

Government of Madras

HOME (EDUCATION) DEPARTMENT

G.O. No. 1022, 7th August 1917

Land

Communicating to the Collector of Tanjore the opinion of the Hon'ble the Advocate-General that the — acquired for a play-ground for the Nadar's high school, Poraiyar, should be transferred to the school authorities by means of a conveyance by way of sale and that it does not require registration.

N. P.

BACK PAPERS.

FURTHER PAPERS.

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ORIGINAL.

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READ—the following papers :—

Letter—from J. R. HUGGINS, Esq., I.C.S., Collector of Tanjore.
To—the Secretary to Government, Home (Education) Department.
Dated—the 3rd April 1917.
No.—B.C. 176-Eng. of 1916.

I have the honour to invite a reference to paragraph 2 of G.O. Mis. No. 100, Educational, dated 2nd February 1916, directing that the land acquired for a playground for the Nadar's High school, Poraiyar, should be conveyed to the manager of the school, by a formal deed of conveyance and to state that the Government Solicitor, Madras, who was asked to prepare a deed of conveyance considers that a deed of gift would be the proper document to be drawn up in the present case at the cost of the acquisition, viz., Rs. 995-3-11 was paid by the school authorities from the Government grant of Rs. 1,200 sanctioned in G.O. No. 47, Educational, dated 15th January 1915, and requests to be informed if a deed of gift or a deed of conveyance is to be drawn up. The Local Government Pleader, who was consulted in the matter, is of opinion that a deed of conveyance is the more appropriate form in the circumstances of the case, but at the same time points out that under the Crown Grants Act XV of 1895, no registered instrument of transfer is ever necessary in this case, as the Transfer of Property Act does not apply. I therefore request to be informed if the land acquired can be transferred to the manager of the school under the Crown Grants Act or if it is necessary to draw up a deed of conveyance as already ordered to convey the land to the school authorities.

I

Memorandum No. 17 B-3, Home (Education), dated 6th July 1917.

The letter from the Collector of Tanjore R.C. No. 176-Eng. of 1916, dated the 3rd April 1917, enquiring whether a piece of land acquired for a play-ground for the Nadar's high school, Poraiyar, should either be transferred to the authorities of the school under the Crown Grants Act or conveyed to them by means of a deed of conveyance is forwarded to the Hon'ble the Advocate-General and he is requested to advise Government in the matter.

R. RAMACHANDRA RAO,
Secretary to Government.

To the Government Solicitor.

III

From—H. BRIGHTWELL, Esq., Government, Solicitor, Madras.
To—the Secretary to Government, Home (Education) Department.
Dated—the 13th July 1917.
No.—836.

ABSTRACT.—Forwarding the following opinion of the Hon'ble the Advocate-General,
No. 139, dated 12th July 1917:—

OPINION.

In the *Secretary of State v. Kasturi Reddi*, I.L.R., 26 Mad., 268, at p. 276, Bhashyam Ayyangar J held that the Crown Grants Act, 1895, exempts crown grants from the operation of the Transfer of Property Act and sections 17 (2) (vii) and 90 (1) (d) of the Registration Act exempt from registration "grants of immoveable

property by Government" and "all documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land". In a case reported in 3 All., L.J. 130, it was said that section 2 of the Crown Grants Act does not render all the provisions of the Transfer of Property Act inapplicable to grants from the Crown and that it only means that when the court is called upon to construe a crown grant it shall construe it irrespective of the provisions of the Transfer of Property Act. It is no doubt true that section 3 of the Crown Grants Act and the last words of section 2 of that Act enable Government to create for instance estates unknown to Hindu and Muhammadan Law and to make such provisions, restrictions, conditions and limitations in a crown grant as may be desired, irrespective of the provisions of the Transfer of Property Act and any other rules of law on the construction or effect of grants in general. For instance neither the rule against perpetuity nor the rule in the Tagore case that a grant cannot be made to an unborn person, has any application to the case of a crown grant—See 27 All., 634, at p. 653, P.C. But the dictum of the Allahabad High Court in 3 All., L.J., 130 is against the express words of section 2: "Nothing in the Transfer of Property Act contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of Her Majesty the Queen-Empress, her heirs or successors or by or on behalf of the Secretary of State for India in Council to or in favour of any person whomsoever." These words are quite plain and are not cut down by the subsequent clause in section 2. Though sections 54, paragraphs 2 and 3, 59, 107 and 123 of the Transfer of Property Act are required by section 4 of that Act to be read as supplemental to the Registration Act, they are not made part of or declared as enacted in the Registration Act: they are part of and are contained in the Transfer of Property Act within the meaning of section 2 of the Crown Grants Act. The view taken in 26 Mad., 268, at p. 276 that crown grants are exempt from the operation of the Transfer of Property Act is therefore sound and should be followed.

2. Further sections 28 and 30 of the Government of India Act, 1915, exclusively govern and regulate the sale and disposal of any real or personal estate vested in the Crown for purposes of the Government of India and the form and execution of assurances and the authorities by whom they are to be executed. These provisions cannot be affected by any law made by the Governor-General in Council such as the Transfer of Property Act, sections 54, 59, 107, 118 and 123 of which prescribe that certain transfers can be made only by a registered instrument and that in some cases the instrument should also be attested by witnesses (vide section 65 (2) of the Government of India Act, 1915).

3. On the above two grounds, I am of opinion that a grant by the Crown is not governed by any of the provisions of the Transfer of Property Act either as regards the requirement of registered writing or otherwise.

4. As regards the Indian Registration Act, too, the words of sub-section (2) of section 30 of the Government of India Act and especially the words "if so executed may be enforced by or against the Secretary of State" lead me to the conclusion that section 49 of the Registration Act would very materially conflict with the Government of India Act and would be ultra vires if it applied to an unregistered instrument of gift or other conveyance by the Crown. There is, however, no decision on the point and the question is one of first impression. Anyhow, it is quite plain that section 90 (1) (d) of the Registration Act exempts from the requirement of registration sanads, inam title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land or any interest in land. My opinion upon the construction of that clause is contained in paragraph 2 of my opinion No. 1043, dated 24th December 1916, regarding memorandum No. 8203/16A-10, Public Works (Irrigation) Department, dated the 7th December 1916. In addition I would only refer to a decision of the Privy Council since reported in 44 Indian Appeals, page 46, as confirming my interpretation of the word "grant". The decision in I.L.R., 36 All., 176, is in my opinion erroneous. The reason why the exemption in section 17 (2) (vii) is not in terms extended to clauses (a) and (d) of section 17 (1) is because the words "nothing in clauses (b) and (c) applies to" govern the whole series of exemptions and none of the instruments exempted under sub-section 2 (i to vi) and (viii to xii)

is an instrument of gift or of lease so as to fall within clauses (a) and (d) and to be compulsorily registrable but for the exemption. But apart from section 17 (2) (vii) there is of course the comprehensive exemption contained in section 90 (1) (a) of the Act.

5. In my opinion any writing purporting to grant or assign the piece of land in question does not require registration as it is a grant or an assignment of land by Government.

6. If, as I gather, the school acquired the land from Government in consideration of a payment of Rs. 995-3-11, the transaction would be really a sale. The sum of Rs. 1,200 referred to in the Collector's letter became the money of the school whatever its origin. And, to effect the proposed transfer, the "proper assurance" within the meaning of section 30 of the Government of India Act is a conveyance by way of sale and it should be executed by such person and in such manner as is prescribed by the Government of India Resolution on the subject and subject to such provisions and restrictions as may have been laid down by the Secretary of State for India in Council with the concurrence of a majority of votes at a meeting of the Council.

7. Whether section 30 of the Government of India Act imperatively requires a transfer of property by Government to be in writing may be, abstractedly speaking, a nice point. But obviously a grant by the Government—especially having regard to section 30 and the rules and resolution thereunder—cannot be made either orally or merely by delivery of possession unaccompanied by any writing. It is certainly advisable that the writing evidencing the grant should be a "proper assurance" that is, such a conveyance as may be appropriate to carry out the particular transaction in accordance with the general principles of law and the practice of conveyancers. And on the whole, I am inclined to construe section 30 of the Government of India Act, 1915, as requiring, and not as merely permitting, a "proper assurance" to be made.

S. SRINIVASA AYYANGAR,
Advocate-General.

Order—No. 1022, Home (Education), dated 7th August 1917.

