

Revenue (1899) Department.

MISCELLANEOUS SERIES.

G.O., No. 104

DATED 6th January 99

[Despatch Abstract.]

Recording B.P. Communicating to Collectors
for information and guidance. C. G. forwarding
copies of decree and judgment ^{of the High Court} A. S. No. 126
of 1897 re: the sale of a mittah in Salem
for arrears of land revenue.

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
~~Marine~~ (1898) Department.

CURRENT No. 8583



From

Board of Revenue
Land Revenue

No. 325

Order this 12/10/98 7/6 Jan 99

Recorded

11/1/99

11/5/99

Dated 28. 11. 98

Received } 15th Dec. 98

Registered

Enclosures —

Spare copies —

To

The Board of Rev. L. R. Bd. 9-1. 99

16-12-98

RS

16-12-98

SUBJECT.

Communicating to the Collector of Salem and all other Collectors, for information and guidance, with Board's remarks, Government Order, Revenue Department, forwarding copies of decrees and judgments in Appeal Suit No. 126 of 1897 on the file of the High Court against the order of the District Court setting aside the sale of a mittah for arrears of revenue and sanctioning the fee of Rs. claimed by the Government Pleader for his appearance in the case.

BACK PAPERS.

FURTHER PAPERS.

REVENUE DEPARTMENT.

1898.

Board of Revenue
(Land Revenue),
MADRAS.

Printed December th.

Proceedings, No. 325, 28th November 1898.

NOVEMBER.

Communicating to the Collector of Salem and all other Collectors, for information and guidance, with Board's remarks, Government Order, Revenue Department, forwarding copies of the decree and judgment in Appeal Suit No. 126 of 1897 on the file of the High Court against the order of the District Court setting aside the sale of a mittah for arrears of revenue and sanctioning the fee of Rs. 330 claimed by the Government Pleader for his appearance in the case.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

Read—the following Government Order, No. 655, Revenue, dated 8th November 1898.

Read—the following letter from E. B. POWELL, Esq., Government Pleader, Madras, to the Secretary to Government, Revenue Department, dated 6th September 1898, No. 737:—

With reference to the Proceedings of Government, dated 30th June 1897, Mis. No. 3306, I have the honour to state that Appeal Suit No. 126 of 1897 preferred by me to the High Court against the decree and judgment in O.S. No. 18 of 1894 on the file of the District Court of Salem, came on for hearing on the 18th August and 2nd September 1898, and stood over for consideration till this day, when the judgment was delivered. The Court held that inasmuch as the arrears for fasli 1302 were tendered and accepted by the Tahsildar, there could not be a valid sale of the mittah for those arrears. The appeal was therefore dismissed with costs.

2. I have applied for copies of the decree and judgment, which will be forwarded on receipt.

Read—the following letter from E. B. POWELL, Esq., Government Pleader, Madras, to the Secretary to Government, Revenue Department, dated 31st October 1898, No. 999:—

In continuation of this office No. 737 of the 6th ultimo, I have the honour to forward herewith copies of the decree and judgment in A. S. No. 126 of 1897 on the file of the High Court, and to request that you will be so good as to obtain the sanction of Government for Rs. 330, being my full regulation fee on Rs. 9,000.

ENCLOSURES.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

TUESDAY, THE 6TH DAY OF SEPTEMBER 1898.

Present:

The Hon'ble Mr. Justice DAVIES and the Hon'ble Mr. Justice BENSON.

Appeal No. 126 of 1897.

The Secretary of State for India in Council

M. Rajah Goundar

Appellant (First Defendant).

Respondent (Plaintiff).

Appeal against the decree of the District Court of Salem in Original Suit No. 18 of 1894.

This appeal coming on for hearing on Friday, the 19th August, and Friday, the 2nd September 1898, and having stood over for consideration till this day, the Court delivered the following:

JUDGMENT.

