re-
scued by Government when the personal
inam was alienated by the grantee or
his descendants to a stranger and re-
granted to the alienee as a Devadayam,
Dharmadayam or other charitable inam,
subject to the payment of a nom jodi.
But he pointed out at the same time -

that there were more difficulties than one which should be overcome before such a view could be accepted.

In conclusion he observed "Though it will be quite legal for the Inam Commissioner to correct or amend the title deed in question and issue a fresh title deed in conformity with the Inam register notwithstanding the protest made on behalf of the present head of the Mutt, yet I have thought it right to draw the attention of Government to the different considerations adverted to above, because the Government might possibly consider it inexpedient to rectify the mistake in the present instance, if such a mistake was a general one and numerous title deeds similar to the one in question have been issued by the Inam Commissioner from time to time, the alienees in whose interests and in whose interests alone it is supposed that the mistake in the present instance has to be rectified, cannot as already

Para 3 of the opinion dt 22 December 97 page 7 - flag O

What he means is that if Govt. treat the inam as still "religious", how? save the Manager of the Mutt from the trouble of suing to set aside the alienation made by his predecessor - that alienation being invalid under the general law that it was in violation of the trust under which the personal inam is held.

But we cannot take this crooked course - if the inam is really personal - because it will save these & other religious institutions some trouble in combating improper alienations by existing or former Managers

Govt. No 431/27 Jany 98 flag P

Inam Commissioner's letter dt 10 Feby 1898. flag T

stated by me be benefitted by the proposed change, for even if the title deed had been originally issued as it ought to have been treating the inam as a personal one, it would not necessarily validate the alienation made in their favour by the then trustee or head of the Mutt."

The above opinion of the Advocate-General was referred to the Inam Commissioner for favour of remarks with reference to paras 2 and 3. In reply, the Inam Commissioner reports that the presumption of the Advocate-General in para 2 of his opinion is correct and that in the Pattukottai taluk alone (to which the inam under reference belongs) there have been twelve such cases. He also reports with reference to para 3 of the Advocate-General's opinion that there is nothing to show that in any of the above cases there was a resumption on behalf of Government and a regrant as suggested by the Advocate-General. He

He observes:-

"As between Government and the -- Mutt or its alienees it appears clear that the grant should be regarded and hereafter treated as a personal one - to which Government has no reversionary right. As the guardian of the present head of the Mutt is unwilling to accept a revised title deed, it would seem sufficient merely to correct the Quit-rent register with reference to this correspondence, of which parties interested may be furnished with a - copy".

3. It will be seen from the - above that the inam in question is a personal inam to which the Government has no reversionary right, that the - issue of the title deed for this inam in the form prescribed for charitable inams was a mistake, that the Inam -- Commissioner can legally correct or amend the title deed in question and issue a fresh title deed in conformity with the Inam register notwithstanding

the protest made on behalf of the present head of the Mutt (the Inamdar) & that as between the head of the Mutt - and the alienees it is immaterial whether the title deed already issued is modified or not. The question for consideration is whether in the above circumstances the title deed should be modified in conformity with the Inam register. The guardian of the present head of the Mutt being unwilling to accept a revised title deed, the Inam Commissioner is inclined to the view that it will be sufficient merely to correct the Quit-rent register, i.e., the register containing the counterpart of the title deeds issued. The - necessity for correcting the Quit-rent register without modifying the original title deed is not clear, but it - is probably intended that the Inam register and the Quit-rent register - should correspond. It is submitted - that the Inam Commissioner's view may be accepted seeing that several -----

Mistakes of the kind were made at the time of the Inam settlement, that the Government is not to be benefited in this case and that as between the head of the Mutt and the alienees it is immaterial whether the title deed is revised or not.

Sen
16/4/98. In addition it might be well to send the Mamlatdar a notice cancelling the original title deed & forwarding a corrected deed, by registered post.

The similar cases referred to may be dealt with as they come to notice. There seems to be no need to search them out.

