Revenue (1899) Department.

MISCELLANEOUS SERIES.

G.O., No. 1454

DATED 22 april 99

[Despatch Abstract.]

Stating that the Govt declines to grant the request of the petitioners Kaniambra Elaya Nair & others for exemption from the payment of the value of the Arjithampatam nilam and that the terms of the interest bond executed in 1876 for Rs 4000 in favor of Govt must be enforced.

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
~~Local & Munl.~~ (1899) Department.

CURRENT No. 67

From

The Board of Revenue,
Land Revenue,

Order

No. 6/ Ref

Dated 2nd January 1899

Received 4th ..

Registered 5th ..

Enclosures 1 file of papers. (17 mall)

Spare copies

SUBJECT.

Submitting for the orders of Govt. with remarks a petition presented by the Kannambra Nayar's tarwad to the Deputy Collector appointed for the registration of jenmam titles praying for the remission of the Rs. 4000/ payable under an interest-bond and for the registration of certain land as their jenmam and requesting the Collector of Malabar to report the dates on which the Rs. 46[illegible]-12-4 shown against faslis 1302-7 in the Tahsildar's statement was paid by the petitioners.

BACK PAPERS.

G.O.	No.	Department	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Office of the Board of Revenue
(Land Revenue)
Dated 2nd January 1899.

Read letter from G.W.Dance, Esquire, Collector of Malabar, to the Secretary to the Commissioners of Land Revenue, Ref. on C.No. 42/Confl. '98, dated 29th April 1898.

And the following Reference thereon No.629, dated 8th June 1898.

From para 8 of the Special Deputy Collector's office-note dated 17th July 1897 it appears that the actual jenmam value of the Ayithampatam nilom after allowing for deductions on account of the Kanom amount (Rs.345) and incidental abatement (Rs.1949) is given in the interest bond as Rs.1708. If this statement is correct, the principal amount that should equitably be remitted in favour of the Kannambra Nayar's Tarwad will be Rs.1708 and not Rs.4000, the remaining Rs.2292 payable under the interest bond must represent the balance of the Jenmam value due on the date thereof in respect of the 26 other items of land sold by Government. Further, the interest already paid under the bond is stated to be nearly Rs.3000 in para 6 of the above letter and in para 8 of the office-note of 17 July 1897 quoted above; while according to para 4 of the later office-note dated 20th December 1897, it is over Rs.3000. The exact amount paid should be reported. Assuming that it is exactly Rs.3000, the portion paid in excess on the Rs.1708 to be remitted comes to Rs.1281. The total amount, both Principal and interest, to which Government appears to have no claim thus comes to Rs.1708+1281 or Rs.2989. The Collector is requested to report if this is correct.

2. Again, the sum of ~~Rs.~~ Rs 3000 paid by the Kannambra Nayar represents the interest due for 15 years only, whereas 21 years (1876-77 to 1896-97) have already elapsed from the date of the interest bond. The interest due for the remaining 6 years on the Rs.2292 which are clearly payable under the interest bond comes to Rs.687-9-7.* If this be set off against the sum of Rs.2989 mentioned in the preceding para, the net amount to be remitted will be reduced to Rs.2301-6-5.

*
100 1 year 5
100 6 years 30
2292 Do. $\frac{30}{100} \times 2292$
$\frac{6876}{10} = 687-9-7$

Read also letter from F.C.Parsons, Esquire, Acting Collector of Malabar, to the Secretary to the Commissioners of Land Revenue

Ref.on C.No.42/Confl.,dated 21st August 1898.

And the following Reference thereon No.1140,dated 8th October 1898.

Referred to the Government Pleader.

2. (a) In 1804 a portion of a piece of land known as Azhinjampatam Nilom in the Palghat taluk and covering a seed-area of 15 paras escheated to Government. In 1809 the land was demised on Kanom to one ~~Samee~~ Shanu Pattar who transferred his interest therein to the Kannambra Nayar's tarwad in the same year. In 1852 Kannambra Nayar was called on by the Sub-Collector of Malabar to point out the land covered by the lease; but on his failing to do so, that officer had a plot of about equal extent measured out of another land called the Ayithampatam Nilom which was then in the possession of the Nayar and issued a renewed kaichit (lease) in respect of it. Again in 1864, the Deputy Collector appointed to settle escheats called on the Nayar to show the Azhinjampatam Nilom originally demised to him; but as he was unable to do so, that officer took the whole of the Ayithampatam Nilom covering a seed area of 150 paras to represent the escheated Azhinjampatam Nilom and sold it together with twenty six other items of land to the Nayar for a net value of Rs.11,000 after allowing for a deduction of Rs.2880 from the gross value of all the lands (Rs13880) on account of the kanom amount, value of improvements and incidental abatement. The gross value of the Ayithampatam Nilom was ~~paid~~ fixed at Rs.4000. The Nayar then petitioned the Deputy Collector and the District Collector in May 1864 and May 1865 respectively, pointing out that the above mentioned land belonged in jenmam to his Tarwad and that the escheated Azhinjampatam Nilom which was demised to Samu Pattar in 1809 was actually in the possession of the Kongot Tarwad and had also been sold to it by Government for Rs.1000; but the protest was fruitless.