The opinion of the Advocate-General, Madras, No. 139, dated the 12th July 1917, with which the Government concur, is communicated to the Collector of Tanjore and he is informed that a conveyance by way of sale is the proper form of transfer of the land acquired for a play-ground for the Nadar's High School, Poraiyar, and that it does not require registration.

(True Extract)

R. RAMACHANDRA RAO,
Secretary to Government.

To the Collector of Tanjore.
" Director of Public Instruction.
" Board of Revenue (Land Revenue).
" Revenue Department.

NOTES CONNECTED WITH G.O. No. 1022, HOME (EDUCATION),
DATED THE 7TH AUGUST 1917.

[SUBJECT.— *Conveyance of the land acquired for a playground for the Nadar's high school at Porayar.*]

Previous papers :

G.O.	252, Revenue,	27th January	1911.	G.O.	1362, Edl.,	9th December	1915.
"	509, Edl.,	27th June	1913.	"	Mis. 1399 "	11th "	"
"	1448 "	18th December	1914.	"	" 194, Revenue,	31st January	1916.
"	47 "	15th January	1915.	"	" 100, Edl.,	2nd February "	"
"	Mis. 157 "	13th February	"	"	2588, Revenue,	17th November "	"
"	703, Revenue,	19th March	"	"	1215, Home (Edn.),	20th "	"
"	Mis. 1577 "	9th July	"	"	Mis. 1290 "	1st December "	"
"	" 973, Edl.,	6th September	"	"	1148, Revenue,	21st April	1917.

From the Collector of Tanjore, dated 3rd April 1917, R.C. No. 176 Eng.

The deed of conveyance was the form which was hitherto adopted in all cases of conveyances of land acquired for educational purposes on behalf of private institutions. The Government Solicitor did not object till now to this form of conveyance even though the cost of acquisition was met from the Government grant made for the purpose, as in the present case. It is not clear why a different form of conveyance should be drawn up in the present instance. Perhaps the Advocate-General may be requested to advise in the matter. The draft memorandum is for approval.

T.K.—23-4-17.

The precedents * put up in this file relate to cases in which at least a portion of the acquisition compensation was met by the party for whom the land was acquired and the conveyance had for its consideration the portion provided by the party. In the present case the entire amount of compensation comes out of the grant given from Provincial funds towards the provision of playground; and thus it is pointed out that there is no consideration on which the conveyance can be based. In this view the transaction partakes of the nature of a gift.

2. It may perhaps be argued that the Provincial grant having been already made over to the party and funds for acquisition having been provided by the party himself, this amount may be taken as the consideration. This will not do, as we have to treat this grant as distinctly Provincial funds; otherwise under section 6 of the Act acquisition would have been impossible and public funds would not have been utilized for the acquisition.

3. Before we refer the case to the Revenue Department for advice, please say whether there have been any cases in which lands have been acquired where the entire cost was met from Provincial grant.

C. RAMANUJA ACHARIYAR—26-4-17.

Submitted that there appear to have been no cases in which lands have been acquired for private institutions and the cost met entirely from Provincial funds. From the statement on pages 4 and 5 of G.O. No. 47, Educational, dated the 15th January 1915, it is observed that in eleven cases the Government have undertaken to bear the entire cost of the land required for playgrounds for private institutions. Of these, the case of the Nadar's High school, Poraiyar, dealt with in this file is the first in which the Land Acquisition Act has been applied. The authorities of the C.M.S. high school, Megnanapuram, has applied to Government for acquiring the land required by them under the Land Acquisition Act. The application is separately under consideration.

2. Submitted that the remarks of the Revenue Department may be invited on the question raised.

P.R.—1-5-17.

T.K.—5-5-17.

C.R.—9-5-17.

R. RAMACHANDRA RAO—10-5-17.

REVENUE DEPARTMENT.

The question for consideration is whether in cases in which land has been acquired entirely with Provincial funds for an educational institution under private management, the best way of transferring the land to the institution would be by a deed of conveyance or by one of gift or whether a registered document is necessary at all for the purpose. As the cost of acquisition is entirely met from Provincial funds, there is no "consideration" for the transfer of the land to the school authorities and the Government Solicitor therefore considers that the more correct procedure would be to transfer the land by a deed of gift. The local Government Pleader (Tanjore) is said to be of opinion that a deed of conveyance is a more appropriate document but that no registered document is necessary at all in such cases.

2. It is submitted that lands acquired for educational institutions under private management, a portion of the cost of acquisition being met from Provincial funds, are usually made over to them subject to certain terms and conditions [vide for example pages 3-4 of G.O. No. 1215, Home (Education), dated 20th November 1916 and pages 2-6 of G.O. Mis. No. 1290, Home (Education), dated 1st December 1916] and a registered document providing for the conditions would appear to be necessary.

* Where the whole cost of acquisition is borne by Government. As the present* case is the first of its kind and as the local Government Pleader, Tanjore, and the Government Solicitor do not agree in the matter, it seems desirable to obtain the opinion of the Advocate-General as to the best procedure to be adopted in effecting transfers of land in cases like the present. This department may therefore, it is submitted, advise a reference K to the Advocate-General on the subject, as suggested in Home (Education) Department note on page 1 ante.

A.S.R.—15-6-17.

K may, it is submitted, be done. Or, as the whole cost of the acquisition has been borne by Government, the land may be alienated to the school authorities subject to the usual † conditions. The alienation may be sanctioned by Government without reference to the Government of India as the value of the grant does not exceed Rs. 1,000 [Board's Standing Order No. 24 (5)].

V. A. ANANTARAMA AYYAR—19-6-17.

The point raised is, I gather, entirely a legal one and Revenue is not competent to offer an opinion of any value. Provided that precautions are taken to see that the land is used solely for the purposes for which it has been alienated, Revenue need not object to any form of transfer that may be found suitable and convenient.

A. R. KNAPP—21-6-17.

HOME (EDUCATION) DEPARTMENT.

Please see the Revenue Department note above. It does not help the disposal of the question raised in the Collector's letter. It is for consideration whether, as the question has been specifically raised, it may not be referred to the Advocate-General and settled once for all. If a reference to the Advocate-General is agreed to, the draft memorandum in the file is submitted for approval.

P.R.—23-6-17.

T.K.—25-6-17.

Please examine why we should not lease the ground acquired to the institution for use as a playground as we have done in the case of Pachaiyappa's College. The ground will remain the property of Government.

C. RAMANUJA ACHARIYAR—27-6-17.

Submitted that in the case of the Pachaiyappa's College, Madras, referred to in the Registrar's note above the land required by the college for a playground was acquired by the Government—please see G.O. No. 157, Educational, dated the 13th February 1915. The ground remained the property of the Government, the institution being allowed only its use as a playground on condition of its maintenance

in good condition—please see paragraph 9 of G.O. No. 1448, Educational, dated the 18th December 1914. There does not appear to have been any formal conveyance or lease of the property to the college authorities.

2. The case of the Nadar's high school does not appear to be similar to that of the Pachaiyappa's College. In the latter case the Government took upon themselves the responsibility of providing the institutions concerned with playgrounds, while in the former, they only distributed certain grants and left the institutions to make their

G.O. 47, Educational, 15th January 1915. own arrangements to get the grounds they required. Accordingly the grant of Rs. 1,200 sanctioned for the Nadar's High school was its absolute property, subject, of course, to the forty years' mortgage contemplated by article 53 (ii) of the Grant-in-Aid Code and it was entirely in the discretion of the school authorities to secure any site they wanted and use it as a playground. If the school authorities had purchased a ground by private negotiations it would have remained their property subject to the forty years' mortgage stated above. The application of the Land Acquisition Act to the land was only a concession shown to the school by the Government; and it does not appear that on that ground the school should be deprived of its right in the land which would, as explained above, have otherwise been its.

3. As regards the alienation suggested by the Revenue Department, it may be pointed out that it is also open to objection. For, alienation is possible only of State lands. In this case, though the land now vests absolutely in the Government, it is doubtful whether it can be regarded as State land inasmuch as the compensation for the land was paid by the school authorities, for all practical purposes from the funds of the school including, of course, the grant sanctioned by the Government which naturally merged in the school funds and the land was acquired for the specific purpose of a playground for the school. If this view is concurred in, alienation does not appear to be a suitable disposal.

