

Revenue (1899) Department.

MISCELLANEOUS SERIES.

G.O., No. 1506

DATED 24 April 99

[Despatch Abstract.]

Madras
Minor and G.O. 13237/6.4.99. V. to be read in full
Pass
Print this & send the clean copies.
MR
27/4

Communicating to the ~~2d~~ Collector of the Vizianagaram zamindari opinion of the Advocate General regarding the applicability of the appointment order of the S. Court of Vizianagaram appointing Mr. Willock the Colls of the Vizianagaram zamindari under Act VIII of 1890 as guardian of the property of the minor Rajah of Vizianagaram.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
<i>Ms</i>	<i>1323</i>	<i>Rw</i>	<i>6.4.99</i>				

FURTHER PAPERS.

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

25/2/02

Government (1899) of Madras. REVENUE.

Recd. } 1899. *Enclosures*
Regd. } *Spare copies*

Mis. G.O., No. 1506, 24th April 1899.

APRIL.

Vizianagram Zamindari.

Communicating to the Collector of the Vizianagram Zamindari opinion of the Advocate-General regarding the applicability of the appointment order of the District Court of Vizagapatam appointing Mr. Willock, the Collector of the Vizianagram Zamindari, under Act VIII of 1890 as guardian of the property of the minor Raja of Vizianagram.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—again the following Endorsement, Mis. No. 1323, Revenue, dated 6th April 1899 :—

Read—the following letter from H. F. W. GILLMAN, Esq., I.C.S., Collector and Guardian, Vizianagram Zamindari, to the Secretary to Government, Revenue Department, dated Vizianagram, 30th March 1899, No. 4 :—

I beg to inform Government that, in a suit filed by me as next friend and guardian of the minor Raja of Vizianagram, objection has been taken by the defendant to my power to sue for want of appointment, and that the same objection is threatened in another important suit.

2. Mr. Willock was appointed by the District Judge as guardian of the property of the minor by virtue of his office as Collector of Vizianagram. Copy of the District Judge's order is enclosed.

3. There can be no doubt that, so long as Mr. Willock held the office of Collector of Vizianagram, the order of the court authorized and required me, as his *locum tenens*, to act as guardian : section 18 of the Guardians and Wards Act (VIII of 1890) is clear on this point : and even after Mr. Willock's retirement and consequent relinquishment of the Collector's office, I would clearly still be guardian, if the court's order could be construed as securing the guardianship to the Collector of Vizianagram, so long as that office exists, whoever the officer holding it may be. Had the order run "the Collector of Vizianagram is appointed guardian by virtue of his office", it would have been more in consonance with section 18, which provides "where a Collector is appointed, &c.," and there would have been no doubt as to its general application.

4. The mention of Mr. Willock by name, from which it may possibly be inferred that the order covers his appointment alone, and the fact that he has not applied to the court for his discharge from the guardian's office under section 40, clause 2 of the Act, give some colour to the objection raised by the defendant in the suit. I may say that I intend to reply to the objection that the court has in effect constituted the Collector of Vizianagram as the guardian of the property, but the question may be raised in other suits and different courts may take different views of it. I have therefore thought it necessary to ask Government to instruct me whether District Court's order satisfactorily establishes my position as guardian, or whether Mr. Willock should apply to resign his guardian's office, and I to be appointed in his place. In the latter case I beg that the necessary instructions may be issued to Mr. Willock.

Endorsement—Mis. No. 1323, Revenue, dated 6th April 1899.

Referred to the Advocate-General for favour of very early advice.

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

To the Advocate-General,
through the Government Solicitor,
with enclosure, and copy of Notification,
No. 166, dated 27th February 1899.

READ—also Endorsement from ERNEST BARCLAY, Esq., Government Solicitor, Madras, to the Secretary to Government, Revenue Department, dated 13th April 1899, No. 204, forwarding the following Advocate-General's opinion, with enclosures, with reference to the Endorsement of Government, Mis. No. 1323, Revenue, dated 6th April 1899 :—

OPINION.

