

11-7-12 ✓
Revenue (1899) Department.

MISCELLANEOUS SERIES.

G.O., No. 328

DATED 21st January 99

[Despatch Abstract.]

Approving the recommendation made
the Board of Revenue in respect of the
moshara village of Buradakkaniar in
in the Chinnurapalle taluk, Vizagapatnam
d.t.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	1738/99		20.10.98				
	7534/99		11.8.99				
			4-5-00				

Revenue Financial (1898) Department.

CURRENT No. 7329



Read again G.O. 21998 25-11-98
3417 19-10-98
" also B.O. 2992 22-10-98 From

Order (un) N^o 328 of 21st January 1899.

The Board of Revenue, Land
Revenue, Madras.

The Board's recommendation
is approved as a special case.
2. The petitioners will be referred
to the Collector for orders.

No. 2992 Misc.

Dated 22nd. October 1898

Received 24/10

Registered 26/10

Enclosures 30

Spare copies -

From orders:

To The Board of Rev (L.A.) No. 25-1-99
" Collr. of Vizagapatam with enclosures
" petitioners. (para 2) No. 26-1-99

SUBJECT.

Submitting to Government with
Board's remarks petitions from Mir
Jaina Bibi & Mir Qurban Ali Sahib,
appealing ~~against~~ ^{against} an order direct-
ing the resumption of the village
of Buradachancharam in the Chipurd-
palli Taluk, Vizagapatam District.

Reg
20-1-99

BACK PAPER

G.O.	No.	Department.	
	mis 3417	Com? paper	19th Aug

FURTHER PAPERS.

G.O.	No.	Department.	Date.



Proceedings of the Board of Revenue (Land Revenue).

No. 2992 Misc. Dated 22nd. October 1898.

Read the following papers:-

(1) Letter from W.O. Horne Esq., Collector of Vizagapatam, Dis. No. 4158, dated 5th November 1897, submitting for transmission to Government two memorials addressed to it by Mir Jaina Bibi and Mir Qurban Ali Sahib, Mokhasadars of Burada Kancharam in the Chipurapalle Taluk praying for a reconsideration of the orders passed for the resumption of their Mokhasa village; and reference thereon dated 6th January 1898.

(2). Also endorsement of Government, Revenue Department, No. 3417, dated 19th August 1898.

(3). Also letter from the above officer (W.O. Horne Esq.), No. 48/B&G, dated 22nd. August 1898, reporting on the petitions of Mir Jaina Bibi and Mir Qurban Ali Sahib, Mokhasadars of Burada Kancharam in the Chipurapalle Taluk regarding the details of services and expenditure at the Darga in Chicacole.

Resolution

In endorsement No. 3417 Misc. dated 19th August 1898, Government referred to the Board for remarks two petitions received from Mir Jaina Bibi and Mir Qurban Ali Sahib on the subject of the resumption of the Mokhasa village of Buradakuncharam in the Chipurapalle Taluk of the Vizagapatam District.

2. Almost simultaneously with the submission of these petitions to Government, the two petitioners presented copies thereof.

to the Collector for transmission through the proper channel. These --- reached the Board in November last, but before submitting them to Govern- ment, the Board desired to investigate the correctness of some of the - allegations made therein and accordingly made a reference to the Col- lector. That officer's reply having now been received, the Board submits the petitions to Government together with the papers received with the Government endorsement under reply.

3. The facts of the case are as follows:-

The assessment of the Mokhasa village of Buradakancharam --- which was ~~earlier~~ confirmed by the Inam Commissioner in 1863, as a dev. Dat dayam (religious service) inam "for darga and asari sharif service" is according to the Inam Register ~~in~~ Rs.1,174-10-0. In 1896, the Collector recommended the resumption of the inam, on the following grounds, viz., that the inamdar utilized only a small portion (Rs.161) of the pro---- ceeds of the village for the performance of the service and that the - village was under mortgage. The Government thereupon ordered that the - inamdar should be warned that his inam would be resumed if the condi- tions of the grant were not fulfilled within a period of six months.--- The Principal Assistant Collector, after serving a notice to this effect on the inamdar, reported that in spite of the warning given the services ~~are~~ were only partially rendered, that the inamdar only spent Rs.60 or Rs.70 thereon and that the whole income of the inam could not be uti- lized for the services as it should be, owing to the inamdar's inability ^{and the Collector} to redeem the mortgage. The Principal Assistant Collector, therefore re- commended the resumption of the inam and this course was sanctioned by the Board in its Proceedings No.1505 dated 23rd April 1897 which was - recorded by Government in its Order No.2353 Misc. dated 10th May 1897.

4. The petitioners now contend that the village is not an en- dowment exclusively held in trust for darga and asari sharif service, but that it was granted to an ancestor of theirs for the maintenance - of the grantee and his heirs, that only a portion of the income of the village need be applied towards carrying out the trust, that they have been regularly discharging this trust by performing the "urus" festi- val once a year and keeping the darga in good order and that the vil- lage is alienable in the ordinary way except that the aliensee takes it

subject

subject to the charge upon it.

It appears that there has been some misunderstand- ing as to the conditions of the grant in the present case. The Inam Register shows that the inam was granted for darga and asari sharif service and the note recorded therein by the Inam Deputy Collector lends support to the petitioners' allegation that they have only - to keep the darga in order and perform the "urus" festival once a year. For these services the sum of Rs.161, which according to the - Collector's original report, was being spent by the inamdar, was per- haps sufficient. It, however, appears from the statement filed by the inamdar at the time of the Inam enquiry, that he also admitted that it was incumbent on him to give sadaqritti (batta) to fakirs and - to maintain a free school besides discharging the duties named in the Inam Register. The Board is not aware what it would cost to per- form these additional duties and cannot positively say whether the inamdar is bound to discharge them. In a case like this, where the - conditions of service and the details of the expenditure to be in- curred have nowhere been definitely laid down, the Board is disposed to consider that it would be hard measure to resume the inam on - the ground ^{that} the whole of the income is not devoted to the service - more especially as the inamdar ~~that~~ has now produced documentary - evidence which goes to support his contention that the inam was - granted both for the maintenance of the grantees and their descend- ants and for the up-keep of the services required. The documents - referred to consist of a civil court judgment of 1844 - which is - undoubtedly genuine - and a number of Persian hukmnamas of much - older date which may or may not be genuine but cannot be shewn to be false. In the similar case of the Yarada and Devada inams recent- ly dealt with in Board's Proceedings No.2989 Misc. dated 22nd. Octo- ber 1898 the Board has accepted the Collector's recommendation that the services to be rendered and the portion of the income to be - set apart for ~~that~~ purpose should be fixed by a Committee of res- - pectable Muhammadans and the same course may, in the Board's opi- - nion, be adopted in the present case. If a balance is left after per- forming the duties thus agreed upon, the Board would allow the inam- dar to appropriate it to his own use.

6. The second reason assigned by the Collector for his proposal to resume the inam was that it had been alienated by mortgage. In the case of religious service inams, the policy of Government enunciated in Rule III of the Rules in the appendix to Board's Standing Order No. 116 is to leave the inam undisturbed unless and until the service is discontinued. On this principle the Board deems it inexpedient to treat the mere fact of alienation unaccompanied by proof of cessation of service as a ground for resumption.

7. The Board would, however, recommend that after the details of the services to be rendered and the expenditure to be incurred thereon have been fixed as above recommended, the petitioners should be allowed, as in the case of the Yarada and Devada inams, a year's trial in order to see whether they render the services properly. If these views commend themselves to Government the order of resumption already passed may be held in abeyance.

(True Extract)

Donald Davidson

Ag. Secretary.

To the Secretary to Government, Revenue Department, with
petitions and enclosures.