Yes 8/4

Sen
Q-ref

Hm

The Inam Register stands: the Quitrent register may be altered; & a revised title deed to correspond with the real decision recorded in the Inam Register should be issued. The Manager should have notice of the cancelment of the old deed & ~~of~~ the revised deed sent to him by registered post

S.R.
25/4/98

Judgt

Read again C.J. 3889/26-7-97
— " " 6127/29-11-97
— — " 431/27-1-98.
— Cos. 1230 of 98 1/6/0

Mode C.O. (Press) No. 262 of 7th May 98.

The Court considers that ~~in addition to altering the~~ Sheriff's Quitrent Register ~~shall be~~ ~~required to~~ ~~compel the~~ ~~Commissioners~~ and that the titledeed already issued to the claimants should be cancelled and a revised deed to correspond with the ~~final~~ decision recorded in the Quitrent Register should be issued to the managers should be informed of the cancelment of the old deed and the revised deed, which should ~~also~~ bear the same date as the titledeed which is revoked, should be sent to him by post registered.

M.S.C. 17-7-98

the draft copy with enclosures } Mr. Despatches 11.5.98
copy to the Ad: Genl } Despatches 26.5.98

40/7

Note

Submitted that the Advocate General's opinion is an important one and that the G.O. may be printed.

Yes Proof to be submitted to Mr. Ie. Ie 6.5.98

2/5/98

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Government {1898} of Madras.

REVENUE.

Recd.	1898.	*Enclosures*
Regd.		*Spare copies*

G.O., No. 262, 7th May 1898.

MAY.

Title-deed.

Considering that the Quit-rent Register should be corrected and that the — already issued to the inamdar of Melappattu village, Pattukkóttai taluk, Tanjore district, should be cancelled and a revised one to correspond with the decision recorded in the inam Register should be issued.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—again the following G.O., Mis. No. 3889, Revenue, dated 26th July 1897:—

Read—the following letter from the Hon'ble Mr. C. S. CROLE, Inam Commissioner, to the Secretary to Government, Revenue Department, dated Madras, 12th June 1897, R.C. No. 878 of 1896:—

I have the honour to submit, for the orders of Government, the marginally-noted correspondence, in original, to be returned when no longer required.

From Collector, Ref. on Petition No. 1036-Rev. of 1894, dated 28th November 1896.
To Collector, R.C. No. 878, dated 12th December 1896.
From Collector, Ref. on Petition No. 1036-Rev. of 1894, dated 18th December 1896.
To Collector, R.C. No. 878 of 1896, dated 2nd February 1897.
From Collector, No. 2459-Rev., dated 26th May 1897.

2. For the entire inam village of Melappattu, in Pattukkóttai taluk, Tanjore district, an inam title-deed No. 292 was issued in the name of the manager, for the time being, of the Agorasivachari mattam. In the title-deed the inam in question was stated to be a religious service inam held for the support of the mattam, subject to the existing quit-rent of Rs. 261 to be held without interference, so long as the conditions of the grant should be fulfilled (*vide* title-deed enclosed in original). But in the inam register relating to the case, it was regarded as a personal inam which had come to the possession of the mattam by virtue of an alienation; the inam was enfranchised accordingly on a quit-rent of one-eighth of the assessment (*vide* copy of the inam register enclosed).

3. It having come to the notice of the local authorities that the mattam was not properly kept up and that the village of Melappattu, which had been granted, according to the title-deed, for the support of the mattam had been in the hands of alienees in spite of the usual notice to the enjoyers and to the manager to restore the charity, it was recommended that the inam should be resumed and patta issued in the names of the persons at present in enjoyment by virtue of alienation. To this recommendation the persons in enjoyment objected on the ground that the inam was a personal grant enfranchised by the Inam Commissioner by the imposition of a quit-rent and thereby conferring absolute power of alienation on the trustee and that the inam was held by them by virtue of purchase at a court-sale.