(b) The Jenmam right over 100 paras (or 2/3rds) of the Ayithampatam Nilom in fact belonged to the Maramittath Nambudripad; its right, therein and in another piece of land covering a seed area of 68½ paras having been attached in execution of a Civil Court's decree in the year 1875, the Kannambra Nayar petitioned the Tahsildar to take steps to protect his title to the first mentioned land as vendee of Government. But the petition having been rejected and the claim subsequently advanced in the Civil Court on the strength of the purchase of the jenmam right from Government having also been disallowed, the Nayar himself purchased the jenmam right over the two lands at the Court sale for Rs.2400.

(c) In the meantime ~~of~~ the purchase money due to Government in respect of all the 27 items of land was being gradually paid; and for the balance of Rs.4000 that was due on 11th November 1876, Kannambra Nayar executed an interest bond in favour of Government undertaking, on behalf of himself and his heirs, to pay an interest of Rs.200 per annum, in addition to the annual assessment of the lands, pending the discharge of the principal debt. The Collector states that the interest due up to date has been paid by the Nayar.

(d) In 1896, Kannambra Elaya Nayar and the other members of his Tarwad presented a petition to the Deputy Collector appointed for the registration of Jenmam titles under Madras Act III of 1896, alleging (1) that the Jenmam right to the Ayithampatam Nilom sold to their Tarwad had never belonged to Government but that the right to a portion thereof had descended to them by inheritance and that the right to the remaining portion was purchased from the Maramittath Nambudripad at a Court sale held in 1873 and (2) that the escheated Azhinjampatam Nilom had gone into the possession of the Kongot Tarwad by right of encroachment before 1852 and was at the time of the escheat settlement sold ~~by~~ to it by Government and requesting that as, even if the 2nd allegation is not correct Government is only ~~a~~ entitled to the value of 15 paras or 1/10th of Rs.4000 (the gross value of the 150 paras in the Ayithampatam Nilom) and as they had already paid Rs.3000 by way of interest under the bond dated 11th November 1876, they might be exempted from the payment of the principal debt and registered as Jenmies of the 27 items of lands. The Deputy Collector has after local inspection come to the conclusion that the Jenmam right to the Ayithampatam Nilom did not belong to Government and thinks that he has been able to identify the escheated Azhinjampatam Nilom with a piece of land in the possession of the Kongot Tarwad. The Collector accordingly recommends that excluding about * Rs.950 which may be said to represent the correct amount due from the Kannambra Nayar to ~~Go~~ Government at the time of execution of the interest bond, the remaining Rs.2950 paid by him up to date under the terms of the interest bond may be refunded to his Tarwad on the assumption

*

	On account of the undisputed 26 items	On account of the 27th item now in dispute	Total
Total gross value as fixed at the Escheat Settlement ...	Rs. 9880	Rs. 4000	13880
Deductions on account of Kanam	588	343	931
Deduct also incidental abatement as distributed with reference to the gross value after ~~after deducting Kanam~~ debt	1399	550	1949
Deducting Kanam debt	1987	893	2880
Purchase money payable to Government	7893	3107	11000
Add to the value payable for the 26 items the difference bet. the Jenmam value of 15 paras of Azhinjampatam land (calculated at $\frac{15}{150}$ × 4000 or Rs. 400) & the Kanam amount Rs. 343	57		
Total amount correctly payable	7950		
Deduct amount paid before the date of the interest bond	7000		
Net amount	950		

that no interest would be charged for the money due to or from him and that the claim to the principal debt mentioned in the bond may also be waived by Government. He adds that this should be done as a matter of grace inasmuch as the Nayar having once agreed to admit the Jenmam right of Government is now estopped from denying it.

3. The Government Pleader is requested to favour the Board with his advice as to whether the petitioner's (Kannambra Nayar's Tarwad's) claim to relief is legally sustainable at the present date and if so, to what extent. His attention is, in this connection, invited to the fact that, according to the entries appearing against item No.27 in the schedule to the Interest bond, the net value payable for the Ayithampatam Nilom is only Rs.1708. The principal amount payable to Government for the remaining 26 items according to the strict letter of the bond therefore comes to Rs.4000-1708 or Rs.2292 and the interest payable thereon up to date is Rs. $\frac{2292}{4000} \times 3900$ or Rs.2234 7/10. The excess payment (by way of interest) of Rs.3900 minus Rs.2234 7/10 (or Rs.1665 3/10) and the interest× thereon amount to but little more than the principal debt of Rs.2292 strictly due; and the petitioners have, it is presumed, no legal claim to anything more than the remission of the principal debt of Rs.4000 and the registration of their names as the jenmies of all the 27 items of land conveyed by the interest bond.

×about Rs 858

Read also letter from the Government Pleader, Madras, No.1105, dated 23rd November 1898, submitting his opinion as to whether Kannambra Nayar's claim to certain relief is legally sustainable at the present date.

Reference No. 1 , dated 2nd January 1899

The Board submits for the orders of Government the papers read above which relate to a petition presented by the Kannambra Elaya Nayar and other members of his tarwad to the Deputy Collector appointed for the registration of jenmam titles praying (a) for the remission, on the ground of absence of consideration, of the value of the Ayithampatam nilam or Rs.4000 which corresponds to the principal debt payable by them under the interest bond executed in favour of Government in 1876 in respect of this & 26 other items of land & (b) for the registration of the said land as their jenmam.