The facts which it is necessary to notice in this case are as follow:—The revenue due on the plaintiff's mitta for fasli 1302 fell into arrear, and a portion of it was attached and advertised for sale, with the usual formalities. Some days before the date fixed for the sale the full amount (Rs. 2,766-4-0) of the arrear of fasli 1302, with interest and other charges, was paid

by the defaulter to the Tahsildar. Meantime, however, the revenue payable for fasli 1303 had become due, but had not been fully paid by the defaulter. The Collector, therefore, refused to stay the sale already advertised and sold the land in order to recover the arrears due for fasli 1303. The District Judge found that the sale was invalid and void, and against this decree the Secretary of State for India in Council appeals mainly, as we are informed by the learned Government Pleader, for the purpose of ascertaining the meaning of section 37 of the Revenue Recovery Act (No. II of 1864, Madras). The section runs as follows:—

"It shall be competent to the defaulter . . . to tender the full amount of the arrears of revenue with the interest thereon, and all charges which have been incurred in demanding the arrears or in attaching and managing the estate, or in taking the steps necessary for sale, and thereupon the sale shall be stayed."

The question for our decision is whether the words "the full amount of the arrears of revenue" mean the arrears of revenue on account of which the land was attached and the notice of sale issued, or include also arrears which accrued after the attachment and sale notice, but prior to the day of tender; in other words, whether, in the present case, the Collector was bound to stay the sale on payment of the arrears of fasli 1302 specified in the attachment and sale notices, together with interest and other charges thereon, or was justified in bringing the land to sale for the arrears of fasli 1303 without making any demand or attachment or issuing any sale notice in respect thereof.

We have no doubt but that the sale of the land was, in the circumstances stated, invalid and voidable at the option of defaulter.

There is nothing in section 37 or in any other section of the Act or even in the notices issued under the Act to justify the conclusion that the land when attached and advertised for sale for a specified arrear can, after that arrear has been paid up, be legally sold for subsequent arrears. The Act gives the Collector power to recover arrears in various ways, one of which is by attachment and sale of so much of the land as may be necessary, but the exercise of this power must be in accordance with the provisions of the Act. First, he must issue a demand in writing under section 25. If that is of no avail he may attach the land under section 27, and may either keep it under management (section 28) in order to recover the arrears out of the rents and profits, or may sell the land after due notice (section 36). In all these sections the wording of the Act is such as to show that the procedure laid down refers to "the arrears" for which the demand was made, the amount of which is specified in the notices of demand, attachment and sale. Then follows section 37 which gives the defaulter the right to pay up "the arrears" and charges at any time up to sunset of the day preceding the sale "and thereupon the sale shall be stayed." If it was intended that the sale should not be stayed unless all arrears subsequent, as well as prior, to the attachment had been paid, we should certainly have expected an explicit statement to that effect, especially as the section states in detail the various sums which have to be paid in addition to "the arrears." The simple addition of some such words as "up to date of tender" after the words "arrears of revenue" would have made the intention, if such there was, quite plain. We do not think that there is anything to justify the importation of such words. It is argued for the appellant that it is reasonable that the terms should be made more stringent the longer the default continues, and that though the defaulter might under section 35 obtain the release of the land from attachment by paying merely the arrears for which the attachment was made, he ought to be required to pay subsequent arrears also if he fails to take advantage of section 35 and allows the sale notice to issue. It is contended that the Legislature intended to indicate this further liability by the change in the language of section 37, that in the sections prior to section 37 and especially in section 35 reference is made simply to "the arrears," whereas in section 37 the words are "the full amount of the arrears" and that this change of phrase is intended to include subsequent arrears. We do not think that this is so. The words "the full amount" appear to be used merely to show clearly that a part-payment would be of no avail. The words "the full amount" are used in section 33 without any such special import being attached to them. If so considerable a further liability were to be imposed under section 37, we think that it ought to have been, and would have been, clearly expressed.

Again, it is argued that the security of the revenue is endangered unless we accept the appellant's interpretation of section 37, inasmuch as section 42 provides that the land shall be sold free of incumbrances, and that after liquidating the arrears the balance shall be paid to the defaulter who may also (section 43) collect the rents due up to the day of sale.

In reply to this it would seem to be enough to say that possible risk to the revenue from defective legislation is no sufficient reason for putting a strained construction on the Act, but we may also add that the risk appears to be unreal, for section 42 must be read with section 2 which lays down the fundamental rule that the land is the security for the public revenue, and there seems to be little doubt but that, in accordance with the doctrine of conversion, the sale-proceeds of land sold at a sale properly held under the Act would be liable for any arrears of revenue due on the land at the date of sale. That, however, is not the question before us. The question is whether the sale was a valid sale notwithstanding that the arrears for which the

land was attached had all been paid off prior to the sale. As already stated, we think that it was not valid. We observe that in section 13, clause 5 of Regulation XXVII of 1802 (superseded and repealed by Act II of 1864) provision was made in perfectly explicit language for the recovery of arrears falling due while land was under management of the Collector, and in section 43 of Act II of 1864 provision is made for the defaulter to recover rents due up to the date of sale of his land. The legislature, therefore, when passing the Act had that date prominently in view for certain purposes, and it seems to us unlikely that if they intended that land attached for one arrear should be sold after its payment for the satisfaction of other arrears falling due up to the date of the sale, they would not have expressed the intention in plain language.