Q.B.

J. B. A.

To

His Excellency the Governor-in-Council,

Fort St. George,

MADRAS.

May it please Your Excellency in Council.

Memorialist, Mir Jaina Bibi, Mokhasadar of Buradakancharam, Chipurupalli Taluk, Vizagapatam District, residing at Chicacole most respectfully sheweth:—

1. That the village of Buradakancharam is a Mokhasa granted in perpetuity to the Memorialist's ancestor, Haji Meer Mahmud Saheb in Hijri 1120 by Jammet Bekhan, Nawab of Chicacole under the orders of Mahommed Faruk Badisha, Nizam of Hyderabad as a permanent hereditary provision for the maintenance of the grantee and his heirs, because the original grantee was a most celebrated pilgrim who travelled to Mecca and brought home a precious moustache of the Holy Muhammad.

2. That the grant was subsequently confirmed to the grantee and his heirs by many Hukums issued by the Nawabs of Chicacole, under the orders of the Nizams of Hyderabad.

3. That the Memorialist learns Your Excellency's Government's order issued to the Local Authorities to resume the Mokhasa right of the Memorialist in the said village, under the impression that the Original Grant was a religious endowment in trust for the Asar Sheriff Darga situated at Chicacole, the whole income of which ought to be exclusively devoted to the services connected with the Darga, and that the village ought not, under such circumstances, to be alienated or diverted to private uses.

4. That the grant of the village is not, however, an endowment exclusively in trust for the Asar Sheriff Darga, but a grant of an absolute estate to the original donee, on which a simple trust was engrafted by the donor so as to impose an obligation to apply a portion of the income of the village in carrying out the trust, viz. the performance of the Urus festival annually at the Darga.

5. That the simple nature of the trust with which the heritable estate is charged is itself indicative of the fact that the grant was not intended by the donor to be an endowment exclusively in trust for the performance of the Urus festival enjoined by it.

6. That the village is under such circumstances alienable in the ordinary way, the only difference being that it passes to the alienee with the charge upon it.

7. That the Memorialist and her predecessors in title have been all along carrying out the object of the said trust with scrupulous care by performing the Urus festival annually and keeping the Darga in good order.

8. That the Memorialist most respectfully implores Your Excellency in Council to reconsider the decision in the light of the facts set forth in the Memorandum sent along with this humble Memorial, and be graciously pleased to cancel the order of resumption.

9. That if Your Excellency in Council is still pleased after perusing the Memorandum to consider that the right of the Mokhasadar in the village is liable to resumption, the Memorialist most humbly prays Your Excellency in Council to be graciously pleased to direct a local enquiry to be held by the Collector of Vizagapatam with a

view to ascertain the nature of the grant, and to decide the question whether the Memorialist and her predecessors in title have been substantially complying with the terms of the grant by annually performing the Urus festival at the Asar Sheriff Darga and keeping it properly repaired, perfumed, cleaned and lighted to the entire satisfaction of the Muhammadan community at Chicacole.

10. That it would be contrary to the fair name of Your Excellency's Government whose actions are ever characterised by unimpeachable impartiality and calm but dignified deliberation, to be guided solely by the one sided representations of the Local Authorities set in motion by interested persons bent on ruining me.

11. That if the Memorialist is only afforded an opportunity of proving that the nature of the grant is as stated in paras 1, 3 & 5 and set forth in detail in the Memorandum, and that the Urus festival was being regularly performed as enjoined by the trust, the Memorialist feels sure Your Excellency in Council will be graciously pleased to cancel the order of resumption made in the recent resolution.

12. That the usufructuary mortgage, ever since it came into existence, was recognized and given effect to both in the Revenue and Civil Courts.

13. That the Memorialist's husband and the Memorialist herself from the very beginning tried in all possible ways to recover possession of the village, but the High Court recognized the transaction and decreed that in case the mortgage amount is not paid within six months the village is to be sold by the Court at a public auction for the decretal amount.

14. That the Government also was ready to recover the amount of Court fees decreed in the above litigation against the Memorialist who had to conduct the litigation as a pauper, by attaching and bringing to sale, the village in question.

15. That both these calamities were averted by a usufructuary mortgage executed afresh for the decree amount and the Court fees to Rani Sri Achayamma Garu in 1884, from whom the latter amount was borrowed and paid to the Government.

16. That the usufructuary mortgagee was paying ever since Rs. 250 annually out of the income of the village for meeting the expenses of the Darga.

17. That if Your Excellency in Council is still pleased to consider the alienation to be improper, Your Excellency in Council may, in view of the fruitless, but incessant, and highly expensive attempts made by the Memorialist and her predecessors in title, be graciously pleased to set aside the mortgage and place the Memorialist in possession thereof, who will pledge herself to see that no more alienations are made in future.

18. That if the Memorialist is, however, so unfortunate as to be unable to induce Your Excellency in Council on perusing this humble Memorial and Memorandum to adopt any of the above courses, and if Your Excellency in Council decides finally upon compelling the humble Memorialist to take the chances of a law suit, the Memorialist most humbly begs Your Excellency in Council to maintain a dignified impartiality in the course of the unfortunate litigation, which the Memorialist fervently prays Your Excellency's benevolent Government to be graciously pleased to avert by a merciful and opportune intervention. For which gracious act the humble Memorialist will, as in duty bound, ever pray.

May it please Your Excellency in Council,

Your Excellency's most humble & loyal subject.

22 (2) 1897
25th October 1897

MEMORANDUM.

1. Under the Mahommedan Law, endowments granted exclusively for the support of religious, and charitable institutions are known as Wakfs. Wakf is the appropriation or dedication of any property in such a manner that the appropriator's right in it is extinguished, and the property becomes ever after solely the property of God, either directly or indirectly through the advantages resulting from it to His creatures (2 M. I. A. 393).

In Mahommedan countries, such endowments are under the control and supervision of Government which is delegated to an officer known as Nazir-in-Wakif.

2. When the British assumed the Government of the various Provinces of this country ostensibly under the authority of the Moghul Emperor, or directly by virtue of conquest, these endowments were allowed to remain for some time in a condition of disorder. But in 1817, the Madras Government found it necessary to pass a regulation for the purpose of protecting and preserving these endowments, and accordingly Reg. VII of 1817 was passed. However, the Government of India considered it desirable in 1863 to divest itself of all connection with the religious endowments of Hindus and Mahommedans, and retain control only over such institutions as were secular in their character. To give effect to this decision, Act XX of 1863 was passed. Under this Act, such religious endowments are divided into two classes; (I) those in the appointments of the Superintendents of which the Government exercises no control, and (II) in which it has control. A committee called Temple Committee exercises control over the latter class of institutions, while the Government has no control over the former class of institutions, and there good or bad management is left to be determined by a suit in the Civil Courts. Thus the preambles, and the earlier sections of the Act, and the Regulation clearly indicate their respective scopes. If a religious endowment had been taken charge of by the Board of Revenue under Reg. VII of 1817, and subsequently dealt with under Act XX of 1863, prima facie, it is a public endowment and even then the clear distinction drawn between the two classes of religious institutions should be steadily kept in view to determine if the Government has reserved to itself any sort of control over it. But if a property was not dealt with under either of them, it does not fall with in the purview of either of them, and it should be either private property, or property over which the Government can exercise no control.

To see what sort of grant this Mokhasa village is and whether it was in any way dealt with under the Regulation or the Act.