2. The facts of the case~~s~~ are as follow:-

(a) In 1809, an escheated land known as Azhinjampatam nilam in the Rishinaradamangalam desam of the Palghat Taluk and covering a seed area of 15 paras (1.34 acres) was demised on kanom to one Samu Pattar who

transferred his interest therein to the Kannambra Nayar's tarwad in the same year. In 1852, the Nayar was called upon by the Sub-Collector of Malabar to point out the land covered by the lease; but on his failing to do so, that officer had a plot of about equal extent measured out of another land in the Nayar's possession called the Ayithampatam nilam and lying in the Kannambra Desam and issued a renewed kaichit (lease) in respect of it. Again in 1864, the Deputy Collector appointed to settle escheats required the Nayar to point out the land originally demised to him; but as he was unable to ~~to~~ do so, that officer took the whole of the Ayithampatam nilam covering a seed area of some 150 paras (or 13.54 acres) to represent the missing escheated land and sold it, together with twenty six other items of land, to the Nayar for a net price of Rs. *11000 after allowing for a deduction of Rs.2880 from the gross value of all the lands (Rs.13,880) on account of the kanom amount, value of improvements and incidental abatement. The gross value of the Ayithampatam nilam was fixed at Rs.4000. On this occasion the Nayar protested, but unsuccessfully, against the sale of the last mentioned land to him by Government on the grounds that it belonged in jenmam to his tarwad and that the escheated Azhinjampatam nilam originally demised in 1809 was then actually in the possession of the Kongot tarwad and had been sold to it by Government for Rs.1000.

*

	Ayithampatam land Rs.	26 other items of land Rs.	Total Rs.
Gross value	4000	9880	13880
Deductions on account of Kanam	343	588	931
Incidental abatement			1949
Total deductions			2880
Net value			11000

(b) In 1873, when the janmam right over two-thirds of the Ayithampatam nilam or 100 paras which in fact belonged to the Maramittath Nambudripad (the kanom right was vested in the Kannambra Nayar) and the same jenmi's right to another piece of land measuring 68 ½ paras were attached in execution of a Civil Court's decree, the Kannambra Nayar petitioned the Tahsildar to take the necessary steps to protect his title to the former item of land as vendee of Government. But the petition having been rejected and the claim preferred to the Civil Court on the strength of the purchase of jenmam right from Government having been also disallowed, he himself purchased ~~th~~ the jenmam right over both the lands, at the Court sale held in 1874, for Rs.2400.

(c) The purchase-money due to Government in respect of all the 27 items of land was being paid off gradually; and for the balance of Rs.4000 that was outstanding on the 11th November 1876 the Nayar executed an interest-bond in favour of Government undertaking on behalf of himself and his heirs, to pay interest at the rate of 5 ※ per cent per annum, in addition to the annual assessment of the lands, pending the discharge of the principal debt. The Collector states that the interest due up to the end of fasli 1307 amounting to Rs.3900 × has been paid by the tarwad but that, of this amount, the Tahsildar has not been able to trace the credit of Rs.80 in the accounts of 1888.

※ reduced to 4 p.c. from the latter half of the year 1886

	Rs.
× Interest due for the years 1877 to 1885 & for the first half of 1886 at Rs. 200 per annum	1900
Interest due for the second half of 1886 & for the years 1887 to 1898	2000
	Rs. 3900

3. In 1896, the Kannambra Elaya Nayar and the other members of his tarwad presented a petition to the Deputy Collector appointed for the registration of jenmam titles under Madras Act III of 1896 praying for exemption from the payment of the value of the Ayithampatam nilam or Rs.4000 which corresponds to the principal debt payable under the interest-bond and for the registration of their names as jenmies of the nilam on the following grounds:-

(1) The jenmam right to the Ayithampatam nilam sold to their tarwad had never belonged to Government but the right to one-third portion thereof had descended to them by inheritance and the right to the remaining two-thirds was purchased from the Maramitwath Nambudripad at the Court sale held in 1874.

(2) The escheated Azhinjampatam nilam, in the place of which the entire Ayithampatam nilam was sold to them by Government, had gone into the possession of the Kongot tarwad by right of encroachment before 1852 and had been sold to that tarwad by Government at the time of the escheat settlement.

(3) Government was in any case entitled to the value of 15 paras only or to 1/10th of Rs.4000 (the gross value of the Ayithampatam nilam measuring 150 paras) but the petitioners had already paid Rs.3000 by way of interest under the bond dated 11th November 1876.

4. The Deputy Collector has after local inspection and enquiry, come to the conclusion that the Ayithampatam nilam is in no way connected with the escheated Azhinjampatam nilam originally demised in 1809 and that the two lands are situated in different desams and are far apart. He thinks that he has been able to identify the latter nilam with a piece

of land now in the possession of the Kongot tarwad. He has, nevertheless, registered the Ayithampatam nilam as Government jenmam, subject to the Collector's orders on this petition. The Collector considers that in the circumstances set forth above the Kannambra Nayar is equitably entitled to, and may, as a matter of grace, be granted the remission of the principal debt and the refund of the interest of Rs.3900 paid thereon after deducting Rs.950 ⊗ which as will be seen from the marginal table may be taken to represent the correct amount due from the Nayar to Government at the time of the execution of the interest bond. The refund of the remaining Rs. 2950 is proposed on the assumption that no interest should be charged for the money due from or to the Nayar.