4. On a reference thereon by the Collector to me as to whether the inam should be treated as personal or religious, it was observed from the inam register that the inam was a personal inam, that it came to the possession of the mattam by alienation, and that it was consequently enfranchised at one-eighth of the assessment under rule VII of the inam rules. The title-deed issued in the form prescribed for religious service inams with the condition of service was, therefore, found to be a mistake which should be rectified with the sanction of Government, leaving it open to the persons interested in the service of the mattam, should the service fail, to resort to proceedings under the Civil Procedure Code as advised by the Advocate-General in his opinion communicated in G.O., No. 82, dated 11th January 1895. The Collector was, therefore, requested to report what objection the inamdar had to the revision of the title-deed. In reply, the Collector reports that the guardian of the minor trustee of the mattam objects to the revision of the title-deed, on the ground that the inam is a religious grant and, in proof

thereof, requests that the records produced before the Inam Commissioner at the time of the inam settlement may be referred to. But, from the inam register, it is clear that no documents were produced at the time of the inam settlement in proof that the lands were originally confirmed for the support of the mattam. The objection put forth by the inamdar is not, therefore, valid as remarked by the Collector.

Order—Mis. No. 3889, Revenue, dated 26th July 1897.

The proposal to modify the terms of the religious service inam deed already granted and issue in lieu thereof a personal inam deed would, if approved, only have the effect of conferring greater power on the inamdar over the inam than he possesses at present. If so, it is not clear why the inamdar should object to the proposal. The point should be explained to him and his further wishes in the matter should be ascertained and communicated to Government.

2. The Inam Commissioner is also requested to report, whether in the event of the inamdar not agreeing to the proposed modification of the deed, it would not be advisable to enforce its terms and resume the inam for non-performance of the conditions of the grant.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

To the Inam Commissioner, with enclosures (to be returned).

Read—again the following G.O., Mis. No. 6127, Revenue, dated 29th November 1897:—

Read—again G.O., Mis. No. 3889, Revenue, dated 26th July 1897.

Read—the following endorsement by the Hon'ble Mr. C. S. CROLE, Inam Commissioner on the following letter from J. ANDREW, Esq., Acting Collector of Tanjore, dated 19th October 1897, Ref. on Cur. No. 942—Gen. Rev.:—

In reply to your Ref. on Cur. No. 878 of 1896, dated 17th August 1897, I have the honour to state as follows.

2. As reported in paragraph 2 of Mr. Ayling's letter of the 26th May 1897, No. 2459, the inam lands attached to the Agorasivachari mattam at Melappattu are now in the enjoyment of two alienees, viz., Sathappa Chetti and Narayanasami Aiyar. The present head of the mattam is a minor, and Venkatrama Aiyar, his guardian, states that the inam is a religious grant as stated in the title-deed, that the alienation is not valid, and that he intends filing civil suits for possession of the inam lands against the present enjoyers on the strength of the title-deed, and objects, therefore, to the proposed alteration of the terms of the title-deed so as to make the inam a personal grant on the ground that, by doing so, this evidence to support the intended suit will be lost.

Endorsement dated Madras, 10th November 1897, Ref. on Cur. No. 878 of 1896.

Submitted to Government, with reference to G.O., Mis. No. 3889, dated 26th July 1897, the enclosures to which are returned as desired.

2. From the correspondence relating to the case, it will be observed that in the inam register the inam was treated as personal and confirmed in the name of the mattam on a quit-rent of one-eighth assessment which, combined with the existing jodi of Rs. 176-15-9 thereon, amounted to Rs. 261. But in issuing the title-deed the inam was treated as a religious service inam and confirmed in the name of the mattam to

be held without interference so long as the conditions of the grant were fulfilled. The title-deed also imposes a quit-rent which is not imposed on religious service inams except on account of some defect in the title of the holders. In the absence of proof of any such defect, the imposition and levy of the quit-rent supports the inam register which treats the inam as personal.