3. This village of Buredakancharam was granted to Haji Mir Mahommed Sadir Saheb by Zabith Beg Khan, Nabob of Chicacole under the orders of Mahommed Faruk Badisha, Nizam of Hyderabad in Hijri 1120 or about 200 years ago. This original grant was confirmed by a Hukum to the original donee issued under the orders of the Nizam of Hyderabad and was confirmed over again by many more Hukum to the descendant of the donee issued under the orders of the Nizams of Hyderabad. This grant was made to Haji Mir Mahommed Saheb to be enjoyed in perpetuity, "Generation after generation." This heritable, absolute estate was burdened with a simple trust as to a portion of the income for the performance of Urus festival connected with the Asar Sheriff Daraga at Chicacole, so that the village is alienable in the ordinary way, the only difference being that it passes to the alienee with the charge upon it (10 W. R. 299; 13 W. R. 200; 20 W. R. 267; 4 Cal. 56; 12 Mad. 387; 8 M. I. A. 66; 17 I. A. 28;). The nature of the simple obligation engrafted upon the grant is clearly indicative of the fact that the grant is not in the nature of a trust for the Asar Sheriff Darga and the Urus festival connected with it. The primary object of the grant was to make a permanent provision in perpetuity to the original donee and his heirs, because the latter was a celebrated pilgrim that travelled to Mecca, and brought home a precious moustache of the Holy Prophet, and the simple trust to perform the Urus festival at the Darga was engrafted on the grant only as a secondary matter, thereby imposing an obligation on the holders of the Mokhasa to apply only a portion of the income of the village in carrying out the object of the trust.

4. That the nature of the grant is such as is described above is also supported by the decision of Mr. Ross, Principal Sudr Ameen in O. S. 173 of 1844 which was brought by Mir Akbaralli Saheb to recover possession of this village mortgaged with possession to the grand-father of Rani Sri Ankitham Achayyammagar in 1836, and

wherein it was found by Mr. Ross that the grant of the Mokhasa village was primarily for the maintenance in perpetuity of the donee and his heirs, and secondarily for the performance of the Urus festival connected with the Darga. This mortgage of 1836 was superseded by a Kararnama of 1847 executed by the Memorialist's husband. In 1863, the Memorialist brought a suit for the recovery of this village, wherein it was stated that the mortgage was fully liquidated by the income of the estate. The High Court ultimately decided in R. A. No. 39 of 1863 that the Memorialist is entitled to redeem the village only on payment of about Rs. 10,000. The Memorialist attempted again in O. S. 27 of 1882 to recover possession of the village, but the Madras High Court again gave a decree in R. A. 133 of 1882 that the Memorialist is entitled to redeem only on payment of the above amount with costs within 6 months from the date of the decree and that on default the village is to be sold. Thereupon the Memorialist, and the joint heir Kurbanalli Saheb executed a fresh mortgage with possession to Rani Sri Ankitham Achayyammagar for Rs. 14,400 with the following conditions:— I. the mortgagee should have the usufruct for 20 years; II. the amount should be paid off by the usufruct; III. the mortgagee should pay Rs. 250 annually to the Memorialist for the performance of the Urus festival and keeping the Darga in good order; IV. the mortgagee should pay herself the net income of Rs. 720 annually towards the discharge of the mortgage amount. A portion of the mortgage amount was borrowed for the purpose of paying off Rs. 1545, being the amount of Court fees decreed against the Memorialist under Sec. 412, C. P. C. for which the village was attached, and about to be sold by a public auction at the Court sale at the instance of the Collector. Thus originally the grant was intended to be and ever since has been regarded and dealt with as absolute. Both the High Court and the Government decided that the village might be sold in pursuance of a decree passed against the Memorialist. Again, small portions of the village were granted by the Mokhasadars as inams to the support of a small temple and the goddess of the village, and to Pandrangi Subbarao, Pandrangi Jogi Pantulu, Mallapudi Yellamraj, Vandana Daligadu, Appayya, Meduri Kamayya and Kummara Papadu.

5. The usufructuary mortgage of 1847 was recognised and given effect to in a Judgment by Mr. Carmichael in an appeal against the decree of Senior Assistant Collector on the 12th July 1862. On 28th April 1847 the parties to the deed of usufructuary mortgage executed on 12th April 1847 applied to the then Collector Mr. P. B. Smollette to recognise the transaction, and collect the kattubadi of Rs. 112, and landcess of Rs. 78 from the mortgagee to the end of the term for which the mortgage was to endure, a copy of which was also transmitted along with the petition. This mortgage came into existence during the minority of the Memorialist's husband, and ever since the Memorialist's husband and the Memorialist tried in all possible ways to set aside the mortgage and recover possession of the village. But the High Court, and the revenue Courts recognised and gave effect to it.

6. The Inam Title deed, No. 674 was issued by the Inam Commissioner on behalf of the Governor in Council on 2nd December 1863. It confirms the village to the Memorialist, and the joint heir on the conditions with which the village was originally granted to Haji Mir Mahommed Saheb by the Nawabs of Chicacole under the orders of the Nizams of Hyderabad. The Purvana granted in Hijri 1120 was presented to the Inam Commissioner whereon the above Title deed was issued.

Under Act VIII of 1863, the Title deed granted by the Inam Commissioner can neither infringe nor destroy the rights of any description of the holders of the lands; nor can it convert an estate into one of a quite different nature. The nature of the original grant appears clearly from the words used in it, as well as from the Hukums issued subsequently in confirmation of the original grant. From this it is clear that the grant is not one which falls under the provisions of Reg. VII of 1817 and unless it does fall under it the provisions of Act XX of 1863 do not apply (I. L. R. 17 Mad. 95). It is only when the endowment was made exclusively for the maintenance of the Darga or for the performance of religious exercises connected with that it becomes a religious institutions within the meaning of the Regulation or the Act (2 Mad. 199; 8 Cal. 32). The rule of the Mahomedan Law that a Mutwalli is removeable under certain circumstances does not apply to the case of a person who has a hereditary proprietary right vested in him, and it is essential for the exercise by the donor or his representative of the power of resumption or removing such person that such power be specially reserved at the time of the creation of the grant (4 M. H. C. R. 44). The

Temple Committee appointed under Act XX of 1863 for the Ganjam District brought O. S. 48 of 1867 against the Memorialist and Sri Ankitham Achayyammagar in the Principal Sadr Ameen's Court, Vizagapatam to recover possession of the village on the ground that the Memorialist's husband alienated the village from the purpose for which the grant was originally made, by mortgaging the village to Rani Sri Achayamma's grand-father, but it was dismissed on the ground that Sec. 3 of Act XX of 1863 does not apply to the property. Nor could the Revenue Board ever assume any control over the village under Reg. VII of 1817, and consequently it was not dealt with even under Sec. 4 of Act XX of 1863. Having regard to the nature of the Mokhasa in question and the scopes of the Reg. VII of 1817, or Act XX of 1863, it is respectfully submitted that the Government has no power to resume the proprietary right of the Mokhasadar, and that the resumption is contrary to the terms of the Purvana granted in Hijri 1120, and confirmed by many Hukums issued subsequently by the Nabobs of Chicacole under the orders of the Nizam of Hyderabad.

Even the Register of Inams prepared by the Inam Commissioner Mr. W. Robinson under the impression that the Inam belongs to the class of Devadayams shows that the Mokhasa is to be permanent so long as the Urus festival is performed. When there is ample evidence to show that the Urus festival, some religious exercises, as reading the Kuran, and some other festivals, as the Moharam, over and above what was actually enjoined by the trust are being regularly performed by the Memorialist, it is most respectfully submitted that the proprietary right of the Memorialist cannot under any circumstances be resumed by the Government.

George,

MADRAS.

May it please Your Excellency in Council.

The Memorialist, Mir Kurabanalli Sahib, Joint Mokhasadar of the Village Buredakancharam, Chipurupalli Taluq, Vizagapatam District, residing at Chicacole, most respectfully sheweth.

