

Revenue (1897) Department.

PRESS SERIES.

G.O., No. 281

Dated 28 April 1899

[Despatch Abstract.]

Communicating to the Board of Revenue with the request that the rough Draft Bill to give effect to the intentions of the Govt. of India together with the Schedule may be prepared & submitted at an early date. Letter from the Govt. of India forwarding copy of the Correspondence with the Secy. of State for India on the question of legislating with a view of declaring the inalienability & imalienability of Ancient Zamindars in the Madras Presidency.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
~~Rev 7-799~~							
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18 4,000-18-10-98.

Revenue (1899) Department.

CURRENT No. 2162

See up
Order (Pres) no. 2812/28th April 1898.

From The Govt of India
Home Department
Judicial.

No. 398

Communicated to the
Board of Rev. with the request that
the rough draft of Bill together with the
may be prepared and submitted
to Govt at an early date.

Dated 20th
Received 27th
Registered 28th } March 1899
Enclosures two.
Spare copies.

To the Board of Rev: L. R. It would seem from
the correspondence that the
Govt of India intends that
the proposed land should go
further than merely declaring
a presumption

SUBJECT.
Having a copy of the correspondence
with the Secy of State for India
on the question of legislating
with a view of declaring the
impartibility and inalienability
of ancient estates in the Madras
Presidency.

28-3-99
16-4-99

Please put up a complete file
with the original G.O.
File & C.O. are
submitted as directed.

BACK PAPERS.

G.O.	No.	Department.	Date.
	52-53		18-1-99
	508-89		29-6-97.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

No. 398.

FROM

H. LUSON, Esq.,
Deputy Secretary to the Government of India,

TO

THE SECRETARY TO THE GOVERNMENT OF MADRAS,
REVENUE DEPARTMENT.

Home Department.
Judicial.

Calcutta, the 20th March 1899.

SIR,

I AM directed to refer to the correspondence ending with your letter No. 53, dated the 18th January 1899, on the question of legislating with a view of declaring the impartibility and inalienability of ancient estates in the Madras Presidency, and to forward, for the information of the Governor in Council, a copy of the correspondence on the subject with the Secretary of State, noted in the margin.

Extract, paragraphs 13-19 of Despatch to the Secretary of State, No. 43, dated the 27th October 1898.

Telegram from the Secretary of State, dated the 14th February 1899.

2. The general scheme of legislation submitted by the Government of Madras was recommended by the Government of India to Her Majesty's Secretary of State as suitable, and no modifications as to details were suggested except that the opinion was expressed that the date of the Permanent Settlement Regulation of 1802 should be fixed as the date from which an estate must have descended as impartible in order that it may claim the benefit of the legislation. His Lordship has sanctioned the introduction of a Bill to give effect to the proposals, reserving his opinion until he sees the Bill with its schedule.

3. I am to request that, with the permission of the Governor in Council, a draft Bill may now be prepared and submitted to the Government of India, together with the schedule which the Board of Revenue has been asked to draw up, showing the estates which are locally considered to be, by old custom, impartible and inalienable.

I have the honour to be,

SIR,

Your most obedient Servant,

H. Luson

Deputy Secretary to the Government of India.

28

Extract, paragraphs 13—19, of Despatch to the Secretary of State, No. 43, dated the 27th October 1898.

13. There remains for consideration the case of the ancient zamindaries in the Madras Presidency submitted by the Government of Madras. This case resembles that of the Oudh taluqdars, inasmuch as the policy of preserving the old landed aristocracy by restricting the power of alienation is directly involved. The circumstances are clearly explained in the order of the Government of Madras, No. 508, dated the 29th June 1897, a copy of which, with a copy of the memorial from the Landholders' Association of the 5th February 1897, alluded to therein, is appended to this Despatch.

14. The permanently-settled estates in the Madras Presidency are of two main classes—the modern zamindaries created by the Permanent Settlement Regulation, XXV of 1802, and the ancient zamindaries which were in existence before that Regulation was passed. The present discussion concerns only zamindaries of the latter class. They were originally either military fiefs or properties which had become heritable in the hands of official *sanad*-holders (or farmers-general of revenue) under Native Governments. Out of a total number of 849 permanently-settled estates covering an area of $27\frac{1}{2}$ million acres, there are 135 of these ancient estates covering an area of $15\frac{1}{2}$ million acres. Until a few years ago it was believed that these estates were held under the law of primogeniture, and that they were impartible. It was also believed by all interested in the matter that the holders for the time being of these impartible estates had only a life interest in them, and that their powers were the same as those of the manager of a Hindu family with the exception that partition could not be claimed by the junior members of the family, who were only entitled to maintenance out of the income of the estate.