⊕

	The undisputed 26 items Rs.	Amount relating to the 27th item or the Ayithampatam nilam now in dispute Rs.	Total Rs.
Total gross value as fixed at the time of the escheat settlement	9880	4000	13880
Deductions			
(i) on account of Kanam	588	343	931
(ii) On account of incidental abatement distributed with reference to the gross value after deducting the Kanam debts	1399	550	1949
Total deductions	1987	893	2880
Net value or purchase money payable to Government	7893 ~~7893~~	3107	11000
Add to the value of the 26 items the difference between the Janmam value of the 15 paras of Ayithampatam land originally selected by the Sub. Collector of Malabar ($\frac{15}{150}$ × Rs. 4000 or Rs. 400) and the Kanam amount, Rs. 343	57		
Total amount correctly payable	7950 ✓		
Deduct amount paid before the date of the interest bond	7000 ✓		
Balance	950 ✓		

5. In view to make sure of the strictly legal aspect of the case, the Board referred the matter to the Government Pleader for favour of advice as to whether the petitioners' claim to relief is legally sustainable at the present date and, if so, to what extent. In his opinion read above, that officer states that any suit that may now be instituted by the petitioners to set aside the transaction evidenced by the Interest bond on the ground of either fraud or mistake will clearly be barred under articles 95 and 96 of schedule II to the Limitation Act as they have acquiesced in it from 1864-5 or at all events from 1874, the date of the Court sale of the Ayithampatam nilam and that if they seek to recover any of the money already paid under the Interest bond on the ground of mistake, their suit will be governed by article 62 of the Limitation Act which only allows three years from the time the money is received.

6. Although according to the Government Pleader's

opinion the Nayar would not be entitled to recover the amounts overpaid by him up to three years before the date of suit and although according to the same authority any such suit by him would fail on principles of equity as well as of common law, yet the Board doubts whether in a case of this nature Government would insist on its legal rights. Possibly Government will agree with the Board that it is desirable to place the Nayar in the position in which he would have been but for the mistake made by the officers of Government. In other words, he may be considered to have been indebted to Government at the date of the interest bond, in the sum of Rs.950 only, as shown in para 5 above: and the subsequent payments made by him may be reckoned as having gradually discharged this debt with the interest due thereon. On this calculation, the debt would have been extinguished at the end of the sixth year when a balance of Rs.87-4-8 would have been left to the Nayar's credit. This sum and the payments subsequently made by him up to 1898 inclusive i.e. Rs.2787-4-8 in all may be refunded to him, without interest which is not usually paid by Government on sums refunded by it. The above proposals imply the remission of the principal debt due by the Nayar on the interest bond viz. Rs.4000 and the registration of the 27 items of land in the name of the Nayar's tarwad.

x x x x x x x x

Lionel Davidson

Ag. Secretary.

To

The Secretary to Government, Revenue Department, (paras 1-6) with the Collectors letters and enclosures & the Government Pleader's opinion ~~& appended statement~~ in original to be returned and appended Statement.

To

The Collector of Malabar. (para 7 only)

Md.E.H.

XVI

Years	Principal Rs	Interest Rs	Total debt Rs	Amount paid Rs	Balance Rs
1876	950				
1st year 1877	950	47½	997½	200	797½
2nd year 1878	797½	39 7/8	837-6-..	200	637-6-..
3d year 1879	637-6-..	31-13-11	669-3-11	200	469-3-11
4 year 1880	469-3-11	23-7-5	492-11-4	200	292-11-4
5 year 1881	292-11-4	14-10-2	307-5-6	200	107-5-6
6 year 1882	107-5-6	5-5-10	112-11-4	200	87-4-8
Amount paid in respect of the instalments which fell due in subsequent years up to 1898				2700	2700
				3,900	2787-4-8

Note. The entries made in red ink represent the amount left to the Nayar's credit.

Lionel Davidson

Ag: Secretary.

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859

17
67

$\frac{D}{4}$ 1,000—8-4-97.

REVENUE DEPARTMENT.

C No. 67

From the Board of Rev. Land Rev

Ref. No. 1 Dated 2. 1. 1899.

Re: an application from one Kannambara Elaya Nayar for the cancellation of an interest-bond &c.

Para 2 of Board's Reference $\frac{1}{2-1-99}$ (current)

Paras 2 (3 & 4) of Collector's report d/ 29-4-98

Para 2 of Spl D.C's affi[illegible]note d/ 17-1-99

vide Sir W. Robinson's order quoted in full in para 2 of Mr. Dance's letter d/ 29.4.98

II

FOR ORDERS.

To the Under Secretary

The facts of the case which are fully stated in the Board's Reference are as under:-