3. There are two contending parties in the case—one being the head of the mattam in whose name the title-deed was issued, and the other being the persons at present in enjoyment by virtue of purchase at a Court sale. The party in whose name the title-deed was issued relies on the title-deed and objects to its revision as a personal inam title-deed as reported by the Collector in the letter submitted above. The present occupants, on the other hand, rely on the inam register and object to the resumption of the inam on the ground that, at the time of the inam settlement, it was dealt with as a personal inam and enfranchised by the imposition of a quit-rent, and that absolute power of alienation was thereby conferred on the trustees.

4. It has to be decided whether the inam register or the title-deed should prevail. As this is a question which is likely to be contested by resorting to litigation, it seems advisable to take legal opinion before coming to any conclusion in the matter.

Order—Mis. No. 6127, Revenue, dated 29th November 1897.

The papers will be forwarded to the Honourable the Advocate-General for favour of opinion as to whether, in the circumstances of the case, it is open to Government to revise the title-deed granted to the mattam, treating the inam as a personal inam. The case is clearly stated in the Inam Commissioner's letter to Government, dated 12th June 1897, R.C. No. 878 of 1896, and his endorsement, dated 10th November 1897.

(True Extract.)

(Signed) G. S. FORBES,
Ag. Secretary to Government.

To the Advocate-General, with papers to be returned.

Read—again the following G.O., Mis. No. 431, Revenue, dated 27th January 1898 :—

Read—letter from WILLIAM MORGAN, Esq., Acting Government Solicitor, to the Secretary to Government, Revenue Department, dated Madras, 23rd December 1897, No. 843, forwarding with reference to the Order of Government, Mis. No. 6127, Revenue, dated 29th November 1897, the following opinion of the Advocate-General, Madras :—

OPINION.

The adjudication by the Inam Commissioner as to whether a certain holding is held on inam tenure, and if so, under what class of inam it falls, is recorded in the inam register; and the title-deed is issued simply to give effect to the adjudication. In other words, the inam register corresponds to the judgment in a civil suit, and the title-deed, to the decree therein. If the decree should be at variance with or not in conformity with the judgment, it is the duty of the Court either of its own motion, or on the application of any of the parties concerned, to amend the decree so as to bring it into conformity with the judgment (*vide* section 206, Code of Civil Procedure). Though the proceedings of the Inam Commissioner are not strictly judicial, yet in a sense they are quasi-judicial, and the same principle as that applicable to judgments and decrees of Civil Courts, viz., that the decree should be amended and brought into conformity with the judgment is applicable to the inam register and the title-deed. It is therefore competent to the Inam Commissioner either of his own motion or under the direction of Government to revoke a title-deed already granted which is at variance with the inam register, and issue a fresh title-deed in conformity with the register and bearing the same date as the title-deed which is revoked. In analogy also to the principle of law (*vide* section 31 of the Specific Relief Act I of 1877) applicable to the rectification of contracts and other instruments between private parties, the Inam Commissioner would be entitled to rectify a title-deed