15. This view was held to be erroneous by the decision of the Privy Council in 10 Allahabad, 272. In this decision it was ruled that the holder for the time being is absolute owner, and can dispose of the estate as he pleases, unless inalienability depends on custom which must be proved, or on the nature of the tenure. It has also been decided by the Privy Council that the rule of primogeniture and impartibility does not necessarily attach to any estate, but is only the result of family custom liable to be annulled with the mutual consent of the members of the family. These decisions have imported an element of uncertainty into the nature of the tenure, which can only be settled by protracted litigation in each case. They have resulted in a great amount of litigation, the junior members in the case of several estates which had been supposed to be impartible having instituted suits for partition, and alienations having been made and contested. The landholders viewed this condition of affairs with alarm, and, fearing the decay of the influence and importance of their families, presented memorials to the Government of Madras through their Association, in 1890 and 1892, invoking the aid of the Legislature to declare the ancient zamindaries impartible and inalienable.

16. The Local Government at that time declined to comply with the request of the memorialist for the reasons quoted in paragraph 4 of the order of the 29th June 1897. The present memorial from the Landholders' Association is an appeal to Your Lordship against that decision. It puts forward in a very forcible way the arguments in favour of the legislation. The present Government of Madras, differing from the view taken by the Local Government in 1893, deem it expedient to declare by legislation, as prayed for by the memorialists,—

- (1) that ancient zamindaries and estates of the like nature which have descended as impartible continuously, from some date to be fixed, and of which no partition since that date can be proved, are impartible; and
- (2) that the powers of the holder of the estate for the time being shall be those of the managing member of a Hindu family governed by the ordinary law of succession.

The Government of Madras advocate this legislation as dictated by simple justice in view to a return to former status and to the removal of hardships

produced by the interpretation of the law by the Courts, and also on the grounds of public policy explained in paragraph 11 of their order of June 1897.

17. We agree with the view taken by the present Government of Madras, and think that effect should be given to the wishes of the memorialists. They do not demand any general declaration of inalienability which shall necessarily apply to all the estates which were recognised in 1802, whether partible or impartible. Nor do they seek to create any new attribute of inalienability or to impose any limitation or restriction upon the power of alienation which the representative of a joint family possesses under the Mitakshara law. But the Privy Council has ruled that if an estate is impartible, the very attribute of impartibility destroys the degree of inalienability which would, under that law, attach to the estate if it were not impartible. It is this ruling which the memorialists seek to set aside. As pointed out in the memorial, the doctrine by implication denies (and, if allowed to stand, will be certainly extended to deny) all claims of the members of the family upon the estate to maintenance or otherwise, and perverts to the injury of the family the very attribute of impartibility which was desired as a protection to its dignity and status. It is true that a custom of inalienability may be proved. But such a custom would be not a tribal or territorial custom, which is really a part of the common law of the tribe or territory, and is generally capable of abundant illustration, but a custom personal to each family, for which it must be proved separately. It is, moreover, a negative custom, to establish which it is not sufficient to show that no alienation has ever been made; but it must be shown that alienation has been abstained from under circumstances which render it certain that alienation would have occurred had not the custom of the family forbidden it. We agree with the memorialists that the position is fraught with the gravest danger to the interests of all families whose estates are of importance; for it is clear that an owner who has so little consideration for his family as to desire to alienate his estate will not hesitate to set up an allegation of its impartibility if by so doing he can free himself from the restraints which the Hindu law imposes upon him, and that, whatever the ultimate decision may be, the litigation that may ensue will often be ruinous to the family. We also agree with the Government of Madras that on grounds of general policy it is most desirable to prevent the decay of the old landed families of the Madras Presidency which is likely to result from the interpretation that has been given of the existing law.

18. The general scheme of legislation proposed by the Government of Madras and mentioned in paragraph 17 above appears to be suitable. The Local Government have not proposed any definite date from which the estate must have descended as impartible in order that it may claim the benefit of the legislation. We think that the proper date to fix will be that proposed by the Landholders' Association and the Madras Board of Revenue, namely, the date of the Permanent Settlement Regulation of 1802.

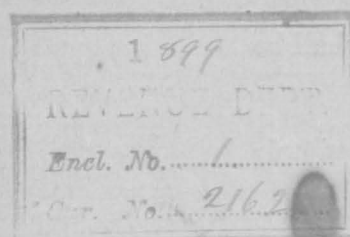
19. The Government of Madras have not contemplated a reference to Your Lordship, but we have considered it advisable to submit the matter for your consideration both because the memorial of the Landholders' Association is addressed to Your Lordship and because of the great importance of the proposed measure and of the principle involved. Should Your Lordship sanction legislation being undertaken, we agree with the Government of Madras that an inquiry should be made with a view to the preparation of a schedule of ancient estates. We are consulting the Local Government as to the necessity of appointing a special Commissioner for this purpose, and are suggesting that the work might be undertaken by the Board of Revenue without special assistance.