2. In 1809 a piece of ~~land~~ escheated land known as the Azhinjampatam Nilam, covering a seed area of 15 paras was demised by Govt on Kanom to one Sharma Pattar who transferred his interest therein to Kannambara Nayar's tarwad in the same year. In 1852 the then Sub-Collector of Malabar, Mr (afterwards Sir William Robinson, called on the Nayar to point out this land. This the latter was unable to do, and, as all trace of the land had been lost at the time, Mr Robinson had another piece of land sowing the same extent of seed (15 paras) marked, the "Eitampatam" nilam (a [illegible]

land in the occupation of the Nayar as an equivalent of the missing field. In 1864, when the jannam right in escheated lands was being sold by Government, the ~~again~~ escheat Dy Collr. called upon the Nayar to point out the land and on the latters' being unable to do so, took the whole of ~~concluded that~~ the Aiyithampatam Nilam in the occupation of the Nayar to represent the escheated land ~~[illegible]~~ demised to Shamu Pattar in 1809 ~~[illegible]~~ and sold to the Nayar the jannam right of this land ~~of~~ and of 26 other escheat items for Rs 13,880, that of the Aiyithampatam Nilam being taken at Rs 4,000; the Kanom amount, value of improvements and incidental abatement (in respect of the 27 items) amounted to Rs 2,880, and the net amount payable by the Nayar was fixed at Rs 11,000. In thus taking the whole of the Aiyithampatam Nilam as identical with the land marked out by Mr Robinson, the escheat Dy Collector appears to have failed to notice that the former covered a of 150 paras, that of as well as of the Azhinjampatam

FOR ORDERS.

I can find nothing on record to show that the Escheat Deputy Collr. in 1864 proposed to be dealing with the land marked out by Mr. Robinson — The Depty Collr. was appointed to ferret out escheated lands & to make the best he could out of the Govt. Claims — I can find nothing on record to show on what evidence he proceeded

W.S.
8-4-99.

vide para 4 of Mr. Varghese's office note dy 17. 7. 97 III

vide para 3(1) of Bd's Ref No. 1 dy 2.1.99 (Current).

Paras 3 & 7 of Kannakara Nayar's petition dy 12-7-96 VI

Para 5 of the Spl D.C's office note dy 17-7-97 III

Nilam leased out by Govt in 1809, was only 15 paras. The Nayar appears to have protested ~~[illegible]~~ ~~[illegible]~~ against the inclusion of the land in the sale urging ~~[illegible]~~ that the escheated land demised in 1809 was then in the possession of the Kongot tarwad and that the Govt had sold its jannam right therein to this tarwad for Rs 1000. It would seem that of the 150 paras of Aiyitampatam Nilam the jannam right in one third or 50 paras was ~~[illegible]~~ vested in the Nayar at the time of the sale by the Dy Collector and that in the remaining two-thirds in a Nambudripad. The right in this two-thirds was attached in 1873 in execution of a Civil Court's decree against the Nambudripad, and the tahsildar whom the Nayar petitioned to protect his title to the land as the vendee of Govt having rejected his application, the Nayar who held the ~~[illegible]~~

FOR ORDERS.

Kanom right in the land was obliged to buy in the Jammam right also at the Court sale. Meanwhile the purchase money of the 27 items sold by Govt was being gradually paid off and on 1. 11. 76, the balance amounted to Rs 4,000. For this amount the Nayar executed in 1876 an interest bond in favour of Govt undertaking ~~on behalf~~ on behalf of himself and his heirs to pay interest at the rate of 5⊗ p.c. per annum in addition to the annual assessment of the lands pending discharge of the principal debt.

para 7 ibid

⊗ reduced to 4 p.c from 1886

3. With its Reference read above, the Board of Rev. submits for orders correspondence relative to a petition presented in 1896 to the Dy Collr for the registration of Jammam titles in Malabar by Kammambara Edaya Nayar and the other members of his tarwad, praying for exemption from the payment of the value of the Ayithampertam Nilam i.e. [illegible],

VI

i.e. ~~or~~ Rs 4,000 which corresponds to the principal debt payable to Govt under the interest bond, and for the registration of their names as Jammis of the said Nilam. The grounds on which the petitioners make their claim are:—

vide paras 51-72 of petition of 12.7.96.

(i) that the jammam right to the said land, which was sold to their tarwad in 1864 by Govt, had never belonged to Govt, but that the right to one-third portion thereof had descended to them by inheritance while ~~their~~ the right to the remaining two-thirds, which at the time of the sale by Govt was vested in the Marimittath Nambudripad, was acquired (by them) by purchase at the Court-sale in 1874;

paras 40-42 of petition ibid.

(ii) that the escheated Azhinjampatam Nilam, in the place of which the whole of the Ayithampatam Nilam was sold by Govt, had (~~[illegible]~~) gone into the possession of the Koyot tarwad and was ~~having been~~ sold to the latter ~~it~~ by Govt at the time of the escheat settlement and (iii) that the Govt was in any case entitled to the value of only 15 paras or to one-tenth of Rs 4,000 (the gross value of the Ayithampalam Nilam measuring 150 paras), and that the petitioners had already paid Rs 3000 by way of interest under the bond dated 11. 11. 76.

paras 5 of petition *ibid*

VII

In a later petition dated 2. 7. 98, Kannambara Elaya Nayar prays for the refund of the extra amounts paid by him under the interest bond.

4. The Dy Collr. Mr Verghese, who inspected the localities and conducted the necessary inquiries into the matter, has come to the conclusion that the Azhinjampalam Nilam is in no way connected with the Ayithampalam Nilam taken over and sold by Govt in lieu, ~~and~~ and that the former nilam does not appear to have in fact ~~form~~ ever formed part of Kannambara Desam, ~~and~~ He thinks that he has been able to identify the former with a piece of land in the possession of the Kongot tarwad and situated in Mannapra Desam, far apart.

vide appendices A + B to the Dy Collr's Office note of 3-1-98

III

vide map (detached).

IV

vide paras 5 of Appendix A to the D.C.'s Office note of 3. 1. 98.