which, owing to a mistake, does not express and carry out what was really intended. In the present case, the inam was treated and adjudicated upon as a personal Inam (*Bhatta vriti*) which by virtue of an alienation by a descendant of the original grantee was in the possession of the head or trustee of Aghorasivachari mutt at the time of the inam settlement in 1862. There can be no doubt that the inam then was a part of the endowment of the mutt, and held in trust for religious and other charitable purposes of the mutt. In this sense, it certainly was a religious endowment or inam, just as *taraf* land fully assessed which is held in trust for the purposes of a religious institution is a religious endowment given as inam by the donor. But within the purview of the inam rules and for the purposes of the inam settlement, the question is not whether at the time of the settlement, the inam was in fact a religious endowment, but whether it was originally conferred by the State or somebody acting on behalf of the State, with or without authority as a *Devadayam*, *Dharmadayam* or other charitable endowment, or whether it was conferred as a personal inam. Though the inam was admittedly an endowment of the mutt at the time of the inam settlement, it was adjudged in the inam register as having originally been a personal inam and in the possession of one Atmanathien in 1809, and to have subsequently come into the possession of the head of the mutt by alienation. Whether such alienation was by way of gift to the mutt as was probably the case, or by way of purchase with the funds of the mutt, in either case, the character of the inam tenure would not be altered, but the inam would only be converted into trust property held for the charitable purposes of the mutt. As personal inam it was subject to a jodi of Rs. 176–15–9 and though under its original tenure, it was inalienable and therefore liable to resumption from the hands of the alienee, yet under Rule 7 of the Inam Rules, the Government waived its right of resumption and allowed the alienee the benefits of Rule 5 applicable to personal inams (which at the time of the inam settlement continued in the line of the original grantee), but without giving him the option of refusal of enfranchisement. Accordingly the inam in question was enfranchised as a personal inam under Rule 7 by the imposition of a one-eighth quit-rent amounting to Rs. 84–0–3 in addition to the then existing jodi of Rs. 176–15–9. The title-deed therefore ought to have been issued treating the inam as a personal inam, and not as *Dharmadayam* or religious inam. If the deed had been issued enfranchising the inam as a personal inam, it would have become the freehold and absolute property of the manager of the mutt for the time being only in the sense that the Government in consideration of the quit-rent then imposed, relinquished such rights, by way of reversion or otherwise, as would have belonged to Government in the absence of such enfranchisement. If I remember right, the form of a title-deed in the case of a personal inam declares that when the inam is enfranchised, the person to whom the title-deed is issued is at liberty to alienate the same as he pleases. This means no more than that the previous restriction in favour of Government as to the right of alienation of the inam by the grantee or his descendants to a stranger is removed, and that so far as Government is concerned, the holder can, after the enfranchisement, deal with it as he pleases. The title-deed cannot, of course, enlarge the power of alienation which the owner of the inam for the time being may have according to the ordinary law of the land applicable to him. If the personal inam had been converted into a religious endowment and impressed with trust, the general law would, notwithstanding the issue of the title-deed enfranchising the inam, restrain its alienation by the trustee for purposes other than those necessary or beneficial to the religious institution. In fact, if a personal inam which has been enfranchised is owned by a Hindu having male issue governed by the law of the Mitakshara or by a Hindu widow, the person in whose name the title-deed is issued cannot alienate it except for purposes sanctioned by the Hindu law. In the present case, the inam appears to have been alienated subsequent to its enfranchisement in 1862 to two persons by the predecessor of the present head of the mutt who, it appears, is a minor. As between the present head or manager of the mutt and the alienees, it is, in my opinion, perfectly immaterial whether the title-deed was issued enfranchising the inam as a personal inam, or the title-deed was issued as in fact it was, confirming it as a religious inam. Even in the former case, the alienation would not be binding upon the present head of the mutt unless the alienation was made for a justifiable purpose binding on the mutt or the alienees have acquired prescriptive title by limitation. The proposed amendment of the title-deed treating the inam as a personal one instead of as a religious inam would, as between the present head of the mutt and the alienees, neither prejudice the former, nor benefit the latter. But as between the crown on the one hand and the mutt or its alienees on the other, it will have an important bearing. Under the existing title-deed treating the inam as a religious endowment, the Crown has a right of reversion in the inam which would entitle it to resume the inam if the condition of the grant, viz., the appropriation of the proceeds of the inam to the religious purposes of the mutt, is not duly fulfilled. According to the interpretation placed by the Crown from the earliest times upon grants made for the maintenance of a charitable or religious institution, the inam lapses to the Crown when the particular institution, for the maintenance of which the grant was made, ceases to exist or the endowment is not duly appropriated for the maintenance of that institution. The equitable doctrine of *Cypres* is therefore not applicable to these grants, and the courts cannot settle a scheme for diverting the inam to a kindred charitable institution, though no doubt they have their general jurisdiction to enforce, if necessary, by the