1. That the Memorialist is the Joint Mokhasadar of the Village of Buredakancharam, and the son of the other Joint Mokhasadar Mir Jainabibi.
2. That the Memorialist learns with regret Your Excellency's Government's Order issued to the local authorities at the suggestion of the Revenue Board to resume the proprietary right of the Memorialist and the Joint Mokhasadar Mir Jainabibi in this Mokhasa Village, under the impression that the Village is a religious endowment solely in trust for the Asar Sheriff Darga situated at Chicacole, and that the Village ought not under such circumstances to be alienated or diverted to other uses.
3. That the Village is not an endowment as was represented to Your Excellency's Government, but a grant of an absolute estate to the original donee, on which a simple trust was engrafted, thereby imposing an obligation on the holders of the Mokhasa to apply only a portion of the income of the Village in performing the Urus festival annually.
4. That the mortgage of the Village executed in 1836 came into existence during the Minority of the Memorialist's ancestor Mir Akbaralli Sahib, and before the Memorialist was born.
5. That Mir Akbaralli Sahib and his wife the present Joint Mokhasadar tried ever after in every possible way to set aside the mortgage, but the highest Revenue and Civil Courts recognised, and gave effect to, the said mortgage.
6. That the said litigation was carried on before the Memorialist's birth or during his Menority.
7. That the Memorialist on attaining to the age of majority took upon himself the Management of the Darga, and has been ever since performing the Urus festival, annually and keeping the Darga properly repaired, perfumed, cleaned and lighted to the entire satisfaction of the Mahomedan community at Chicacole.
8. That all the facts necessary for Your Excellency's Government's benign consideration have been most respectfully represented in the Memorial and Memorandum submitted to Your Excellency in Council by the Memorialist's mother.
9. That the Memorialist most humbly begs Your Excellency in Council to be graciously pleased to cancel the order for resumption because it is contrary to the terms of the original grant as confirmed by many Hukums issued subsequently under the orders of the Nizams of Hyderabad.

For which gracious act the Memorialist shall, as in duty bound, ever pray.

May it please Your Excellency in Council,

Your Excellency's Most humble and loyal subject.

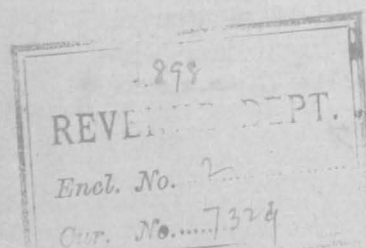
(Signature)
25th October 1897

(Signature)
25-10-97

*Encl. 1
To the Vizagapatam Collector
letter No 4158
5-11-97*

1898
REVENUE DEPT.
Encl. No.
Cur. No. 7329

enc. 2.
To the Vizagapatam Collector
letter No. 4158
6-11-97.



To

His Excellency the Governor-in-Council,

Fort St. George.

MADRAS.

May it please Your Excellency in Council.

Memorialist, Mir Jaina Bibi, Mokhasadar of Buradakancharam, Chipurupalli Taluk, Vizagapatam District, residing at Chicacole most respectfully sheweth:—

1. That the village of Buradakancharam is a Mokhasa granted in perpetuity to the Memorialist's ancestor, Haji Meer Mahammad Saheb in Hijri 1120 by Jammet Bekhan, Nawab of Chicacole under the orders of Mahommed Faruk Badisha, Nizam of Hyderabad as a permanent hereditary provision for the maintenance of the grantee and his heirs, because the original grantee was a most celebrated pilgrim who travelled to Mecca and brought home a precious moustache of the Holy Muhammad.

2. That the grant was subsequently confirmed to the grantee and his heirs by many Hukums issued by the Nawabs of Chicacole, under the orders of the Nizams of Hyderabad.

3. That the Memorialist learns Your Excellency's Government's order issued to the Local Authorities to resume the Mokhasa right of the Memorialist in the said village, under the impression that the Original Grant was a religious endowment in trust for the Asar Sheriff Darga situated at Chicacole, the whole income of which ought to be exclusively devoted to the services connected with the Darga, and that the village ought not, under such circumstances, to be alienated or diverted to private uses.

4. That the grant of the village is not, however, an endowment exclusively in trust for the Asar Sheriff Darga, but a grant of an absolute estate to the original donee, on which a simple trust was engrafted by the donor so as to impose an obligation to apply a portion of the income of the village in carrying out the trust, viz. the performance of the Urus festival annually at the Darga.

5. That the simple nature of the trust with which the heritable estate is charged is itself indicative of the fact that the grant was not intended by the donor to be an endowment exclusively in trust for the performance of the Urus festival enjoined by it.

6. That the village is under such circumstances alienable in the ordinary way, the only difference being that it passes to the alienee with the charge upon it.

7. That the Memorialist and her predecessors in title have been all along carrying out the object of the said trust with scrupulous care by performing the Urus festival annually and keeping the Darga in good order.

8. That the Memorialist most respectfully implores Your Excellency in Council to reconsider the decision in the light of the facts set forth in the Memorandum sent along with this humble Memorial, and be graciously pleased to cancel the order of resumption.

9. That if Your Excellency in Council is still pleased after perusing the Memorandum to consider that the right of the Mokhasadar in the village is liable to resumption, the Memorialist most humbly prays Your Excellency in Council to be graciously pleased to direct a local enquiry to be held by the Collector of Vizagapatam with a

the grant by annually performing the Urus festival at the Asar Sheriff Darga and keeping it properly repaired, perfumed, cleaned and lighted to the entire satisfaction of the Muhammadan community at Chicacole.

10. That it would be contrary to the fair name of Your Excellency's Government whose actions are ever characterised by unimpeachable impartiality and calm but dignified deliberation, to be guided solely by the one sided representations of the Local Authorities set in motion by interested persons bent on ruining me.

11. That if the Memorialist is only afforded an opportunity of proving that the nature of the grant is as stated in paras 1, 3 & 5 and set forth in detail in the Memorandum, and that the Urus festival was being regularly performed as enjoined by the trust, the Memorialist feels sure Your Excellency in Council will be graciously pleased to cancel the order of resumption made in the recent resolution.

12. That the usufructuary mortgage, ever since it came into existence, was recognized and given effect to both in the Revenue and Civil Courts.

13. That the Memorialist's husband and the Memorialist herself from the very beginning tried in all possible ways to recover possession of the village, but the High Court recognized the transaction and decreed that in case the mortgage amount is not paid within six months the village is to be sold by the Court at a public auction for the decretal amount.

14. That the Government also was ready to recover the amount of Court fees decreed in the above litigation against the Memorialist who had to conduct the litigation as a pauper, by attaching and bringing to sale, the village in question.

15. That both these calamities were averted by a usufructuary mortgage executed afresh for the decree amount and the Court fees to Rani Sri Achayamma Garu in 1884, from whom the latter amount was borrowed and paid to the Government.

16. That the usufructuary mortgagee was paying ever since Rs. 250 annually out of the income of the village for meeting the expenses of the Darga.

17. That if Your Excellency in Council is still pleased to consider the alienation to be improper, Your Excellency in Council may, in view of the fruitless, but incessant, and highly expensive attempts made by the Memorialist and her predecessors in title, be graciously pleased to set aside the mortgage and place the Memorialist in possession thereof, who will pledge herself to see that no more alienations are made in future.

18. That if the Memorialist is, however, so unfortunate as to be unable to induce Your Excellency in Council on perusing this humble Memorial and Memorandum to adopt any of the above courses, and if Your Excellency in Council decides finally upon compelling the humble Memorialist to take the chances of a law suit, the Memorialist most humbly begs Your Excellency in Council to maintain a dignified impartiality in the course of the unfortunate litigation, which the Memorialist fervently prays Your Excellency's benevolent Government to be graciously pleased to avert by a merciful and opportune intervention. For which gracious act the humble Memorialist will, as in duty bound, ever pray.