4. Article 54 of the Grant-in-Aid Code prescribes the maximum grant payable for the acquisition of land as one-half of the Collector's valuation. It is, however, in the discretion of Government to vary the maximum and there is no rule prohibiting them from paying a full grant. No distinction is, however, made in the rules of the Grant-in-Aid Code between schools receiving only half-grants and those receiving more than half. Similarly in the present case it does not appear that any distinction should be made in the manner of conveying the property on the ground that a full grant was sanctioned for its acquisition. The usual deed of conveyance appears to be sufficient. Moreover, to alienate or lease the land in such cases places the schools at a disadvantage when compared with those which secure lands by private negotiations and consequently enjoy their absolute right in them and also defeats the main purpose for which the application of the Act is generally invoked, namely, the attainment for the schools concerned of an indefeasible title to the property. In the circumstances the transfer by a deed of conveyance appears to be all that is needed in all cases.

5. If the above view is accepted and if it is considered that a reference to the Advocate-General is not necessary, the Director of Public Instruction may be requested to state whether he agrees with the conclusion arrived at above.

P.R.—3-7-17.

The file may at this stage be sent to the Director of Public Instruction for remarks as to what course he considers desirable.

C. RAMANUJA ACHARIYAR—5-7-17.

If I understand the case aright, it is not intended to vary the incidents of the tenure from that where a portion of the cost is met by the management. The only difficulty is one of conveyancing and as two lawyers differ, the reference to the Advocate-General may issue.

R. RAMACHANDRA RAO—5-7-17.

[Memorandum No. 17-B-3, dated the 6th July 1917.]

From the Advocate-General, dated the 6th July 1917, No. 139.

~~Other Collectors,~~
Director of Public Instruction
Board of Revenue, Land Revenue
Revenue Department. ~~2~~

Not very. Only cases are few

HOME (EDUCATION) DEPARTMENT
G.O. No. 1022, 7th August 1917
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READ—the following papers :—

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Dated—the 3rd April 1917.
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I have the honour to invite a reference to paragraph 2 of G.O. Mis. No. 100, Educational, dated 2nd February 1916, directing that the land acquired for a play-ground for the Nadar's High school, Poraiyar, should be conveyed to the manager of the school, by a formal deed of conveyance and to state that the Government Solicitor, Madras, who was asked to prepare a deed of conveyance considers that a deed of gift would be the proper document to be drawn up in the present case at the cost of the acquisition, viz., Rs. 995-3-11 was paid by the school authorities from the Government grant of Rs. 1,200 sanctioned in G.O. No. 47, Educational, dated 15th January 1915, and requests to be informed if a deed of gift or a deed of conveyance is to be drawn up. The Local Government Pleader, who was consulted in the matter, is of opinion that a deed of conveyance is the more appropriate form in the circumstances of the case, but at the same time points out that under the Crown Grants Act XV of 1895, no registered instrument of transfer is ever necessary in this case, as the Transfer of Property Act does not apply. I therefore request to be informed if the land acquired can be transferred to the Manager of the school under the Crown Grants Act or if it is necessary to draw up a deed of conveyance as already ordered to convey the land to the school authorities.

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The letter from the Collector of Tanjore R.C. No. 176-Eng. of 1916, dated the 3rd April 1917, enquiring whether a piece of land acquired for a play-ground for the Nadar's high school, Peraiyar, should either be transferred to the authorities of the school under the Crown Grants Act or conveyed to them by means of a deed of conveyance is forwarded to the Hon'ble the Advocate-General and he is requested to advise Government in the matter.

R. RAMACHANDRA RAO,
Secretary to Government.

To the Government Solicitor.

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To—the Secretary to Government, Home (Education) Department.
Dated—the 13th July 1917.
No.—836.

ABSTRACT.—Forw'ding the following opinion of the Hon'ble the Advocate-General, No. 139, dated 12th July 1917:—

OPINION.

In the *Secretary of State v. Kasturi Reddi*, I.L.R., 26 Mad., 268, at p. 276, Bhashyam Ayyangar J held that the Crown Grants Act, 1895, exempts crown grants from the operation of the Transfer of Property Act and sections 17 (2) (vii) and 90 (1) (d) of the Registration Act exempt from registration "grants of immoveable property by Government" and "all documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land". In a case reported



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Advocate-General
17 Aug 1917
H. B. Brightwell

HOME DEPARTMENT
G.O. No. 1022, 7th August 1917
Ladd

Government of India, Home Department, to the Secretary to Government, Madras (Education) Department, dated 7th August 1917.

From J. H. Haddock, Esq., Collector of Tanjore.

I have the honour to acknowledge the receipt of your letter of the 2nd inst. regarding the land acquired for a day-school at Tanjore. The land was acquired by the Government of India in 1915 and is now being used for the purpose of a day-school. The land is situated in the village of Tanjore and is bounded by the river. The land is now being used for the purpose of a day-school and is being managed by the Government of India. The land is now being used for the purpose of a day-school and is being managed by the Government of India.

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H. Haddock, Esq., Collector of Tanjore.

Secretary to Government.

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From J. H. Haddock, Esq., Collector of Tanjore.

To the Secretary to Government, Madras (Education) Department.

Dated 1st July 1917.

No. 1022.

Subject: Land acquired for a day-school at Tanjore.

In the Government of India, Home Department, dated 7th August 1917.

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2

No. 1022, Home (Education), 7th August 1917

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3. On the above two grounds, I am of opinion that a grant by the Crown is not governed by any of the provisions of the Transfer of Property Act either as regards the requirement of registered writing or otherwise.

4. As regards the Indian Registration Act, too, the words of sub-section (2) of section 30 of the Government of India Act and especially the words "if so executed may be enforced by or against the Secretary of State" lead me to the conclusion that section 49 of the Registration Act would very materially conflict with the Government of India Act and would be ultra vires if it applied to an unregistered instrument of gift or other conveyance by the Crown. There is, however, no decision on the point and the question is one of first impression. Anyhow, it is quite plain that section 90 (1) (d) of the Registration Act exempts from the requirement of registration sanads, inam title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land or any interest in land. My opinion upon the construction of that clause is contained in paragraph 2 of my opinion No. 1043, dated 24th December 1916, regarding memorandum No. 8203/16A-10, Public Works (Irrigation) Department, dated the 7th December 1916. In addition I would only refer to a decision of the Privy Council since reported in 44 Indian Appeals, page 46, as confirming my interpretation of the word "grant". The decision in I.L.R., 36 All., 176, is in my opinion erroneous. The reason why the exemption in section 17 (2) (vii) is not in terms extended to clauses (a) and (d) of section 17 (1) is because the words "nothing in clauses (b) and (c) applies to" govern the whole series of exemptions and none of the instruments exempted under sub-section 2 (i to vi) and (viii to xii) is an instrument of gift or of lease, so as to fall within clauses (a) and (d) and to be compulsorily registrable but for the exemption. But apart from section 17 (2) (vii) there is of course the comprehensive exemption contained in section 90 (1) (d) of the Act.

5. In my opinion any writing purporting to grant or assign the piece of land in question does not require registration as it is a grant or an assignment of land by Government.

6. If, as I gather, the school acquired the land from Government in consideration of a payment of Rs. 995-3-11, the transaction would be really a sale. The sum of Rs. 1,200 referred to in the Collector's letter became the money of the school whatever its origin. And, to effect the proposed transfer, the "proper assurance" within the meaning of section 30 of the Government of India Act is a conveyance by way of sale and it should be executed by such person and in such manner as is prescribed by the Government of India Resolution on the subject and subject to such provisions and restrictions as may have been laid down by the Secretary of State for India in Council with the concurrence of a majority of votes at a meeting of the Council.

7. Whether section 30 of the Government of India Act imperatively requires a transfer of property by Government to be in writing may be, abstractedly speaking, a nice point. But obviously a grant by the Government—especially having regard to section 30 and the rules and resolution thereunder—cannot be made either orally or merely by delivery of possession unaccompanied by any writing. It is certainly advisable that the writing evidencing the grant should be a "proper assurance" that is, such a conveyance as may be appropriate to carry out the particular transaction in accordance with the general principles of law and the practice of conveyancers. And on the whole, I am inclined to construe section 30 of the Government of India Act, 1915, as *requiring*, and *not* as merely *permitting*, a "proper assurance" to be made.

S. SRINIVASA AYYANGAR,
Advocate-General.

Order—No. 1022, Home (Education), dated 7th August 1917.

The opinion of the Advocate-General, Madras, No. 139, dated the 12th July 1917, with which the Government concur, is communicated to the Collector of Tanjore and he is informed that a conveyance by way of sale is the proper form of transfer of the land acquired for a play-ground for the Nadar's High School, Poraiyar, and that it does not require registration.