III

Vide Appendix B *ibid.*

III

He is of opinion that the land cam into the possession of the Kongot family by encroachment in th first instance and that the possess was subsequently confirmed by the purchase of the janmam right from Govt. The piece of land ~~[illegible]~~ marked out by Mr Robinson has, with reference to the extent, description of boundar and natural marks, been locate by the Dy Collr at the South-west bit of the Ayithampalam Nilam in the Kannampra Desam. The extent of the bit is given as 1. 34 acres and that of the whole of the Ayithampalam Nilam as 13. 54 acres. The Dy Collector therefore believes the petitioners' contention that the land demise by Govt in 1809 and that ~~[illegible]~~ marked out by Mr Robinson i 1852 as its equivalent covered only a seed area of 15 paras, that by the mistake of the officers of Govt the whole of the Ayithampalam Nilam ~~as~~ covering a seed area of 150 (or ten times ~~[illegible]~~ t belonging to the ta

Why this assumption? Is it not for the petitioners to prove the mistake rather than for the Govt officers to prove there was no mistake? N

~~[illegible] Govt has been~~ was sold ~~by Govt~~ in lieu and that the petitioners' representation deserves favourable consideration. The Collector of Malabar ~~recommends~~ in submitting the Dy Collr's report for orders observes:– "8. The present Kannambara "Nayar requests that the demand "still outstanding against him "for the balance of the purchase "money amounting to Rs 4,000 may "be remitted. Even if he was "not able to surrender to Govt "in the first instance a land to "which the Govt had no right; it "is clear that he was afterwards "made to purchase an extent "ten times as large and to the "surplus the Govt could have "had no claim under any cir- "cumstances.

"9. I think it would be "equitable to remit the balance "outstanding against the Nayar "and to refund the interest he "has paid thereon + + +"

10. The Govt Pleader to whom the case was referred for the [illegible], considers that any action

vide paras 8 & 9 of letter dt 29.4.98

II

I

para 6 of Bd's Ref No. 1 dt 2.1.99 (current).

on the part of the petitioners either to set aside the transaction evidenced by the interest bond on the ground of mistake or fraud, or to recover the money paid under the said bond on the ground of mistake will clearly be barred by the Law of Limitation. The Board of Revenue however doubts whether in a case of the kind the Govt would insist on its legal rights and suggests that it is desirable to place the Nayar in the position in which he would have been but for the mistake made by the Officer of Govt; or in other words, (i) to consider him as having been indebted to Govt at the date of the interest bond ~~corresponds~~ in the sum of Rs 950 only as per particulars noted below and to reckon the subsequent payments made as having gradually discharged this debt with ~~the~~ interest; (ii) to refund to him the excess payments made by him under the bond (iii) to remit the principal debt due by th and (iv) to order the ~~[illegible]~~ registration of the 27 items of land sold in 1864 in the name of the Nayar's tarwad.

Particulars of the debt due by the Nayar on date of interest bond.

	Amount relating to		
	The undisputed 26 items. Rs	The 27th items or the Ayittamapalam vilam, in dispute. Rs	Total. Rs
Total gross value as fixed at escheat settlement.	9,880	4,000	13,880.
Deductions.			
(i) On account of Kanom	588	343	931
(ii) On account of the incidental abatement distributed with reference to the gross value after deducting the Kanom debt.	1,399	550	1,949
Total deductions	1,987	893	2,880.
Net value or purchase money payable to Govt.	7,893	3,107	11,000.
Add to the value of the 26 items the difference between the Janmam value of the 15 paras of Ayittampalam vilam originally selected by ~~the~~ Mr. Robinson ($\frac{15}{150}$ × 4,000 or Rs 400) and the Kanom ~~[illegible]~~ amount, Rs 343.	57		
Total amount correctly payable	7,950		
Deduct amount paid before the date of the interest bond.	7,000		
Balance	950		

of the The Board of revenue

Mann that on this calculation that

the

Para 6 of Bd's Ref. (current).

the debt would have been extinguished at the end of the sixth year when a balance of Rs 87-4-8 would have been left to the Nayar's credit, and that this sum together with the subsequent payments which amount to Rs 2700 without interest or Rs 2787-4-8 in all may be ordered to be refunded to him.

Orders are requested.

vide statement in file VII

vide para 4 of Mr. Varghese's Office note of 9. 8. 98 & also statement flagged B in file marked II

6. Regarding however the sum of money reported to have been paid to Govt by the Nayar since the date of the interest bond, viz, Rs 3,900, it may be noted that the statement of payments filed by the Nayar has been verified by the Tahsildar who reports that a sum of Rs 3820 has been duly credited in the accounts, but that he cannot trace the credit of a sum of Rs 80 shown in the Nayar's statement as having been paid in 1888. The Nayar himself has not filed the receipts ~~to~~ for the payment of ~~Rs 3820~~ the amount in quest

~~[illegible]~~ Mr Vurgese thinks that the ~~se~~ nayar will be able to produce it ~~receipts or other vouchers~~. Pending production of a proper voucher for the payment of this sum, the amount entered as repayable to the Nayar should, it is submitted, be reduced by Rs 80.