May it please Your Excellency in Council,

Your Excellency's most humble & loyal subject.

Z. Z. (W. K. S.)

25-10-97

W. K. S. Patnam

Under the Mahomedan Law, endowments granted solely for the support of religious, and charitable institutions are known as Wakfs. Wakf is the appropriation or dedication of any property in such a manner that the appropriator's right in it is extinguished, and the property becomes ever after solely the property of God, either directly or indirectly through the advantages resulting from it to His creatures (2 M. I. A. 393).

In Mahomedan countries, such endowments are under the control and supervision of Government which is delegated to an officer known as Nazir-in-Wakif.

2. When the British assumed the Government of the various Provinces of this country ostensibly under the authority of the Moghul Emperor, or directly by virtue of conquest, these endowments were allowed to remain for some time in a condition of disorder. But in 1817, the Madras Government found it necessary to pass a regulation for the purpose of protecting and preserving these endowments, and accordingly Reg. VII of 1817 was passed. However, the Government of India considered it desirable in 1863 to divest itself of all connection with the religious endowments of Hindus and Mahomedans, and retain control only over such institutions as were secular in their character. To give effect to this decision, Act XX of 1863 was passed. Under this Act, such religious endowments are divided into two classes; (I) those in the appointments of the Superintendents of which the Government exercises no control, and (II) in which it has control. A committee called Temple Committee exercises control over the latter class of institutions, while the Government has no control over the former class of institutions, and there good or bad management is left to be determined by a suit in the Civil Courts. Thus the preambles, and the earlier sections of the Act, and the Regulation clearly indicate their respective scopes. If a religious endowment had been taken charge of by the Board of Revenue under Reg. VII of 1817, and subsequently dealt with under Act XX of 1863, prima facie, it is a public endowment and even then the clear distinction drawn between the two classes of religious institutions should be steadily kept in view to determine if the Government has reserved to itself any sort of control over it. But if a property was not dealt with under either of them, it does not fall within the purview of either of them, and it should be either private property, or property over which the Government can exercise no control.

To see what sort of grant this Mokhasa village is and whether it was in any way dealt with under the Regulation or the Act.

3. This village of Buredakancharam was granted to Haji Mir Mahomed Sadir Saheb by Zabith Beg Khan, Nabob of Chicacole under the orders of Mahomed Faruk Badisha, Nizam of Hyderabad in Hijri 1120 or about 200 years ago. This original grant was confirmed by a Hukum to the original donee issued under the orders of the Nizam of Hyderabad and was confirmed over again by many more Hukum to the descendant of the donee issued under the orders of the Nizams of Hyderabad. This grant was made to Haji Mir Mahomed Saheb to be enjoyed in perpetuity, "Generation after generation." This heritable, absolute estate was burdened with a simple trust as to a portion of the income for the performance of Urus festival connected with the Asar Sheriff Daraga at Chicacole, so that the village is alienable in the ordinary way, the only difference being that it passes to the alienee with the charge upon it (10 W. R. 299; 13 W. R. 200; 20 W. R. 267; 4 Cal. 56; 12 Mad. 387; 8 M. I. A. 66; 17 I. A. 28;). The nature of the simple obligation engrafted upon the grant is clearly indicative of the fact that the grant is not in the nature of a trust for the Asar Sheriff Darga and the Urus festival connected with it. The primary object of the grant was to make a permanent provision in perpetuity to the original donee and his heirs, because the latter was a celebrated pilgrim that travelled to Mecca, and brought home a precious moustache of the Holy Prophet, and the simple trust to perform the Urus festival at the Darga was engrafted on the grant only as a secondary matter, thereby imposing an obligation on the holders of the Mokhasa to apply only a portion of the income of the village in carrying out the object of the trust.

4. That the nature of the grant is such as is described above is also supported by the decision of Mr. Ross, Principal Sudr Ameen in O. S. 173 of 1844 which was brought by Mir Akbaralli Saheb to recover possession of this village mortgaged with possession to the grand-father of Rani Sri Ankitham Achayyammagar in 1836, and

REV

Encl.

Cur. No. 1524

for the maintenance of the performance of the festival connected with the Darga. This mortgage of 1836 was superseded by a Kararnama of 1847 executed by the Memorialist's husband. In 1863, the Memorialist brought a suit for the recovery of this village, wherein it was stated that the mortgage was fully liquidated by the income of the estate. The High Court ultimately decided in R. A. No. 39 of 1863 that the Memorialist is entitled to redeem the village only on payment of about Rs. 10,000. The Memorialist attempted again in O. S. 27 of 1863 to recover possession of the village, but the Madras High Court again gave a decree in R. A. 133 of 1882 that the Memorialist is entitled to redeem only on payment of the above amount with costs within 6 months from the date of the decree and that on default the village is to be sold. Thereupon the Memorialist, and the joint heir Kurbanalli Saheb executed a fresh mortgage with possession to Rani Sri Ankitham Achayyammagar for Rs. 14,400 with the following conditions:— I. the mortgagee should have the usufruct for 20 years; II. the amount should be paid off by the usufruct; III. the mortgagee should pay Rs. 250 annually to the Memorialist for the performance of the Urus festival and keeping the Darga in good order; IV. the mortgagee should pay herself the net income of Rs. 720 annually towards the discharge of the mortgage amount. A portion of the mortgage amount was borrowed for the purpose of paying off Rs. 1545, being the amount of Court fees decreed against the Memorialist under Sec. 412, C. P. C. for which the village was attached, and about to be sold by a public auction at the Court sale at the instance of the Collector. Thus originally the grant was intended to be and ever since has been regarded and dealt with as absolute. Both the High Court and the Government decided that the village might be sold in pursuance of a decree passed against the Memorialist. Again, small portions of the village were granted by the Mokhasadars as inams to the support of a small temple and the goddess of the village, and to Pandrangi Subbarao, Pandrangi Jogi Pantulu, Mallapudi Yellamraj, Vandana Daligadu, Appayya, Meduri Kamayya and Kummara Papadu.

5. The usufructuary mortgage of 1847 was recognised and given effect to in a Judgment by Mr. Carmichael in an appeal against the decree of Senior Assistant Collector on the 12th July 1862. On 28th April 1847 the parties to the deed of usufructuary mortgage executed on 12th April 1847 applied to the then Collector Mr. P. B. Smollette to recognise the transaction, and collect the kattubadi of Rs. 112, and landcess of Rs. 78 from the mortgagee to the end of the term for which the mortgage was to endure, a copy of which was also transmitted along with the petition. This mortgage came into existence during the minority of the Memorialist's husband, and ever since the Memorialist's husband and the Memorialist tried in all possible ways to set aside the mortgage and recover possession of the village. But the High Court, and the revenue Courts recognised and gave effect to it.

6. The Inam Title deed, No. 674 was issued by the Inam Commissioner on behalf of the Governor in Council on 2nd December 1863. It confirms the village to the Memorialist, and the joint heir on the conditions with which the village was originally granted to Haji Mir Mahommed Saheb by the Nawabs of Chicacole under the orders of the Nizams of Hyderabad. The Purvana granted in Hijri 1120 was presented to the Inam Commissioner whereon the above Title deed was issued.