(True Extract)

R. RAMACHANDRA RAO,
Secretary to Government.

To the Collector of Tanjore.
" Director of Public Instruction.
" Board of Revenue (Land Revenue).
" Revenue Department.

[SUBJECT.—*Conveyance of the land acquired for a playground for the Nadar's high school at Porayar.*]

G.O.	252, Revenue,	27th January	1911.	G.O.	1302, Ednl.,	9th December	1915.
"	599, Ednl.	27th June	1913.	"	Mis., 1399	11th "	"
"	1448	18th December	1914.	"	194, Revenue,	31st January	1916.
"	47, Ednl.,	15th January	1915.	"	100, Ednl.,	2nd February	"
"	Mis., 157	13th February	"	"	2588, Revenue,	17th November	"
"	703, Revenue,	19th March	"	"	1215, Home (Edn.),	20th "	"
"	Mis., 1577	9th July	"	"	Mis., 1290	1st December	"
"	973, Ednl.,	6th September	"	"	1148, Revenue,	21st April	1917.

The deed of conveyance was the form which was hitherto adopted in all cases of conveyances of land acquired for educational purposes on behalf of private institutions. The Government Solicitor did not object till now to this form of conveyance even though the cost of acquisition was met from the Government grant made for the purpose, as in the present case. It is not clear why a different form of conveyance should be drawn up in the present instance. Perhaps the Advocate-General may be requested to advise in the matter. The draft memorandum is for approval.

The precedents * put up in this file relate to cases in which at least a *portion* of the acquisition compensation was met by the party for whom the land was acquired and the conveyance had for its consideration the portion provided by the party. In the present case the *entire* amount of compensation comes out of the grant given from Provincial funds towards the provision of a playground; and thus it is pointed out that there is no consideration on which the conveyance can be based. In this view the transaction partakes of the nature of a gift.

Before we refer the case to the Revenue Department for advice, please say whether there have been any cases in which lands have been acquired where the entire cost was met from Provincial grant.

Submitted that there appear to have been no cases in which lands have been acquired for private institutions and the cost met entirely from Provincial funds. From the statement on pages 4 and 5 of G.O. No. 47, Educational, dated the 15th

A circular library stamp from the Government of India. The text "GOVERNMENT OF INDIA" is curved along the top inner edge, and "LIBRARY" is curved along the bottom inner edge. The date "14 AUG 1917" is stamped in the center.

January 1915, it is observed that in eleven cases the Government have undertaken to bear the entire cost of the land required for playgrounds for private institutions. Of these, the case of the Nadar's High school, Poraiyar, dealt with in this file is the first in which the Land Acquisition Act has been applied. The authorities of C.M.S. High school, Megnanapuram, has applied to Government for acquiring the land required by them under the Land Acquisition Act. The application is separately under consideration.

2. Submitted that the remarks of the Revenue Department may be invited on the question raised.

P.R.—1-5-17.

T.K.—5-5-17.

C. RAMANUJA ACHARIYAR—9-5-17.

R. RAMACHANDRA RAO—10-5-17.

REVENUE DEPARTMENT.

The question for consideration is whether in cases in which land has been acquired entirely with Provincial funds for an educational institution under private management, the best way of transferring the land to the institution would be by a deed of conveyance or by one of gift or whether a registered document is necessary at all for the purpose. As the cost of acquisition is entirely met from Provincial funds, there is no "consideration" for the transfer of the land to the school authorities and the Government Solicitor therefore considers that the more correct procedure would be to transfer the land by a deed of gift. The local Government Pleader (Tanjore) is said to be of opinion that a deed of conveyance is a more appropriate document but that no registered document is necessary at all in such cases.

2. It is submitted that lands acquired for educational institutions under private management, a portion of the cost of acquisition being met from Provincial funds, are usually made over to them subject to certain terms and conditions [vide for example pages 3-4 of G.O. No. 1215, Home (Education), dated 20th November 1916 and pages 2-6 of G.O. Mis. No. 1290, Home (Education), dated 1st December 1916] and a registered document providing for the conditions would appear to be necessary.

As the present* case is the first of its kind and as the local Government Pleader, Tanjore, and the Government Solicitor do not agree in the matter, it seems desirable to obtain the opinion of the Advocate-General as to the best procedure to be adopted in effecting transfers of land in cases like the present. This department may therefore, it is submitted, advise a reference

K to the Advocate-General on the subject, as suggested in Home (Education) Department note on page 1 ante.

A.S.R.—15-6-17.

K may, it is submitted, be done. Or, as the whole cost of the acquisition has been borne by Government, the land may be alienated to the school authorities

subject to the usual† conditions. The alienation may be sanctioned by Government without reference to the Government of India as the value of the grant does not exceed Rs. 1,000 [Board's Standing Order No. 24 (6)].

V. A. ANANTARAMA AYYAR—19-6-17.

The point raised is, I gather, entirely a legal one and Revenue is not competent to offer an opinion of any value. Provided that precautions are taken to see that the land is used solely for the purposes for which it has been alienated, Revenue need not object to any form of transfer that may be found suitable and convenient.

A. R. KNAPP—21-6-17.

Please see the Revenue Department note above. It does not help the disposal of the question raised in the Collector's letter. It is for consideration whether, as the question has been specifically raised, it may not be referred to the Advocate-General and settled once for all. If a reference to the Advocate-General is agreed to, the draft memorandum in the file is submitted for approval.

P.R.—23-6-17.

T.K.—25-6-17.

Please examine why we should not lease the ground acquired to the institution for use as a playground as we have done in the case of Pachayappa's College. The ground will remain the property of Government.

C. RAMANUJA ACHARIYAR—27-6-17.

Submitted that in the case of the Pachaiyappa's College, Madras, referred to in the Registrar's note above the land required by the college for a playground was acquired by the Government—please see G.O. No. 157, Educational, dated the 13th February 1915. The ground remained the property of the Government, the institution being allowed only its use as a playground on condition of its maintenance in good condition—please see paragraph 9 of G.O. No. 1448, Educational, dated the 18th December 1914. There does not appear to have been any formal conveyance or lease of the property to the college authorities.

2. The case of the Nadar's High school does not appear to be similar to that of the Pachaiyappa's College. In the latter case the Government took upon themselves the responsibility of providing the institutions concerned with playgrounds, while in the former, they only distributed certain grants and left the institutions to make their

own arrangements to get the grounds they required. Accordingly the grant of Rs. 1,200 sanctioned for the Nadar's High school was its absolute property, subject, of course, to the forty years' mortgage contemplated by article 53 (ii) of the Grant-in-Aid Code and it was entirely in the discretion of the school authorities to secure any site they wanted and use it as a playground. If the school authorities had purchased a ground by private negotiations it would have remained their property subject to the forty years' mortgage stated above. The application of the Land Acquisition Act to the land was only a concession shown to the school by the Government; and it does not appear that on that ground the school should be deprived of its right in the land which would, as explained above, have otherwise been its.

3. As regards the alienation suggested by the Revenue Department, it may be pointed out that it is also open to objection. For, alienation is possible only of State lands. In this case, though the land now vests absolutely in the Government, it is doubtful whether it can be regarded as State land inasmuch as the compensation for the land was paid by the school authorities, for all practical purposes from the funds of the school including, of course, the grant sanctioned by the Government which naturally merged in the school funds and the land was acquired for the specific purpose of a playground for the school. If this view is concurred in, alienation does not appear to be a suitable disposal.

4. Article 54 of the Grant-in-Aid Code prescribes the maximum grant payable for the acquisition of land as one-half of the Collector's valuation. It is, however, in the discretion of Government to vary the maximum and there is no rule prohibiting them from paying a full grant. No distinction is, however, made in the rules of the Grant-in-Aid Code between schools receiving only half-grants and those receiving more than half. Similarly in the present case it does not appear that any distinction should be made in the manner of conveying the property on the ground that a full grant was sanctioned for its acquisition. The usual deed of conveyance appears to be sufficient. Moreover, to alienate or lease the land in such cases places the schools at a disadvantage when compared with those which secure lands by private negotiations and consequently enjoy their absolute right in them and also defeats the main purpose for which the application of the Act is generally invoked, namely, the attainment of an indefeasible title to the property. In the circumstances the transfer by a deed of conveyance appears to be all that is needed in all cases.

for the School concerned

4 NOTES TO G.O. No. 1022, HOME (EDUCATION), 7TH AUGUST 1917

5. If the above view is accepted and if it is considered that a reference to the Advocate-General is not necessary, the Director of Public Instruction may be requested to state whether he agrees with the conclusion arrived at above.