7. There is also some difficulty in fixing the jamman value of the ~~Aiyithamp~~ Aiyithampatam Vilam, less deductions allowed. In the statement appended to the interest bond the settlement value of the Aiyithampatam Vilam (item 27) is given as Rs 4,000, deductions made on account of improvements &c as Rs 2292, and the net amount of purchase-money payable as Rs 1,708 (Rs 4,000 - 2292 = Rs 1708). In his office-note of 9-8-98, Mr Vurgese explains that the sum of Rs 2292 allowed as deduction represents Rs 343, Kanom amount, and Rs 1949, incidental abatement, and that this latter fm ~~what~~ was intended to re- man t the deduction to be made

II

Para 1(a) of office note dt 9-8-98

II

made from the total jamman value of the 27 items, viz Rs 13,880, and not from the value of the 27th item alone (Aiyithampatam Vilam), viz Rs 4000. In support of this view, he invites attention to the arrangement of figures in a deposition of Kannambara valiya Nayar given before the Dy Coll., S. Division, on 6 June 1864, ~~f~~ which shows that the deduction ~~to~~ was made from the total amount of Rs 13,880.

Para 1(b) ~~ibid~~ (c) ibid

Kannambara Elaya Nayar who was called upon by the Dy Coll. (Mr Vurgese) to furnish whatever explanation he had to offer in regard to the entries in the interest bond against item No. 27, is stated to argue that apart from the Kanom amount of Rs 343, there was no valuable improvement, such as conversion of dry into wet or Kuzhikkoor to be allowed for, that there was no necessity to reduce Rs 4,000 by so large a sum as Rs 19 that this amount should in fairness be deducted from the aggregate settlement value of all the 27 items. Mr Vurgese thinks that the Elaya Nayar's ~~of~~ argument is sound & that when the interest-bond of 1876 was prepared, the significance of the arrangement of the figures in the deposition of 1864 was lost sight of, and by a clerical mistake, or for the sake of convenience, the amount of Rs 1949 was added to the Kanom amount of Rs 343 and shown as a deduction against item 27 alone. The Board of Rev: ~~accepts~~ would seem to accept the Dy Collr's Conclusion. ~~[illegible]~~ Is the Conclusion to be accepted by Govt? If it is not to be, the amount payable to Govt on the date of the interest bond in 1876 ~~would~~ will be increased by Rs 1399 (x); i.e., it should be taken at ~~Rs 1349 950 of 1399~~ Rs 2,349, ~~and not~~ and not Rs 950 ~~as~~ as it is ~~[illegible]~~ proposed to be taken by the Board; ~~[illegible]~~

What ~~[illegible]~~

Here again pure assumption

Me

x ~~1949~~ Total deduction	1949
Amount of above distributed among the 26 items	1399
Amount deducted from item 27	550
	1949

2 Asst

(1) On this supposition, namely that at the date of the interest bond in 1876 the sum owing to the Govt was Rs 2349, ~~[illegible]~~ is anything owing to Govt now?

~~[illegible]~~

(2) How was it that the protests of the Nayar made in 1864 & 1865 immediately after the alleged mistake of the Govt officer in settling his Jenm, proved fruitless & what is the explanation offered for having kept quiet for 30 years despite the occurrence in 1873 when his claim as Govt rendee was rejected?

Me
12/3/88

FO. 21. S.

~~To [illegible]~~

A sum of Rs 28 – 2 – 7 will still be due from the Nayar

~~[illegible]~~ ~~of the debt~~: please see statement annexed in which the calculation is worked out

(2) The reports a

16

before Govt do not give any information in the matter. ~~[illegible]~~ The present inquiry appears to have been set on foot by a petition presented ~~[illegible]~~ to the Dy Collr for the registration of Janmam titles in Malabar.

WS
17.3.99
RS
20-3-99

vide para 1 of Mr. Vergese's office-note of 17. 7. 97

Secy

Having regard to the interest bond executed in 1876, I would submit that it is for the petitioners to prove clearly that the action of the Govt officers in 1864-5 & 1873 was wrong & not for the Govt to seek about for explanations for what appears inexplicable in the records at this length of time; & it is the latter course that Mr Vergese has seen fit to adopt.

Submitted that no proof that the orders of 1864-5 & 1873 were wrong appears & that [illegible] of the bond of 1876 departed from the

22/3/99

29/3/99

1.

In its statement of the facts the Board, following the Collector, would seem to have accepted many of the allegations of the petitioners without sufficient verification.

2. In the record submitted to it the ~~Board~~ Govt can find nothing to show that the Escheat Deputy Collector in 1864, when he sold as escheat the 150 paras of land now called Ayitham pâdam professed to be dealing merely with the 15 paras of land accepted by Mr. Robinson in lieu of the 15 paras demised to Shâmu Pattar in 1809.