removal of an existing trustee and the appointment of a new trustee in his place, the appropriation of the endowment to the particular institution so long as it exists, and the Government has not resumed the inam. This reversionary right of the Crown in *Devadayams*, *Dharmadayams* and other charitable inams has in no way been affected by the inam rules or the title issued thereunder. The title-deeds simply confirm such inams on their existing tenure without enfranchising the same from the reversionary right of Government. In the case of a personal inam which has been enfranchised and which either prior to or subsequent to the enfranchisement has been dedicated by the inamdar to a mutt or other charitable institution, the Crown has no manner of reversionary right, and in the absence of an indication to the contrary by the donor, the doctrine of *Cypres* will be applicable to the endowment if the institution ceases to exist. But if there is anything to indicate that the donor intended the endowment towards the maintenance of the particular institution and not any kindred or other charitable institution, it will, on the failure of the particular institution, revert to the heirs of the donor as personal inam.

2. Is the case now in question the only instance in which by mistake the title-deed was issued treating a personal inam as religious inam? If so, the mistake can be easily and legally rectified. But my impression is that this mistake is a general one which has been made in respect of all personal inams which, at the time of the Inam Settlement, formed a religious endowment as in the present case. The mistake was evidently due to the fact that, under the general law, the inam as public charitable or religious trust-property being inalienable the Inam Commissioner erroneously thought that it would be a violation of such law to issue a title-deed treating the inam as a personal one, and that the issue of a title-deed in that form would confer an absolute power of alienation.

3. There is one view under which it might be possible to uphold the action of the Inam Commissioner in issuing the title-deed treating the inam as a religious endowment. When the personal inam was alienated by the grantee or his descendants to a stranger, then, according to theory, the inam was resumable by Government and could therefore be dealt with according to its pleasure. It would therefore be competent to the Crown to make a new grant of it to the alienee as a *Devadayam*, *Dharmadayam* or other charitable inam, and, in doing so, it might fix a new jodi. In this view though the existing jodi on the personal inam in question was Rs. 176-15-9, the effect of the title-deed would be a resumption of the personal inam and a re-grant of the inam as a religious endowment subject to the payment of a jodi of Rs. 261. But more difficulties than one present themselves which have to be overcome before such a conclusion can be accepted. I presume that the inam rules, dated the 9th August 1859 (*vide* Madras Act IV of 1862), were issued with the approval of the Secretary of State for India in Council. By the promulgation of rule VII the Crown relinquished its right of resuming inams by reason of their having been alienated from the line of the original grantee. On the 9th August 1859 the law in force as to the grant or appropriation of any part of the revenues of India was that laid down in sections 40 and 41 of Statute 21 and 22 Vict., Cap. 106. In 1862 when the inam in question was settled by the Inam Commissioner, the corresponding law in force was that contained in section 1 of Statute 22 and 23 Vict., Cap. 41, which was passed on 13th August 1859. This section empowers the local Government to dispose of all real and personal estate vested in Her Majesty within the limits of its Government, but the power is declared to be subject to such rules and restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting, might from time to time prescribe. The extent of the inam in question is about 629 acres, and whether it will be in accordance with such rules and restrictions for the local Government to make a grant of land of such value without the express sanction of the Government of India or the Secretary of State is a point on which I can express no opinion without a reference to the said rules and restrictions. The Inam Commissioner as such had no authority whatever either to resume an inam on behalf of Government or to re-grant it. Such action on his part would be altogether beyond the scope of his authority and jurisdiction. His authority was confined to the issuing of title-deeds in respect of existing inams by order of the Governor in Council on behalf of the Secretary of State for India in Council. Though it might be competent to the local Government to resume an inam which has lapsed, and notwithstanding rule VII, an alienated inam could be resumed with the consent of the alienee who might be willing to give such consent in consideration of a fresh grant of the land being made to him as a religious inam, yet it would not be competent to the local Government to make such fresh grant, if by reason of its value the sanction of a higher authority is needed under the said rules and restrictions. If personal inams of the kind in question had not been dealt with by the Inam Commissioner under instructions from Government, as *Devadayam*, *Dharmadayam* or other charitable inam in the title-deeds issued by him, but he did so on his own responsibility under a mistaken judgment, his action cannot be regarded as tantamount to a resumption by the local Government and a fresh grant made by it, even assuming that such fresh grant would be within the competence of the local Government. Though it will be quite legal for the Inam Commissioner to correct or amend the title-deed in question, and issue a fresh title-deed in conformity with the inam register notwithstanding the protest made on behalf of the present head of the mutt, yet I have thought it