Telegram, dated the 14th February 1899.

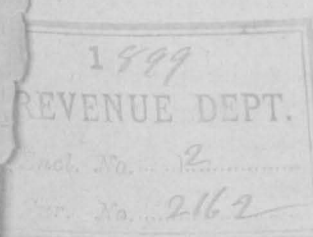
From—Her Majesty's Secretary of State for India, London,

To—His Excellency the Viceroy, Calcutta.

In continuation of my telegram of 7th February last, I sanction Bill being introduced for Madras Zamindars, reserving my opinion until I see Bill with its schedule.



G. I. C. P. O.—No. 1586 H. D.—16-3-99.—60.—P. K. B.



Government {1899} of Madras.
REVENUE.

Recd.

Regd.

} 1899.

Enclosures

Spare copies

G.O., No. 281, 28th April 1899.

APRIL.

Ancient Zamindaris.

Letter from the Government of India forwarding copy of the correspondence with the Secretary of State for India, on the question of legislating, with a view of declaring the impartibility and inalienability of — in the Madras Presidency, communicated to the Board of Revenue, with the request that the rough draft of a Bill to give effect to the intentions of the Government of India, together with the schedule, may be prepared and submitted at an early date.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

READ—the following letter from H. LUSON, Esq., Deputy Secretary to the Government of India (Home Department—Judicial), to the Secretary to the Government of Madras, Revenue Department, dated Calcutta, the 20th March 1899, No. 398:—

I am directed to refer to the correspondence ending with your letter, No. 53, dated the 18th January 1899, on the question of legislating with a view of declaring the impartibility and inalienability of ancient estates in the Madras Presidency, and to forward, for the information of the Governor in Council, a copy of the correspondence on the subject with the Secretary of State, noted in the margin.

2. The general scheme of legislation submitted by the Government of Madras was recommended by the Government of India to Her Majesty's Secretary of State as suitable, and no modifications as to details were suggested except that the opinion be fixed as the date from which an estate must have descended as impartible in order introduction of a Bill to give effect to the proposals, reserving his opinion until he sees the Bill with its schedule.

3. I am to request that, with the permission of the Governor in Council, a draft Bill may now be prepared and submitted to the Government of India, together with the schedule which the Board of Revenue has been asked to draw up, showing the estates which are locally considered to be, by old custom, impartible and inalienable.

ENCLOSURES:

EXTRACT, paragraphs 13—19, of Despatch to the Secretary of State, No. 43, dated the 27th October 1898.

13. There remains for consideration the case of the ancient zamindaris in the Madras Presidency submitted by the Government of Madras. This case resembles that of the Oudh talukdars, inasmuch as the policy of preserving the old landed aristocracy by restricting the power of alienation is directly involved. The circumstances are clearly explained in the order of the Government of Madras, No. 508, dated the 29th June 1897, a copy of which, with a copy of the memorial from the Landholders' Association of the 5th February 1897, alluded to therein, is appended to this Despatch.

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The Government of Madras advocate this legislation as dictated by simple justice in view to a return to former status and to the removal of hardships produced by the interpretation of the law by the courts, and also on the grounds of public policy explained in paragraph 11 of their order of June 1897.

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19. The Government of Madras have not contemplated a reference to Your Lordship, but we have considered it advisable to submit the matter for your consideration both because the memorial of the Landholders' Association is addressed to Your Lordship and because of the great importance of the proposed measure and of the principle involved. Should Your Lordship sanction legislation being undertaken, we agree with the Government of Madras that an inquiry should be made with a view to the preparation of a schedule of ancient estates. We are consulting the Local Government as to the necessity of appointing a special Commissioner for this purpose, and are suggesting that the work might be undertaken by the Board of Revenue without special assistance.

Telegram from Her Majesty's Secretary of State for India, London, to His Excellency the Viceroy, Calcutta, dated the 14th February 1899.

In continuation of my telegram of 7th February last, I sanction Bill being introduced for Madras zamindars, reserving my opinion until I see Bill with its schedule.

ORDER—No. 281, Revenue, dated 28th April 1899.

Miscellaneous.

Communicated to the Board of Revenue, with the request that the rough draft of a Bill to give effect to the intentions of the Government of India, together with the schedule, may be prepared and submitted to Government at an early date.

(True Extract.)

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

To the Board of Revenue (Land Revenue).

Exd. Shaik Karim.

40 Copies.

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Returned for signature.

Despatched in print.

READ AGAIN G.O. No.

189

CURRENT No.

ENCLOSURE TO G. No.

ORDER OF GOVERNMENT.

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILLED UP BEING KEPT FOR DISPATCH
IN ORIGINAL.

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