P.R.—3-7-17.

The file may at this stage be sent to the Director of Public Instruction for remarks as to what course he considers desirable.

C. RAMANUJA ACHARIYAR—5-7-17.

If I understand the case aright, it is not intended to vary the incidents of the tenure from that where a portion of the cost is met by the management. The only difficulty is one of conveyancing and as two lawyers differ, the reference to the Advocate-General may issue.

R. RAMACHANDRA RAO—5-7-17.

[Memorandum No. 17-B-3, dated the 6th July 1917.]

From the Advocate-General, dated the 6th July 1917, No. 139.

The Advocate-General's opinion is that a conveyance by way of sale is the proper form of transfer of the land in this case and that the conveyance does not require registration. Submitted that the Government may concur in this opinion and it may be communicated to the Collector of Tanjore and other Collectors for information and guidance.

Not necessary. Surely cases are few.

R.R.—27-7-17.

2. A draft order is submitted for approval. If approved, it may be sent to Revenue for acceptance.

P.R.—19-7-17.

T.K.—24-7-17.

Other issues raised in the Collector's letter of the 3rd April 1917 have to an extent obscured the main issue in this case, viz., whether the transaction should be a gift or a conveyance. The Advocate-General has in his opinion dealt with more elaborately the other issues. The Advocate-General takes the view, as regards the main issue, expressed at B on page 1 supra. The objection to this view is expressed at A in the same note. This aspect of the question has not been considered by the Advocate-General. If the view at B is accepted, the funds provided for the acquisition will be considered as private funds for purpose of conveyance and as Government funds for purpose of acquisition. It is for consideration whether this point should be placed before the Advocate-General.

C.R.—27-7-17.

Scarcely necessary. It is clear the money is Government money and so the Land Acquisition Act is satisfied. At present, the land has to be conveyed and now the money is really a part of the grant. So the Advocate-General's opinion may be accepted.

R.R.—27-7-17.

REVENUE DEPARTMENT.

The draft order may, it is submitted, be accepted in Revenue and the file returned to Home (Education).

A.S.R.—2-8-17.

V. A. ANANTARAMA AYYAR—2-8-17.

A. R. KNAPP—4-8-17.

HOME (EDUCATION) DEPARTMENT.

Submitted for orders as to whether the draft order may issue.

P.R.—4-8-17.

C.R.—5-8-17.

R.R.—6-8-17.

P[ENTLAND]—7-8-17.

Issue.

R.R.—7-8-17.

[G.O. No. 1022, Home (Education), dated 7th August 1917.]

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Home (S.D.) DEPARTMENT.

7 AUG 1917

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Government of Madras

HOME (EDUCATION) DEPARTMENT

G.O. No. 1022, 7th August 1917

Land

Communicating to the Collector of Tanjore the opinion of the Hon'ble the Advocate-General that the — acquired for a play-ground for the Nadar's high school, Poraiyar, should be transferred to the school authorities by means of a conveyance by way of sale and that it does not require registration.

N. P.

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Government of Madras

HOME (EDUCATION) DEPARTMENT

G.O. No. 1022, 7th August 1917

Land

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READ—the following papers :—

1

Letter—from J. R. HUGGINS, Esq., I.C.S., Collector of Tanjore.
To—the Secretary to Government, Home (Education) Department.
Dated—the 3rd April 1917.
No.—R.C. 176-Eng. of 1916.

I have the honour to invite a reference to paragraph 2 of G.O. Mis. No. 100, Educational, dated 2nd February 1916, directing that the land acquired for a playground for the Nadar's High school, Poraiyar, should be conveyed to the manager of the school, by a formal deed of conveyance and to state that the Government Solicitor, Madras, who was asked to prepare a deed of conveyance considers that a deed of gift would be the proper document to be drawn up in the present case at the cost of the acquisition, viz., Rs. 995-3-11 was paid by the school authorities from the Government grant of Rs. 1,200 sanctioned in G.O. No. 47, Educational, dated 15th January 1915, and requests to be informed if a deed of gift or a deed of conveyance is to be drawn up. The Local Government Pleader, who was consulted in the matter, is of opinion that a deed of conveyance is the more appropriate form in the circumstances of the case, but at the same time points out that under the Crown Grants Act XV of 1895, no registered instrument of transfer is ever necessary in this case, as the Transfer of Property Act does not apply. I therefore request to be informed if the land acquired can be transferred to the manager of the school under the Crown Grants Act or if it is necessary to draw up a deed of conveyance as already ordered to convey the land to the school authorities.

II

Memorandum No. 17 B-3, Home (Education), dated 6th July 1917.

The letter from the Collector of Tanjore R.C. No. 176-Eng. of 1916, dated the 3rd April 1917, enquiring whether a piece of land acquired for a play-ground for the Nadar's high school, Poraiyar, should either be transferred to the authorities of the school under the Crown Grants Act or conveyed to them by means of a deed of conveyance is forwarded to the Hon'ble the Advocate-General and he is requested to advise Government in the matter.

R. RAMACHANDRA RAO,
Secretary to Government.

To the Government Solicitor.

III

From—H. BRIGHTWELL, Esq., Government, Solicitor, Madras.
To—the Secretary to Government, Home (Education) Department.
Dated—the 13th July 1917.
No.—836.

ABSTRACT.—Forwarding the following opinion of the Hon'ble the Advocate-General, No. 139, dated 12th July 1917:—

OPINION.

In the *Secretary of State v. Kasturi Reddi*, I.L.R., 26 Mad., 268, at p. 276, Bhashyam Ayyangar J held that the Crown Grants Act, 1895, exempts crown grants from the operation of the Transfer of Property Act and sections 17 (2) (vii) and 90 (1) (d) of the Registration Act exempt from registration "grants of immoveable

property by Government" and "all documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land". In a case reported in 3 All., L.J. 130, it was said that section 2 of the Crown Grants Act does not render all the provisions of the Transfer of Property Act inapplicable to grants from the Crown and that it only means that when the court is called upon to construe a crown grant it shall construe it irrespective of the provisions of the Transfer of Property Act. It is no doubt true that section 3 of the Crown Grants Act and the last words of section 2 of that Act enable Government to create for instance estates unknown to Hindu and Muhammadan Law and to make such provisions, restrictions, conditions and limitations in a crown grant as may be desired, irrespective of the provisions of the Transfer of Property Act and any other rules of law on the construction or effect of grants in general. For instance neither the rule against perpetuity nor the rule in the Tagore case that a grant cannot be made to an unborn person, has any application to the case of a crown grant—See 27 All., 634, at p. 653, P.C. But the dictum of the Allahabad High Court in 3 All., L.J., 130 is against the express words of section 2: "Nothing in the Transfer of Property Act contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of Her Majesty the Queen-Empress, her heirs or successors or by or on behalf of the Secretary of State for India in Council to or in favour of any person whomsoever." These words are quite plain and are not cut down by the subsequent clause in section 2. Though sections 54, paragraphs 2 and 3, 59, 107 and 123 of the Transfer of Property Act are required by section 4 of that Act to be read as supplemental to the Registration Act, they are not made part of or declared as enacted in the Registration Act: they are part of and are contained in the Transfer of Property Act within the meaning of section 2 of the Crown Grants Act. The view taken in 26 Mad., 268, at p. 276 that crown grants are exempt from the operation of the Transfer of Property Act is therefore sound and should be followed.

2. Further sections 28 and 30 of the Government of India Act, 1915, exclusively govern and regulate the sale and disposal of any real or personal estate vested in the Crown for purposes of the Government of India and the form and execution of assurances and the authorities by whom they are to be executed. These provisions cannot be affected by any law made by the Governor-General in Council such as the Transfer of Property Act, sections 54, 59, 107, 118 and 123 of which prescribe that certain transfers can be made only by a registered instrument and that in some cases the instrument should also be attested by witnesses (vide section 65 (2) of the Government of India Act, 1915).

3. On the above two grounds, I am of opinion that a grant by the Crown is not governed by any of the provisions of the Transfer of Property Act either as regards the requirement of registered writing or otherwise.