I am of opinion that the objection which has been taken to Mr. Gillman's power to sue for want of appointment is not well founded. The order of the District Judge, dated 8th November 1897, appointing Mr. Willock guardian of the property of the minor, is in these terms : "Mr. W. A. Willock is appointed guardian of the property of the minor in virtue of his office as Collector of Vizianagram." I do not think this order, taken by itself, could be relied on "as securing the guardianship to the Collector of Vizianagram, so long as that office exists, whoever the officer holding it may be." Section 18 of the Act (VIII of 1890), however, provides in express terms that where a Collector is appointed guardian in virtue of his office, the order appointing him shall be deemed to authorise and require the person for the time being holding the office to act as guardian. Mr. Willock was appointed guardian of the property of the minor in virtue of his office. Mr. Gillman is the person for the time being holding the office of Collector and is therefore authorised and required to act as guardian. In my opinion the words "the person for the time being holding the office" include a successor to the office of the person appointed, and I do not think they should be read—as Mr. Gillman seems disposed to read them—as applying only to a person acting on behalf of the officer appointed.

2. For the reasons above stated, I think that any objection taken to Mr. Gillman's competency to sue as guardian of the property of the minor ought to be overruled.

(Signed) C. ARNOLD WHITE,
Ootacamund,
11th April 1899.
Advocate-General.

ORDER—Mis. No. 1506, Revenue, dated 24th April 1899.

The Advocate-General's opinion read above will be communicated to the Collector of the Vizianagram Zamindari.

(True Extract.)

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

To the Collector of the Vizianagram Zamindari,
with enclosure, under Endorsement,
Mis. No. 1323, Revenue, dated 6th April 1899.

Exd. P. Cunniab.

10 Copies.

Revenue (1899) Department.

CURRENT No. 2540

From

The Govt. Solicitor

Order

No. 204

Dated 13th April 1899

Received 17th — do —

Registered 18th — do —

Enclosures 3

Spare copies.

SUBJECT.

Forwarding the opinion
of the Advocate General on
the validity of ^{the appointment of} the Collector
of Vizianagaram for the
time being as guardian
to the minor Rajah of
Vizianagaram

BACK PAPERS.

G.O.	No.	Department.	Date.
<i>His</i>	<i>1323</i>	<i>Rev.</i>	<i>6.4.98</i>
	<i>& the back papers are</i>		<i>thereon</i>

FURTHER PAPERS.

G.O.	No.	Department.	Date.

O P I N I O N

I. I am of opinion that the objection which has been taken to Mr. Gillman's power to sue for want of appointment is not well founded. The order of the District Judge, dated Nov. 8th 1897, appointing Mr. Willock guardian of the property of the minor, is in these terms:-

"Mr. W. A. Willock is appointed guardian of the property of the minor in virtue of his office as Collector of Vizianagram". I do not think this order, taken by itself, could be relied on "as securing the guardianship to the Collector of Vizianagram, so long as that office exists, whoever the officer holding it may be". S. 18 of the Act (VIII of 1890,) however, provides in express terms that where a Collector is appointed Guardian in virtue of his office the order appointing him shall be deemed to authorise and require the person for the time being holding the office to act as Guardian. Mr. Willock was appointed Guardian of the property of the minor in virtue of his office. Mr. Gillman is the person for the time being holding the office of Collector and is therefore authorised and required to act as Guardian. In my opinion the words "the person for the time being holding the office" include a successor to the office of the person appointed, and I do not think they should be read - as Mr. Gillman seems disposed to read them - as applying only to a person acting on behalf of the officer appointed.

2. For the reasons above stated I think that any objection taken to Mr. Gillman's competency to sue as Guardian of the property of the minor ought to be over ruled

Ootacamund

April 11th 1899.

C. Arnold. White

Advocate General

(True Copy)

Ernest Bacon

Government Solicitor

(1899) Department

From.

Ernest Barclay
Government Solicitor
Madras

To

The Secretary to Government
Revenue Department
Madras

N^o 204.

Dated. 13th April 1899.
Recd

Enclos 3.

Forwarded with enclosures with
reference to the endorsement of
Government. His: N^o 1328 dated
6 April 1899. Revenue

Ernest Barclay
Government Solicitor

with enclosure under 1323
of 20.4.99 6.4.99

Revenue Department

Read again Endt. His. No.

1323 of 6.4.99 (P)

Read also Endt of the

Govt Solicitor No. 204 of 13.4.99
forwarding A-9's opinion
(C. no. 2540) (A)

G.O. no 1506 of 24 April 99

The Advocates-General's
opinion read above with be
communicated to the Collector
of the Vizianagaram Zamindari.

inf

To

The Collector of the Vizianagaram
Zamindari

with End under Endt No 1323 of 6.4.99.

Done
15.4.99

P.P.K.
19.4.99
A.R.
22.4.99

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

189

READ AGAIN G.O., No.
 189

DATED

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING WANT FOR DESPATCH
 IN ORIGINAL

S.E.—

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