

Government {1899} of Madras.
REVENUE.

Recd.
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gd.

} 1899.

Enclosures

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.

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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 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 guardian of the minor Raja of Vizianagram, objection has been taken by defendant to my power to sue for want of appointment, and that the same objection 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 whether District Court's order satisfactorily establishes my position as guardian, 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.

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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.

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OPINION.

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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,
Advocate-General.
OOTACAMUND,
11th April 1899.

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.)

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(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.

Mis. No. 1506, REVENUE, 24TH APRIL 1899.

READ—also Endorsement from ERNEST BARCLAY, Esq., Gover
Madras, to the Secretary to Government, Revenue Depart.
April 1899, No. 204, forwarding the following Advocate-Ge
with enclosures, with reference to the Endorsement of Gov
No. 1323, Revenue, dated 6th April 1899:—

OPINION.

I am of opinion that the objection which has been taken to Mr. Gillman to sue for want of appointment is not well founded. The order of the Court 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 that order, taken by itself, could be relied on "as securing the guardianship of the property of the minor, so long as that office exists, whoever the officer holding the office is." Section 18 of the Act (VIII of 1890), however, provides in terms that where a Collector is appointed guardian in virtue of his office, the 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 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.

OOTACAMUND,
11th April 1899.

(Signed) C. ARNOLD WHITE,
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. Cunniah,

10 Copies.