4. As regards the Indian Registration Act, too, the words of sub-section (2) of section 30 of the Government of India Act and especially the words "if so executed may be enforced by or against the Secretary of State" lead me to the conclusion that section 49 of the Registration Act would very materially conflict with the Government of India Act and would be ultra vires if it applied to an unregistered instrument of gift or other conveyance by the Crown. There is, however, no decision on the point and the question is one of first impression. Anyhow, it is quite plain that section 90 (1) (d) of the Registration Act exempts from the requirement of registration sanads, inam title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land or any interest in land. My opinion upon the construction of that clause is contained in paragraph 2 of my opinion No. 1043, dated 24th December 1916, regarding memorandum No. 8203/16A-10, Public Works (Irrigation) Department, dated the 7th December 1916. In addition I would only refer to a decision of the Privy Council since reported in 44 Indian Appeals, page 46, as confirming my interpretation of the word "grant". The decision in I.L.R., 36 All., 176, is in my opinion erroneous. The reason why the exemption in section 17 (2) (vii) is not in terms extended to clauses (a) and (d) of section 17 (1) is because the words "nothing in clauses (b) and (c) applies to" govern the whole series of exemptions and none of the instruments exempted under sub-section 2 (i to vi) and (viii to xii)

is an instrument of gift or of lease so as to fall within clauses (a) and (d) and to be compulsorily registrable but for the exemption. But apart from section 17 (2) (vii) there is of course the comprehensive exemption contained in section 90 (1) (a) of the Act.

5. In my opinion any writing purporting to grant or assign the piece of land in question does not require registration as it is a grant or an assignment of land by Government.

6. If, as I gather, the school acquired the land from Government in consideration of a payment of Rs. 995-3-11, the transaction would be really a sale. The sum of Rs. 1,200 referred to in the Collector's letter became the money of the school whatever its origin. And, to effect the proposed transfer, the "proper assurance" within the meaning of section 30 of the Government of India Act is a conveyance by way of sale and it should be executed by such person and in such manner as is prescribed by the Government of India Resolution on the subject and subject to such provisions and restrictions as may have been laid down by the Secretary of State for India in Council with the concurrence of a majority of votes at a meeting of the Council.

7. Whether section 30 of the Government of India Act imperatively requires a transfer of property by Government to be in writing may be, abstractedly speaking, a nice point. But obviously a grant by the Government—especially having regard to section 30 and the rules and resolution thereunder—cannot be made either orally or merely by delivery of possession unaccompanied by any writing. It is certainly advisable that the writing evidencing the grant should be a "proper assurance" that is, such a conveyance as may be appropriate to carry out the particular transaction in accordance with the general principles of law and the practice of conveyancers. And on the whole, I am inclined to construe section 30 of the Government of India Act, 1915, as requiring, and not as merely permitting, a "proper assurance" to be made.

S. SRINIVASA AYYANGAR,
Advocate-General.

Order—No. 1022, Home (Education), dated 7th August 1917.

The opinion of the Advocate-General, Madras, No. 139, dated the 12th July 1917, with which the Government concur, is communicated to the Collector of Tanjore and he is informed that a conveyance by way of sale is the proper form of transfer of the land acquired for a play-ground for the Nadar's High School, Poraiyar, and that it does not require registration.

(True Extract)

R. RAMACHANDRA RAO,
Secretary to Government.

To the Collector of Tanjore.
" Director of Public Instruction.
" Board of Revenue (Land Revenue).
" Revenue Department.

NOTES CONNECTED WITH G.O. No. 1022, HOME (EDUCATION),
DATED THE 7TH AUGUST 1917.

[SUBJECT.— *Conveyance of the land acquired for a playground for the Nadar's high school at Porayar.*]

Previous papers :

G.O.	252, Revenue,	27th January	1911.	G.O.	1362, Edl.,	9th December	1915.
"	509, Edl.,	27th June	1913.	"	Mis. 1399	11th "	"
"	1448 "	18th December	1914.	"	" 194, Revenue,	31st January	1916.
"	47 "	15th January	1915.	"	" 100, Edl.,	2nd February	"
"	Mis. 157	13th February	"	"	2588, Revenue,	17th November	"
"	703, Revenue,	19th March	"	"	1215, Home (Edn.),	20th "	"
"	Mis. 1577	9th July	"	"	Mis. 1290	1st December	"
"	" 973, Edl.,	6th September	"	"	1148, Revenue,	21st April	1917.

From the Collector of Tanjore, dated 3rd April 1917, R.C. No. 176 Eng.

The deed of conveyance was the form which was hitherto adopted in all cases of conveyances of land acquired for educational purposes on behalf of private institutions. The Government Solicitor did not object till now to this form of conveyance even though the cost of acquisition was met from the Government grant made for the purpose, as in the present case. It is not clear why a different form of conveyance should be drawn up in the present instance. Perhaps the Advocate-General may be requested to advise in the matter. The draft memorandum is for approval.

T.K.—23-4-17.

The precedents * put up in this file relate to cases in which at least a portion of the acquisition compensation was met by the party for whom the land was acquired and the conveyance had for its consideration the portion provided by the party. In the present case the entire amount of compensation comes out of the grant given from Provincial funds towards the provision of playground; and thus it is pointed out that there is no consideration on which the conveyance can be based. In this view the transaction partakes of the nature of a gift.

2. It may perhaps be argued that the Provincial grant having been already made over to the party and funds for acquisition having been provided by the party himself, this amount may be taken as the consideration. This will not do, as we have to treat this grant as distinctly Provincial funds; otherwise under section 6 of the Act acquisition would have been impossible and public funds would not have been utilized for the acquisition.

3. Before we refer the case to the Revenue Department for advice, please say whether there have been any cases in which lands have been acquired where the entire cost was met from Provincial grant.

C. RAMANUJA ACHARIYAR—26-4-17.

Submitted that there appear to have been no cases in which lands have been acquired for private institutions and the cost met entirely from Provincial funds. From the statement on pages 4 and 5 of G.O. No. 47, Educational, dated the 15th January 1915, it is observed that in eleven cases the Government have undertaken to bear the entire cost of the land required for playgrounds for private institutions. Of these, the case of the Nadar's High school, Porayar, dealt with in this file is the first in which the Land Acquisition Act has been applied. The authorities of the C.M.S. high school, Megnanapuram, has applied to Government for acquiring the land required by them under the Land Acquisition Act. The application is separately under consideration.

2. Submitted that the remarks of the Revenue Department may be invited on the question raised.

P.R.—1-5-17.

T.K.—5-5-17.

C.R.—9-5-17.

R. RAMACHANDRA RAO—10-5-17.

REVENUE DEPARTMENT.

The question for consideration is whether in cases in which land has been acquired entirely with Provincial funds for an educational institution under private management, the best way of transferring the land to the institution would be by a deed of conveyance or by one of gift or whether a registered document is necessary at all for the purpose. As the cost of acquisition is entirely met from Provincial funds, there is no "consideration" for the transfer of the land to the school authorities and the Government Solicitor therefore considers that the more correct procedure would be to transfer the land by a deed of gift. The local Government Pleader (Tanjore) is said to be of opinion that a deed of conveyance is a more appropriate document but that no registered document is necessary at all in such cases.

2. It is submitted that lands acquired for educational institutions under private management, a portion of the cost of acquisition being met from Provincial funds, are usually made over to them subject to certain terms and conditions [vide for example pages 3-4 of G.O. No. 1215, Home (Education), dated 20th November 1916 and pages 2-6 of G.O. Mis. No. 1290, Home (Education), dated 1st December 1916] and a registered document providing for the conditions would appear to be necessary.

* Where the whole cost of acquisition is borne by Government. As the present* case is the first of its kind and as the local Government Pleader, Tanjore, and the Government Solicitor do not agree in the matter, it seems desirable to obtain the opinion of the Advocate-General as to the best procedure to be adopted in effecting transfers of land in cases like the present. This department may therefore, it is submitted, advise a reference K to the Advocate-General on the subject, as suggested in Home (Education) Department note on page 1 ante.

A.S.R.—15-6-17.

K may, it is submitted, be done. Or, as the whole cost of the acquisition has been borne by Government, the land may be alienated to the school authorities subject to the usual † conditions. The alienation may be sanctioned by Government without reference to the Government of India as the value of the grant does not exceed Rs. 1,000 [Board's Standing Order No. 24 (5)].

V. A. ANANTARAMA AYYAR—19-6-17.

The point raised is, I gather, entirely a legal one and Revenue is not competent to offer an opinion of any value. Provided that precautions are taken to see that the land is used solely for the purposes for which it has been alienated, Revenue need not object to any form of transfer that may be found suitable and convenient.