Under Act VIII of 1863, the Title deed granted by the Inam Commissioner can neither infringe nor destroy the rights of any description of the holders of the lands; nor can it convert an estate into one of a quite different nature. The nature of the original grant appears clearly from the words used in it, as well as from the Hukums issued subsequently in confirmation of the original grant. From this it is clear that the grant is not one which falls under the provisions of Reg. VII of 1817 and unless it does fall under it the provisions of Act XX of 1863 do not apply (I. L. R. 17 Mad. 95). It is only when the endowment was made exclusively for the maintenance of the Darga or for the performance of religious exercises connected with that it becomes a religious institutions within the meaning of the Regulation or the Act (2 Mad. 199; 8 Cal. 32). The rule of the Mahommedan Law that a Mutwalli is removeable under certain circumstances does not apply to the case of a person who has a hereditary proprietary right vested in him, and it is essential for the exercise by the donor or his representative of the power of resumption or removing such person that such power be specially reserved at the time of the creation of the grant (4 M. H. C. R. 44). The

Principal Ameen's Court, Vizagapatam Dated 8 of the village on the ground that the Memorialist's husband alienated the village for the purpose for which the grant was originally made, by mortgaging the village to Rani Sri Achayamma's grand-father, but it was dismissed on the ground that Sec. 3 of Act XX of 1863 does not apply to the property. Nor could the Revenue Board ever assume any control over the village under Reg. VII of 1817, and consequently it was not dealt with even under Sec. 4 of Act XX of 1863. Having regard to the nature of the Mokhasa in question and the scopes of the Reg. VII of 1817, or Act XX of 1863, it is respectfully submitted that the Government has no power to resume the proprietary right of the Mokhasadar, and that the resumption is contrary to the terms of the Purvana granted in Hijri 1120, and confirmed by many Hukums issued subsequently by the Nabobs of Chicacole under the orders of the Nizam of Hyderabad.

Even the Register of Inams prepared by the Inam Commissioner Mr. W. Robinson under the impression that the Inam belongs to the class of Devadayams shows that the Mokhasa is to be permanent so long as the Urus festival is performed. When there is ample evidence to show that the Urus festival, some religious exercises, as reading the Kuran, and some other festivals, as the Moharam, over and above what was actually enjoined by the trust are being regularly performed by the Memorialist, it is most respectfully submitted that the proprietary right of the Memorialist cannot under any circumstances be resumed by the Government.

PETITION

0084

CURRENT NO. 4107

REVENUE DEPT.

To

His Excellency the Governor-in-Council,



Fort St. George,

MADRAS.

May it please Your Excellency in Council.

The Memorialist, Mir Kurabanalli Sahib, Joint Mokhasadar of the Village Buredakancharam, Chipurupalli Taluq, Vizagapatam District, residing at Chicacole, most respectfully sheweth.

1. That the Memorialist is the Joint Mokhasadar of the Village of Buredakancharam, and the son of the other Joint Mokhasadar Mir Jainabibi.

2. That the Memorialist learns with regret Your Excellency's Government's Order issued to the local authorities at the suggestion of the Revenue Board to resume the proprietary right of the Memorialist and the Joint Mokhasadar Mir Jainabibi in this Mokhasa Village, under the impression that the Village is a religious endowment solely in trust for the Asar Sheriff Darga situated at Chicacole, and that the Village ought not under such circumstances to be alienated or diverted to other uses.

3. That the Village is not an endowment as was represented to Your Excellency's Government, but a grant of an absolute estate to the original donee, on which a simple trust was engrafted, thereby imposing an obligation on the holders of the Mokhasa to apply only a portion of the income of the Village in performing the Urus festival annually.

4. That the mortgage of the Village executed in 1836 came into existence during the Minority of the Memorialist's ancestor Mir Akbaralli Sahib, and before the Memorialist was born.

5. That Mir Akbaralli Sahib and his wife the present Joint Mokhasadar tried ever after in every possible way to set aside the mortgage, but the highest Revenue and Civil Courts recognised, and gave effect to, the said mortgage.

6. That the said litigation was carried on before the Memorialist's birth or during his Minority.

7. That the Memorialist on attaining to the age of majority took upon himself the Management of the Darga, and has been ever since performing the Urus festival annually and keeping the Darga properly repaired, perfumed, cleaned and lighted to the entire satisfaction of the Mahommedan community at Chicacole.

8. That all the facts necessary for Your Excellency's Government's benign consideration have been most respectfully represented in the Memorial and Memorandum submitted to Your Excellency in Council by the Memorialist's mother.

9. That the Memorialist most humbly begs Your Excellency in Council to be graciously pleased to cancel the order for resumption because it is contrary to the terms of the original grant as confirmed by many Hukums issued subsequently under the orders of the Nizams of Hyderabad.

For which gracious act the Memorialist shall, as in duty bound, ever pray.

May it please Your Excellency in Council,

Your Excellency's Most humble and loyal subject.

Handwritten signature in Telugu script.

25-10-97

Vizagapatam.

1898
REVENUE DEPT.
Encl. No. 3
7329

10-8
REVENUE DEPT.
Encl. No. 23
5216

Encl. No.
Cur. No. 7329

Dis.

1897

VIZAGAPATAM memorialists for

Dated 8 July

1897

15 July 1898.

From

W. O. HORNE Esq^{re}.

Ag. Collector,

Vizagapatam District.

To

The Honourable Mr G. S. Forbes

SECRETARY TO GOVERNMENT,

Revenue DEPARTMENT,

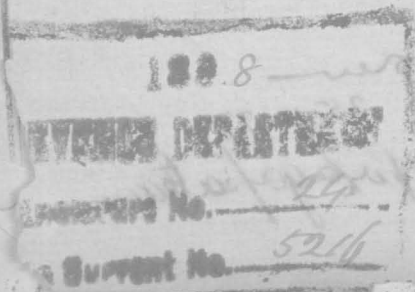
MADRAS.

Through the Inam Commissioner, Madras.

SIR,

Referring to G.O. R. no 2199 dated 29th November 1897, I have the honor to report as follows: -

2. The village of Burada Kancharam in the Chipurupalli Taluk was Confirmed to the Memorialists by the Inam Commissioner as a 'Devadayan' under title deed No. 674 dated 2nd December 1863, to be Continued so long as the Services mentioned in the Inam Register were performed. Column 8 of the Register (extract enclosed) shows that the service for which the village was granted is 'Darga and Asari Shariif Service' to have been rendered in Chicacole where the Darga is situated. The parwana of the Collector, Mr Keating's order, referred to in Column 12 of the Inam Fair register is not forthcoming in the records of Mr. [unclear] and there are no other authentic returns which specify the terms of the original [unclear]



5216

by the Inamdar before the Inam Deputy Collector at the time of his enquiry, in which the village is stated to have been granted by the Nawab of Chicacole in Hijri 1120 to Meer Mohammad Sadig for lighting and burning incense and offering oblations in the Asari Sharif Darga of Chicacole, Charity to Fakirs, opening a charitable school and performing 'Ums' festival. Enclome no 3 was lately found in the course of a further search made in my office records for the original parwana but it is impossible to state whether it may be regarded as genuine as it bears nobody's initials and it is not known when and why it was produced. It is not the original parwana said to have been filed by the memorialists before the Inam Deputy Collector as its contents do not tally with those of a private copy of the parwana (Enclome 4) lately filed by the Mokhasadars before my Principal Assistant Collector. The Inam Commissioner, of whom I have enquired if the original parwana is coming in his office, informs me that such original documents would ordinarily be returned to the parties when no longer required and those that remained behind must have been made over to the record of my office. According to the document in question the village appears to

to have been granted to the memorialists partly for maintenance and partly for defraying the prior expenditure incurred by the original grantee up to that date from his own property.