We therefore confirm the decree of the Court below and dismiss this appeal with costs.

IN THE COURT OF JUDICATURE AT MADRAS.

TUESDAY, THE 6TH DAY OF SEPTEMBER 1898.

Present:

The Hon'ble Mr. Justice DAVIES and the Hon'ble Mr. Justice BENSON.

Appeal No. 126 of 1897.

The Secretary of State for India in Council ... Appellant (First Defendant).
M. Rajah Goundar ... Respondent (Plaintiff).

Appeal against the decree of the District Court of Salem in Original Suit No. 18 of 1894.

GROUND'S OF APPEAL.

I. The District Judge was wrong in the construction he has put upon section 37 of Act II of 1864.

II. The District Judge has attached no meaning whatever to the words "full amount of the arrears" which are used in this section for the first time.

III. If the land was properly brought to sale, section 44 of the Act authorises the sale for the subsequent arrears.

IV. The District Judge was wrong in holding that the sale of an unnecessarily large part of the mittah invalidates the sale, and justifies a Civil Court in setting it aside.

V. The language of section 44 is merely directory, leaving it entirely to the discretion of the Collector as to what portions of the estate shall be sold.

VI. Section 38, which gives the grounds on which a sale may be set aside, does not include an erroneous exercise of his discretion by the Collector under section 44.

VII. The District Judge was wrong in setting aside the sale.

DECREE.

This appeal coming on for hearing on Friday the 19th August and Friday the 2nd September 1898, upon perusing the grounds of appeal, the judgment and decree of the Lower Court and the material papers in the suit, and upon hearing the arguments of the Government Pleader on behalf of the appellant and of Mr. P. S. Sivasami Aiyar, Vakil for the respondent, and the case having stood over for consideration till this day, this Court doth order and decree that the decree of the Lower Court be, and the same hereby is, confirmed and this appeal dismissed, and this Court doth further order and decree that the appellant do pay to the respondent Rs. 558-15-0 for his costs in opposing this appeal.

Memorandum of Costs.

						RS.	A.	P.
Respondent's (plaintiff's costs)—								
Stamp for vakalatnama	...	...	...	...	...	2	0	0
Stamp for application	...	...	...	...	...	0	1	0
Pleader's fee (allowed)	...	...	...	...	...	200	0	0
Printing charge, translation charge	...	...	...	...	...	356	14	0

To be paid to the respondent (plaintiff) by the appellant (first defendant). 558 15 0

Order—No. 655, Revenue, dated 8th November 1898.

Miscellaneous.

Communicated to the Board of Revenue for information.

2. The fee of Rs. 330 claimed by the Government Pleader for his appearance in the case is sanctioned.

(True Extract.)

(Signed) N. E. MARJORIBANKS,
for Secretary to Government.

To the Board of Revenue (Land Revenue), with judgment and decree and enclosures.

„ the Accountant-General.
„ the Government Pleader.

RESOLUTION—No. 325, dated 28th November 1898.

Communicated to the Collector of Salem and all other Collectors for information and guidance.

2. The Board observes that in section 14 of the draft Bill to amend Act II of 1864 which is now under the consideration of Government, it has been proposed to amplify section 37 by inserting the words "due on the date of sale whether such arrears have been demanded under section 8 or section 25 or not" after the words "to tender the full amount of the arrears of revenue" occurring in that section. If this amendment passes into law, lands attached and advertised for sale for a specific arrear will be legally liable to sale for subsequent arrears.

(True Copies and Extract.)

Acting Secretary.

To the Collector of Salem, with copies of judgment and decree and a file of records returned.

„ other Collectors.
„ the Secretary to Government, Revenue Department.

Exd. S. A. S. Raghaviengar.

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

READ AGAIN G.O., No.
189 ,

DATED

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, BRING MEANT FOR DESPATCH
IN ORIGINAL.

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