right to draw the attention of Government to the different considerations adverted to above, because the Government might possibly consider it inexpedient to rectify the mistake in the present instance, if such a mistake was a general one and numerous title-deeds similar to the one in question have been issued by the Inam Commissioner from time to time. The alienees in whose interests and in whose interests alone it is supposed that the mistake in the present instance has to be rectified, cannot, as already stated by me, be benefited by the proposed change; for even if the title-deed had been originally issued as it ought to have been treating the inam as a personal one, it would not necessarily validate the alienation made in their favour by the then trustee or head of the mutt.

Madras,
22nd December 1897.

(Signed) V. BHASHYAM IYENGAR,
Offg. Advocate-General.

Order—Mis. No. 431, Revenue, dated 27th January 1898.

Referred to the Inam Commissioner for remarks with reference to paragraphs 2 and 3 of the Honourable the Advocate-General's opinion read above.

(True Extract.)

(Signed) G. S. FORBES,
Ag. Secretary to Government.

To the Inam Commissioner, with opinion and enclosures to be returned.

Read—also the following letter from the Honourable Mr. H. M. WINTERBOTHAM, Acting Inam Commissioner, to the Secretary to Government, Revenue Department, dated Madras, 10th February 1898, Ref. on Cur. No. 878 of 1896:—

With reference to G.O., Mis. No. 431, dated 27th January 1898, the enclosures to which are returned as directed, I have the honour to report that the presumption of the Acting Advocate-General in paragraph 2 of his opinion appears to be correct. In the Pattukkóttai taluk alone (to which the inam under reference belongs) twelve instances have been found in which the Inam Register shows an inam as personal, [illegible] as the Quit-rent Register exhibits it as religious or charitable. The explanation [illegible] that which the Acting Advocate-General in paragraph 2 suggests.

[illegible] instances the Inam Register contains the following remark in the [illegible]ioner, Mr. Taylor's handwriting:—

"[illegible]nt being originally a personal one though subsequently alienated for a religious [illegible]am must be confirmed at one-eighth quit-rent."

[illegible]thing whatever is forthcoming in the records to evidence in any of the [illegible]es that there was a resumption (either express or implied) on behalf of Gov- [illegible] and a re-grant as suggested by the Acting Advocate-General in paragraph 3 [illegible]pinion.

[illegible]. As betw[illegible]en Government and the mutt, or its alienees, it appears clear that [illegible]grant should be regarded, and hereafter treated, as a personal one to which Gov- [illegible]mer[illegible] has no reversionary right As the guardian of the present head of the mutt is [illegible]il[illegible]ng to accept a revised title-deed, it would seem sufficient merely to correct the [illegible]rent Register with reference to this correspondence, of which parties interested [illegible] be f[illegible]rnished with a copy.

Order—No. 262, Revenue, dated 7th May 1898.

Miscellaneous.

The Government considers that the Quit-rent Register should be corrected and that the title-deed already issued to the inamdar should be cancelled and a revised deed to correspond with the decision

recorded in the Inam Register should be issued. The manager should be informed of the cancelment of the old deed and the revised deed, which should bear the same date as the title-deed which is revoked, should be sent to him by post registered.

(True Extract.)

(Signed) G. S. FORBES,
Ag. Secretary to Government.

To the Inam Commissioner, with eight enclosures.
Copy to the Advocate-General.

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Extract No.

Clerk of Government

Letter of Government

Statement with plan.

Papers not filed with
in original

N.B. —
A = Printed in full.
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