3. The village was alienated by mortgage about 1836 to Sri Rani Ankitham Atchayyanamm, proprietress of Shermahannudpuram Estate, and cannot be redeemed for six years more under the conditions of the last mortgage deed executed in her favour on the 2nd Decem 1884. She, however, pays them under the terms of the mortgage deed, a sum of Rs 250 annually for the upkeep of the Ceremonials connected with the Darga at Chicacole, but the Mokhasadars have spent for the purpose only a portion thereof - Rs 161 as reported by themselves and Rs 60 or Rs 70 as estimated by the Principal Assistant Collector.

4. Being a 'Devadayan' inam the village was included in the list of Endowments in land granted and continued for Massalman Service in the District, submitted to the Board of Revenue with reference to G.O. no 374 dated 18th June 1892 and 541 dated 1st August 1894, Political, and in G.O. no 354 Political, dated 4th June 1896, Government ordered that the Mokhasadars should be warned that the village would be resumed if the conditions of the grant were not duly fulfilled, and allowed six months time to carry out its orders. (vide item no 24 of the G.O. last quoted above.)

was accordingly issued to the inamdars in October 1896 but they stated that they were unable to redeem the village from mortgage and that it was not customary to perform the 'Urus' festival twice a year or to feed Fakirs on the occasion. As it was clear that the conditions of the grant were not fully complied with and as the Mokhasadars admitted their inability to redeem the inam from mortgage I requested the sanction of the Board in my letter R.C. no $\frac{889}{969}$ dated 19th March 1897, to resume the inam and it was granted in Board's Proceedings No. 1503 Miscellaneous dated 23rd April 1897. The village was accordingly resumed and fully assessed in Fash. 1306.

4. The Memorialists now contend that the village was granted in perpetuity to their ancestor Haji Meer Muhammad Sahib as a permanent hereditary provision for the maintenance of the grantee and his heirs; that it is not an endowment exclusively held in trust for the Asar-i-Sharif Darga but a permanent hereditary grant of an absolute estate on which a simple trust was engrafted by the donor so as to impose an obligation to apply a portion of its income in carrying out the trust, viz, the performance of the 'Urus festival' annually at the Darga; that they have been carrying out the object of the said trust with scrupulous care by performing the 'Urus festival' annually and keeping

is a heirable in the ordinary way, and in this difference, that it passes to the heir with the charge upon it.
5. The memorialists have filed the undermentioned Persian documents (submitted herewith with translations in support of their contentions. The translations have been made by the translator attached to the Local District Court.

1. Private Copy of the parwana granted by the Nawab of Chicacole to Haji Meer Muhammad dated Hijri 1120.

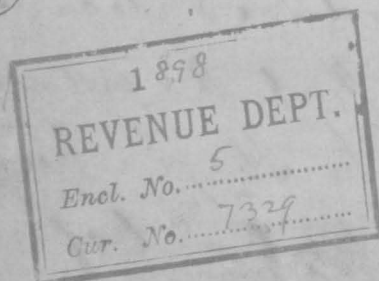
2. Hukum (order) issued by the Nizam of Hyderabad to the Nawab of Chicacole and other officials dated Hijri 1128.

3. Hukum issued under the orders of the Nizam of Hyderabad to the officials of the Chicacole Paraganah dated Hijri 1135.

4. Do - Do - dated Hijri 1138.

5. Do - Do - dated Hijri 1155.

Document no 1 is a private copy, the original of which, the memorialists say was filed in the Dargah enquiry but, as I have also stated, it is not forthcoming in the records of my office; the only Persian document bearing on the subject which has been found in the records of my office is Encl no 3 with which the copy now produced does not agree. The copy, if genuine, shows that the village was granted as a Mokhasa to Haji Meer Muhammad Sadig, and that out of the collections from the village he should



Robertson

I have a coffee house

-18 4,000-18-10-98.

Revenue (1899) Department.

CURRENT No. 89

From

The Private Secretary to H. C. the
Governor.

Order

No.

Dated 4th January 1899

Received 5th

Registered 6th

Enclosures —

Spare copies. —

SUBJECT.

Transferring for disposal a telegram from ^{Mr. Kuttumaji of} ~~Chinnamayanagar~~ ^{Whidacole} ~~Buddalore~~ re the misappropriation of crops by ryots and the recovery of income, and stating that His Excellency wishes to be informed of the result.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.



GOVERNMENT HOUSE,

Madras. 11 Jan 1899.

My dear Forbes,

His Excellency
wishes me to send these
two telegrams into the
office for disposal,
with the remark that
he would like to hear the
result thereof.

Yours sincerely,

vide also no. 8899h A. H. M.

*

1. from Chinnasami for Cuddalore
2. from Mir Kull-un Ali, Chicaodey

PETITION

0015

T-14

REVENUE DEPT.

Class. *SP 6* INDIAN TELEGRAPH. Monthly Local No.

To *Ind Mount Road* From *Chicacole*

Station *Ind Mount Road* Station *Chicacole*

Words *54/4* Day *3* Hour *15* Minute *40* Official Instruction.

To (Person) *His Excellency* From (Person) *Mr. K. K. K.*

The Honorable Sir Arthur

Edmund Harvey

G.C. I & C. M. G.

Government of

Fort St George

Order delayed on

petition 25 ~~th~~

October 97 byots

(misappropriating) crops

unrecoverable after

wards. please permit

to recover income

restrained by subordinate

officials

RECD. FROM L. N. SENT TO L. N.

At Hrs. Mts. By At Hrs. Mts. By

Date *MOUNT ROAD 3-1-99*

C No. 89 of 99.

From The Private Secretary to H. E. the Governor

Dated 4th January 1899.

FOR ORDERS.

The petition referred to in one of the telegrams forwarded with the note read above, is being addressed to Government praying to set aside the order of resumption of the ²⁰makbara village of Buranhar Samaram in the Chhipurapalle taluk of the Vizagapatnam district. In Proceedings No. 2992 and 22-109, the Board recommended that the order of resumption may be held in abeyance and the draft order ~~now~~ approving the recommendation was submitted to the Under Secretary on the 6th instant. As that file will ~~now~~ be circulated to H.E. the Governor, the present file may be linked with it.

RB's ~~copy~~ Secy
 7.1.99 ~~7/1/99~~
 with a draft order is
 held

C No. 7329 of 98

Read again G.O. 2199 in 7 29th November 1897

" G.O. 3417 in 7 19th August 1898.

Read also From the Board of Revenue (Land Rev)

Dated 22nd October

1898.

FOR ORDERS.

no 7329 of 98.

With the Proceedings last read above, the Board of Revenue submit its remarks on the petitions from Mir Daina Bibi and Mir Qurban Ali Sahib appealing against the order of presumption of the Makhara village of Buradakhancharam in the Chhipurupalle taluk, Vizagapatam district.

2. In connection with the general enquiry into the nature of the service on account of which the ceremonial allowances have been made, it was reported that the above village was mortgaged with possession assessed at Rs 1174-10-0 and granted for darga and asar-i-sharif service was mortgaged on condition that the mortgagee was to have possession for 20 years and pay Rs 250 annual to the mortgagors for the upkeep of the ceremonial grounds in the

Item 24 in page 10 of
G.O. 3544 Pal. 4. 6. 96

Go. 2762 15.7.98 E

institution and that the inamdars spent about Rs 161 in actual service. The Inamdars were therefore warned that the inams would be resumed if the conditions of the grant were not duly fulfilled. The Collector subsequently reported that the holders of the inams had been lighting the durga and reading the Khoran since the warning was given, ~~that~~ the other conditions of the grant had not been fulfilled, ~~and~~ that the inams had been alienated by mortgage and that the inamdars were unable to redeem it. He therefore recommended that the inams might be resumed and fully assessed and his recommendation was sanctioned by the Board of Revenue in its Proceedings No 1505 of 23.4.97. F. G.O. 2353 of 10.5.97.