A. R. KNAPP—21-6-17.

HOME (EDUCATION) DEPARTMENT.

Please see the Revenue Department note above. It does not help the disposal of the question raised in the Collector's letter. It is for consideration whether, as the question has been specifically raised, it may not be referred to the Advocate-General and settled once for all. If a reference to the Advocate-General is agreed to, the draft memorandum in the file is submitted for approval.

P.R.—23-6-17.

T.K.—25-6-17.

Please examine why we should not lease the ground acquired to the institution for use as a playground as we have done in the case of Pachaiyappa's College. The ground will remain the property of Government.

C. RAMANUJA ACHARIYAR—27-6-17.

Submitted that in the case of the Pachaiyappa's College, Madras, referred to in the Registrar's note above the land required by the college for a playground was acquired by the Government—please see G.O. No. 157, Educational, dated the 13th February 1915. The ground remained the property of the Government, the institution being allowed only its use as a playground on condition of its maintenance

in good condition—please see paragraph 9 of G.O. No. 1448, Educational, dated the 18th December 1914. There does not appear to have been any formal conveyance or lease of the property to the college authorities.

2. The case of the Nadar's high school does not appear to be similar to that of the Pachaiyappa's College. In the latter case the Government took upon themselves the responsibility of providing the institutions concerned with playgrounds, while in the former, they only distributed certain grants and left the institutions to make their

G.O. 47, Educational, 15th January 1915. own arrangements to get the grounds they required. Accordingly the grant of Rs. 1,200 sanctioned for the Nadar's High school was its absolute property, subject, of course, to the forty years' mortgage contemplated by article 53 (ii) of the Grant-in-Aid Code and it was entirely in the discretion of the school authorities to secure any site they wanted and use it as a playground. If the school authorities had purchased a ground by private negotiations it would have remained their property subject to the forty years' mortgage stated above. The application of the Land Acquisition Act to the land was only a concession shown to the school by the Government; and it does not appear that on that ground the school should be deprived of its right in the land which would, as explained above, have otherwise been its.

3. As regards the alienation suggested by the Revenue Department, it may be pointed out that it is also open to objection. For, alienation is possible only of State lands. In this case, though the land now vests absolutely in the Government, it is doubtful whether it can be regarded as State land inasmuch as the compensation for the land was paid by the school authorities, for all practical purposes from the funds of the school including, of course, the grant sanctioned by the Government which naturally merged in the school funds and the land was acquired for the specific purpose of a playground for the school. If this view is concurred in, alienation does not appear to be a suitable disposal.

4. Article 54 of the Grant-in-Aid Code prescribes the maximum grant payable for the acquisition of land as one-half of the Collector's valuation. It is, however, in the discretion of Government to vary the maximum and there is no rule prohibiting them from paying a full grant. No distinction is, however, made in the rules of the Grant-in-Aid Code between schools receiving only half-grants and those receiving more than half. Similarly in the present case it does not appear that any distinction should be made in the manner of conveying the property on the ground that a full grant was sanctioned for its acquisition. The usual deed of conveyance appears to be sufficient. Moreover, to alienate or lease the land in such cases places the schools at a disadvantage when compared with those which secure lands by private negotiations and consequently enjoy their absolute right in them and also defeats the main purpose for which the application of the Act is generally invoked, namely, the attainment for the schools concerned of an indefeasible title to the property. In the circumstances the transfer by a deed of conveyance appears to be all that is needed in all cases.

5. If the above view is accepted and if it is considered that a reference to the Advocate-General is not necessary, the Director of Public Instruction may be requested to state whether he agrees with the conclusion arrived at above.

P.R.—3-7-17.

The file may at this stage be sent to the Director of Public Instruction for remarks as to what course he considers desirable.

C. RAMANUJA ACHARIYAR—5-7-17.

If I understand the case aright, it is not intended to vary the incidents of the tenure from that where a portion of the cost is met by the management. The only difficulty is one of conveyancing and as two lawyers differ, the reference to the Advocate-General may issue.

R. RAMACHANDRA RAO—5-7-17.

[Memorandum No. 17-B-3, dated the 6th July 1917.]

From the Advocate-General, dated the 6th July 1917, No. 139.

~~Other Collectors,~~
Director of Public Instruction
Board of Revenue, Land Revenue
Revenue Department. *X*

Not very. Only cases are few

HOME (EDUCATION) DEPARTMENT
G.O. No. 1022, 7th August 1917
Land

Communicating to the Collector of Tanjore the opinion of the Hon'ble the Advocate-General that the — acquired for play-ground for the Nadar's High School, Poraiyar, should be transferred to the school authorities by means of a conveyance by way of sale and that it requires no registration.

READ—the following papers :—

I

Letter—from J. R. HUGGINS, Esq., I.C.S., Collector of Tanjore.
To—the Secretary to Government, Home (Education) Department.
Dated—the 3rd April 1917.
No.—R.C. 176-Eng. of 1916.

I have the honour to invite a reference to paragraph 2 of G.O. Mis. No. 100, Educational, dated 2nd February 1916, directing that the land acquired for a play-ground for the Nadar's High school, Poraiyar, should be conveyed to the manager of the school, by a formal deed of conveyance and to state that the Government Solicitor, Madras, who was asked to prepare a deed of conveyance considers that a deed of gift would be the proper document to be drawn up in the present case at the cost of the acquisition, viz., Rs. 995-3-11 was paid by the school authorities from the Government grant of Rs. 1,200 sanctioned in G.O. No. 47, Educational, dated 15th January 1915, and requests to be informed if a deed of gift or a deed of conveyance is to be drawn up. The Local Government Pleader, who was consulted in the matter, is of opinion that a deed of conveyance is the more appropriate form in the circumstances of the case, but at the same time points out that under the Crown Grants Act XV of 1895, no registered instrument of transfer is ever necessary in this case, as the Transfer of Property Act does not apply. I therefore request to be informed if the land acquired can be transferred to the Manager of the school under the Crown Grants Act or if it is necessary to draw up a deed of conveyance as already ordered to convey the land to the school authorities.

II

Memorandum No. 17 B-3, Home (Education), dated 6th July 1917.

The letter from the Collector of Tanjore R.C. No. 176-Eng. of 1916, dated the 3rd April 1917, enquiring whether a piece of land acquired for a play-ground for the Nadar's high school, Peraiyar, should either be transferred to the authorities of the school under the Crown Grants Act or conveyed to them by means of a deed of conveyance is forwarded to the Hon'ble the Advocate-General and he is requested to advise Government in the matter.

R. RAMACHANDRA RAO,
Secretary to Government.

To the Government Solicitor.

III

From—H. BRIGHTWELL, Esq., Government, Solicitor, Madras.
To—the Secretary to Government, Home (Education) Department.
Dated—the 13th July 1917.
No.—836.

ABSTRACT.—Forw'ding the following opinion of the Hon'ble the Advocate-General, No. 139, dated 12th July 1917:—

OPINION.

In the *Secretary of State v. Kasturi Reddi*, I.L.R., 26 Mad., 268, at p. 276, Bhashyam Ayyangar J held that the Crown Grants Act, 1895, exempts crown grants from the operation of the Transfer of Property Act and sections 17 (2) (vii) and 90 (1) (d) of the Registration Act exempt from registration "grants of immoveable property by Government" and "all documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land". In a case reported



HOME DEPARTMENT
G.O. No. 1022, 7th August 1917
Ladd

Government of India, Home Department, to the Secretary to Government, Madras (Education) Department, dated 7th August 1917.

From J. H. Haddock, Esq., Collector of Tanjore.

I have the honour to acknowledge the receipt of your letter of the 2nd inst. regarding the land acquired for a day-school at Tanjore. The land was acquired by the Government in 1915 and is now being used for the purpose of a day-school. The land is situated in the village of Tanjore and is bounded by the river. The land is now being used for the purpose of a day-school and is being managed by the Government. The land is now being used for the purpose of a day-school and is being managed by the Government.

Memorandum No. 17 B-3 Home (Education) dated 6th July 1917. The letter from the Collector of Tanjore, dated 1st July 1917, regarding the land acquired for a day-school at Tanjore, is forwarded to the Secretary to Government, Madras (Education) Department, for their consideration.

H. Haddock, Esq., Collector of Tanjore.

Secretary to Government.

III

From J. H. Haddock, Esq., Collector of Tanjore.

To the Secretary to Government, Madras (Education) Department.

Dated 1st July 1917.

Subject: Land acquired for a day-school at Tanjore.