3- One of the chief duties of the Escheat Deputy Coll- was to discover such lands as ought to have escheated & had not been brought to account, and it appears incredible that an officer of Mr- Canaran's great experience in the work should have overlooked the fact that the item he claimed on behalf of Govt was ten times the area of the plot ~~demis~~ accepted by Mr- Robinson as an equivalent of that demised to Shama Pattar

or that the then Karanavan of the Kannambra tarwad should have acquiesced in the Claim unless he was conscious that it rested on something better than the said transaction -

It would seem much more probable

that Mr- Canaran based the Claim on some evidence other than that alleged by the petitioner, and unless the record of the Escheat Deputy Collector's proceedings (not submitted) contains convincing evidence to the contrary Govt. is not prepared to accept the view that the ~~his~~ Claim which he preferred to the land was wholly devoid of foundation —

4. In any event, Considering the vast field which the escheat enquiry covered, and the number of claims dealt with, it would furnish a most undesirable and embarrassing precedent ~~to re-open~~

4

into title — # to permit a fresh enquiry ^ to be opened in respect of a case settled thirty five years ago — The protests made at the time were (so the Collector reports) rejected, and it is not to be assumed that they were rejected without grounds — The Govt. must decline to go behind the bond executed in 1876, and its terms must be enforced —

H.S.—
8-4-99—

For U.S

Please see draft below

RS
15/4/99

Secy
12/4/99

Statement showing the amount due and paid by the Nayar since the date of the Interest bond

	Year	Principal			Interest			Total debt			Amount paid			Balance			Remark
1	1877	2349	..	..	~~[illegible]~~ 117	7	2	2466	7	..	200	..	..	2266	7	2	5 p.c interest
2	1878	2266	7	2	113	5	2	2379	12	4	200	..	..	2179	12	4	
3	1879	2179	12	4	108	15	10	2288	12	2	200	..	..	2088	12	2	
4	1880	2088	12	2	104	7	..	2193	3	2	200	..	..	1993	3	2	
5	1881	1993	3	2	99	10	7	2092	13	9	200	..	..	1892	13	9	
6	1882	1892	13	9	94	10	3	1987	8	0	..	..	..	1987	8	0	
7	1883	1987	8	0	99	6	..	2086	14	..	200	..	..	1886	14	..	
8	1884	1886	14	..	94	5	6	1981	3	6	400	..	..	1581	3	6	
9	1885	1581	3	6	79	1	..	1660	4	6	200	..	..	1460	4	6	
10	1886	1460	4	6	65	11	5	1525	15	11	200	..	..	1325	15	11	5 … for 1 … 5 + 4 p… for 2nd hal…
11	1887	1325	15	11	53	..	10	1379	..	9	..	..	..	1379	..	9	
12	1888	1379	..	9	55	2	7	1434	3	4	220	..	..	1214	3	4	4 p.c interest
13	1889	1214	3	4	48	9	1	1262	12	5	..	..	..	1262	12	5	
14	1890	1262	12	5	50	8	2	1313	4	7	320	..	..	993	4	7	
15	1891	993	4	7	39	11	8	1033	0	3	--	--	--	1033	0	3	
16	1892	1033	0	3	41	5	1	1074	5	4	92	5	8	981	15	8	
17	1893	981	15	8	39	4	6	1021	4	2	..	..	..	1021	4	2	
18	1894	1021	4	2	40	13	7	1062	1	9	..	..	..	1062	1	9	
19	1895	1062	1	9	42	7	9	1104	9	6	..	..	..	1104	9	6	
20	1896	1104	9	6	44	2	11	1148	12	5	67	10	4	1081	2	1	
21	1897	1081	2	1	43	3	11	1124	6	0	529	6	8	594	15	4	
22	1898	594	15	4	23	12	7	618	11	11	590	9	4	28	2	7	

Note. For a list of payments made by the Nayar, please see statements flagged B and D.

In the above calculation a sum of Rs 80 entered in the Nayar's statement as having been paid in 1888, but for which no corresponding entry is found in the Tahsildar's statement, has been omitted.

Ep 274/99

Read B.R. Ref no 1 of 2-1-99
Case 67

G.O. Ms No 1454 of 22 April 99

It appears to Govt that the Board of Rev following the Collector in its statement of the facts has accepted many of the allegations of the petitioner without sufficient verification.

2. In the records submitted to ~~Govt~~, ~~it~~ (it the Govt) can find nothing to show that the escheat Dy Collector in 1864, when he sold as escheat the 150 paras of land now called Ayitham padam professed to be dealing merely with the 15 paras of land accepted by Mr Robinson in lieu of the 15 paras demised to Shanin Pattar in 1809.

3. One of the chief duties of the Escheat Dy Collr was to discover such lands as ought to have escheated and

and had not been brought to account, and it appears incredible that an officer of Mr. Canaran's great experience in the work should have overlooked the fact that the item he claimed on behalf of Govt was ten times the area of the plot accepted by Mr. Robinson as an equivalent of that demised to Shamu Pattar, or that the then Karanavan of the Kannambra tarawad should have acquiesced in the claim, unless he was conscious that it rested on something better than the said transaction.

It would seem much more probable that Mr. Canaran based the claim on some evidence other than that alleged by the petitioner, and unless the record of the Escheat Dy. Collector's proceedings

Contains

contains convincing evidence to the contrary, the Govt is not prepared to accept the view that the claim which he preferred to the land was wholly devoid of foundation.

4. In any event, considering the vast field which the Escheat enquiry covered, and the number of claims dealt with, it would furnish a most undesirable and embarrassing precedent to permit a fresh enquiry into title to be opened in respect of a case settled thirty-five years ago. The protests made at the time were (so the Collector reports) rejected, and it is not to be assumed that they were rejected without grounds. The Govt accordingly declines to go behind the bond executed in 1876, and considers that its terms must be enforced.

Mn
18/4

To the Bd of Rev (~~Rev Sett~~ Ld. L.R.).
with Enclosures in orgl return.

RS
15-4-99 } Dsd 24.4.99

24/4/99

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