3. In appealing against the above order, the petitioners contended that the village is not an endowment exclusively held in trust for durga and asar-i-Sharif but that it was granted to an ancestor of theirs for the maintenance of the grantee and his heirs, that only a portion of the income of the village need be applied towards carrying out the

FOR ORDERS.

Para 2 of the Collector's letter in page 2 of G.O. 3310 of 19.5.97 in G.O. 3003 Rev. of 14.5.97

Para 2 of the Board's standing order of 11.7.97 (HE)

Paras 1 to 7 of the petition G

~~Para 2 of the Collector's letter in page 2 of G.O. 3310 of 19.5.97 in G.O. 3003 Rev. of 14.5.97~~
 Para 12 of the petition G

Column 8 of the Reg. Slag A
 * Dec 1702 = 1120
 8/7

* This was when Sir W. Robinson was District Commr. 30 or 40 years ago
 8/7

Para 2 of the Collector's letter of 15.7.98

trust viz the performance of the 'urns' festival annually at the Durg that the petitioners and their predecessors in title have been all along carrying out with scrupulous care the object of the said trust and that the village is alienable by ordinary way, the only difference being that it passes to the abnee with the charge upon it. They also allege that the usufructuary mortgage was recognised and given effect to both in Revenue and Civil Courts.

4. It appears from an extract from the Inam Register, that the village was "granted for durga and asar-i-Shariff service stated to have been rendered in Chicharole where the Durga is situated" and the Inam by Collector has at recorded the following note "The Tahsildar of Chicharole reports that the Durg is not in good order but that the service is annually rendered. The parties have been warned to put the Durg in good order and the Mokhasa continued on the existing tenure" the Collector reports that the original documents mentioned in the

Register viz the purnama and the
Collector. Mr. Keeling's order are not
forthcoming in the records of his
office and that there are no other
authentic records which specify the
terms of the original grant. The Board
observes that the entries in the Guam
Register support the petitioners'
negation that they have only to keep
the durga in order and perform the
festival once a year. For these
services the sum of Rs 161, which
according to the Collector's original
report, was being spent by the inamdar,
was perhaps sufficient. It, however,
appears from the statement filed by
the inamdar at the time of the inam
enquiry, that he also admitted that
it was incumbent on him to give
ordavilli (balta) to fakirs and
to maintain a free school besides
discharging the duties inamdar in the
Guam Register. The Board is not
aware what it would cost to perform
these additional duties and cannot
positively say whether the inamdar
is bound to discharge them. In a case
like this, where the conditions of
the grant and the details of the expenditure

Para 5 of the current

column of the statement

to be incurred have nowhere been
definitely laid down, the Board is
disposed to consider that it would
be a hard measure to resume the
inam on the ground that the whole
of the income is not devoted to the
service more especially as the inamdar
has now produced documentary
evidence which goes to support his
contention that the inam was gra-
nted for the maintenance of the
grantees and their descendants and
for the upkeep of the services required.
The documents referred to consist of
a civil court judgment of 1844 - which
is undoubtedly genuine - and a
number of Persian hukumnamas of
much older date which may or may
not be genuine but cannot be shown to
be false. In the Civil Court
judgment of 1844 it is stated
that it is evident from the plaintiff's
records that the village in question
was granted by the old rulers for the
performance of the annual service
in the durga and for the maintenance
of those performing the ceremony. Of
the Persian documents produced
by the inamdar one is a private

Para 5 of the Collector's
letter

6
of the purwana, the original of which is not forthcoming, and the two documents purport to be orders ^{to the officials} issued by the Nizam of Hyderabad not to disturb the possession of the village which was granted for the maintenance of the Khadims of the shrine at Chiriacole.

In cases similar to the one now question, where a large proportion of the annual income was appropriated for purposes other than those for which the endowment was intended, a period of six months' time was allowed to the inamdars for fulfilling duly the conditions of the grant. To afford further opportunity to the Inamdars to put the services on a better footing, the period was extended to one year, and in the meantime it was directed that steps should be taken to define the duties of the Inamdars in consultation with the Minhammaddi Community. The Dy Collector has set apart about 2/5 of the income for the maintenance of the inamdars and has drawn up, ~~which~~ in consultation with the local Minhammaddi Community, a list of ~~exemptions~~ and rules for

Item 22 & 23 in page 94
G.O. 354 Pol. E
4.6.96

Para 1 of B.O. in G.O. 4896
17.9.99
with G.O. 7311 of 98

G.O. 7311 of 98 in the file.

Para 5 of the current.

Para 7 of the current.

7
their observance for the guidance of the inamdars. The Board in its Proceedings No. 29 of 1900 of 22.10.98 approves of the list and also accepts the Collector's recommendation to allow the inamdars a further period of one year for the trial of the new conditions.
6. The Board considers that in the present case also the services to be rendered and the portion of the income to be set apart for that purpose may be fixed by a Committee of respectable Minhammaddis. If a balance is left after performing the duties thus agreed upon, the Board would allow the inamdars to appropriate it to his own use. The Board would, however, recommend that after the details of the services to be rendered and the expenditure to be incurred therein have been fixed, the ~~petitioners~~ petitioners should be allowed, as in the cases referred to in ~~the~~ the preceding para, a year's trial in order to see whether they render the services properly. The Board
Attention

of
this

the government, the order of resumption
already passed may be held in abeyance.

Referring to the reason originally stated of the current.

assigned by the Collector for his

proposal to resume the inam was
that it had been alienated by

mortgage, the Board observed

that in the case of religious service

inams, the policy of government

enunciated in rule III of the

inam rules is to leave the inam

undisturbed unless and until the

in service is discontinued. Rule III

runs as follows:— "If the inam was

given for religious or charitable

objects such as for the support of

temples, mosques, colleges, schools

and other public buildings or

institutions, or for services therein,

whether held in the names of the

institutions or of the persons

rendering the services;— it will be

continued to the present holders

and their successors, and will not

be subject to further interference,

so long as the buildings or

institutions are maintained

and the services are rendered

Page 7 of G.O. 1069 of 9.8.59.

not illegal
S.P.

It would be dangerous to
announce this. Prima facie
alienation of inam does not involve
resumption; the object

of the grant of land is

to furnish a tangible

security for the performance

of the service, as well as

the means for discharging

the duty.

Yours,

S.P.

20.6.99

to the conditions of the grant." On

the above principle, the Board

deems it inexpedient to treat the

mere fact of alienation unaccom-

panied by proof of cessation

of service as a ground for

resumption. In a similar case

where the Collector has recommended

the resumption of the inam on

the ground that it had been alienated,

the Board considers that the inam

should not be resumed, whatever

may be the source from which

the inamdar gets the requisite

funds.

8. Submitted that in the above

circumstances the Board's recom-

mendations that the services to

be rendered in the present case

and the portion of the income to be

set apart for that purpose may be

fixed in consultation with the

local musulman community

and that the petitioners should

be allowed, after the details

have been fixed, a year's trial

to see whether they render the

services properly, may be approved

properly. The Board's

Attention

Attention is ~~immediately~~ solicited to the
note from P. S. G. in G.O. 12938 -
25-1-98

By *[Signature]*
16-11-98

Secy
[Signature]
18/11/98

H.M.

As a special case
the Board's proposal to
hold the resumption in
abeyance & carry out the
arrangement described
for the performance of
the service may be ap-
proved.

[Signature]
15/11/98

Please see draft put up on the
docket.

By *[Signature]*
5-1-99

Secy
[Signature]
10/1/99

To
The Governor

[Signature]
11-1-99

Note P.S.G. do. of 4/1/99
held below.

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

189

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.

APPROVED FOR FILING UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.-

A = Copy in full.
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