Reference: Memorandum No. 17 B-3 Home (Education) dated 6th July 1917.

In the Secretary to Government, Madras (Education) Department.

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2

No. 1022, Home (Education), 7th August 1917

in 3 All., L.J. 130, it was said that section 2 of the Crown Grants Act does not render all the provisions of the Transfer of Property Act inapplicable to grants from the Crown and that it only means that when the court is called upon to construe a crown grant it shall construe it irrespective of the provisions of the Transfer of Property Act. It is no doubt true that section 3 of the Crown Grants Act and the last words of section 2 of that Act enable Government to create for instance estates unknown to Hindu and Muhammadan Law and to make such provisions, restrictions, conditions and limitations in a crown grant as may be desired, irrespective of the provisions of the Transfer of Property Act and any other rules of law on the construction or effect of grants in general. For instance neither the rule against perpetuity nor the rule in the Tagore case that a grant cannot be made to an unborn person, has any application to the case of a crown grant—See 27 All., 634, at p. 653, P.C. But the dictum of the Allahabad High Court in 3 All., L.J., 130 is against the express words of section 2: "Nothing in the Transfer of Property Act contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of Her Majesty the Queen-Empress, her heirs or successors or by or on behalf of the Secretary of State for India in Council to or in favour of any person whomsoever." These words are quite plain and are not cut down by the subsequent clause in section 2. Though sections 54, paragraphs 2 and 3, 59, 107 and 123 of the Transfer of Property Act are required by section 4 of that Act to be read as supplemental to the Registration Act, they are not made part of or declared as enacted in the Registration Act: they are part of and are contained in the Transfer of Property Act within the meaning of section 2 of the Crown Grants Act. The view taken in 26 Mad., 268, at p. 276 that crown grants are exempt from the operation of the Transfer of Property Act is therefore sound and should be followed.

2. Further sections 28 and 30 of the Government of India Act, 1915, exclusively govern and regulate the sale and disposal of any real or personal estate vested in the Crown for purposes of the Government of India and the form and execution of assurances and the authorities by whom they are to be executed. These provisions cannot be affected by any law made by the Governor-General in Council such as the Transfer of Property Act, sections 54, 59, 107, 118 and 123 of which prescribe that certain transfers can be made only by a registered instrument and that in some cases the instrument should also be attested by witnesses (vide section 65 (2) of the Government of India Act, 1915).

3. On the above two grounds, I am of opinion that a grant by the Crown is not governed by any of the provisions of the Transfer of Property Act either as regards the requirement of registered writing or otherwise.

4. As regards the Indian Registration Act, too, the words of sub-section (2) of section 30 of the Government of India Act and especially the words "if so executed may be enforced by or against the Secretary of State" lead me to the conclusion that section 49 of the Registration Act would very materially conflict with the Government of India Act and would be ultra vires if it applied to an unregistered instrument of gift or other conveyance by the Crown. There is, however, no decision on the point and the question is one of first impression. Anyhow, it is quite plain that section 90 (1) (d) of the Registration Act exempts from the requirement of registration sanads, inam title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land or any interest in land. My opinion upon the construction of that clause is contained in paragraph 2 of my opinion No. 1043, dated 24th December 1916, regarding memorandum No. 8203/16A-10, Public Works (Irrigation) Department, dated the 7th December 1916. In addition I would only refer to a decision of the Privy Council since reported in 44 Indian Appeals, page 46, as confirming my interpretation of the word "grant". The decision in I.L.R., 36 All., 176, is in my opinion erroneous. The reason why the exemption in section 17 (2) (vii) is not in terms extended to clauses (a) and (d) of section 17 (1) is because the words "nothing in clauses (b) and (c) applies to" govern the whole series of exemptions and none of the instruments exempted under sub-section 2 (i to vi) and (viii to xii) is an instrument of gift or of lease, so as to fall within clauses (a) and (d) and to be compulsorily registrable but for the exemption. But apart from section 17 (2) (vii) there is of course the comprehensive exemption contained in section 90 (1) (d) of the Act.

5. In my opinion any writing purporting to grant or assign the piece of land in question does not require registration as it is a grant or an assignment of land by Government.

6. If, as I gather, the school acquired the land from Government in consideration of a payment of Rs. 995-3-11, the transaction would be really a sale. The sum of Rs. 1,200 referred to in the Collector's letter became the money of the school whatever its origin. And, to effect the proposed transfer, the "proper assurance" within the meaning of section 30 of the Government of India Act is a conveyance by way of sale and it should be executed by such person and in such manner as is prescribed by the Government of India Resolution on the subject and subject to such provisions and restrictions as may have been laid down by the Secretary of State for India in Council with the concurrence of a majority of votes at a meeting of the Council.

7. Whether section 30 of the Government of India Act imperatively requires a transfer of property by Government to be in writing may be, abstractedly speaking, a nice point. But obviously a grant by the Government—especially having regard to section 30 and the rules and resolution thereunder—cannot be made either orally or merely by delivery of possession unaccompanied by any writing. It is certainly advisable that the writing evidencing the grant should be a "proper assurance" that is, such a conveyance as may be appropriate to carry out the particular transaction in accordance with the general principles of law and the practice of conveyancers. And on the whole, I am inclined to construe section 30 of the Government of India Act, 1915, as *requiring*, and *not* as merely *permitting*, a "proper assurance" to be made.

S. SRINIVASA AYYANGAR,
Advocate-General.

Order—No. 1022, Home (Education), dated 7th August 1917.

The opinion of the Advocate-General, Madras, No. 139, dated the 12th July 1917, with which the Government concur, is communicated to the Collector of Tanjore and he is informed that a conveyance by way of sale is the proper form of transfer of the land acquired for a play-ground for the Nadar's High School, Poraiyar, and that it does not require registration.

(True Extract)

R. RAMACHANDRA RAO,
Secretary to Government.

To the Collector of Tanjore.
" Director of Public Instruction.
" Board of Revenue (Land Revenue).
" Revenue Department.

For approval
10 Aug 1917
Approved. Please
14/8/17

NOTES CONNECTED WITH G.O. No. 1022, HOME (EDUCATION),
 DATED 7TH AUGUST 1917.

[SUBJECT.—Conveyance of the land acquired for a playground for the Nadar's high school at Porayar.

Previous papers:

G.O.	252, Revenue,	27th January 1911.	G.O.	1362, Ednl.,	9th December 1915.
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The precedents * put up in this file relate to cases in which at least a portion of the acquisition compensation was met by the party for whom the land was acquired and the conveyance had for its consideration the portion provided by the party. In the present case the entire amount of compensation comes out of the grant given from Provincial funds towards the provision of playground; and thus it is pointed out that there is no consideration on which the conveyance can be based. In this view the transaction partakes of the nature of a gift.

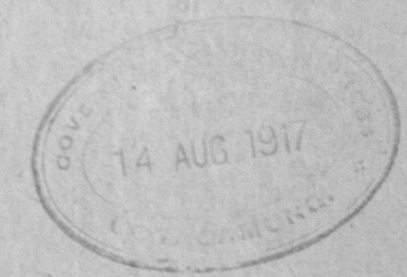
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- A

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C. RAMANUJA ACHARIYAR—26-4-17.

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17 July 1917
22 Dec 1917



January 1915, it is observed that in eleven cases the Government have undertaken to bear the entire cost of the land required for playgrounds for private institutions. Of these, the case of the Nadar's High school, Poraiyar, dealt with in this file is the first in which the Land Acquisition Act has been applied. The authorities of C.M.S. High school, Megnanapuram, has applied to Government for acquiring the land required by them under the Land Acquisition Act. The application is separately under consideration.

2. Submitted that the remarks of the Revenue Department may be invited on the question raised.

P.R.—1-5-17.

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K to the Advocate-General on the subject, as suggested in Home (Education) Department note on page 1 ante.

A.S.R.—15-6-17.

K may, it is submitted, be done. Or, as the whole cost of the acquisition has been borne by Government, the land may be alienated to the school authorities

subject to the usual† conditions. The alienation may be sanctioned by Government without reference to the Government of India as the value of the grant does not exceed Rs. 1,000 [Board's Standing Order No. 24 (6)].

V. A. ANANTARAMA AYYAR—19-6-17.

The point raised is, I gather, entirely a legal one and Revenue is not competent to offer an opinion of any value. Provided that precautions are taken to see that the land is used solely for the purposes for which it has been alienated, Revenue need not object to any form of transfer that may be found suitable and convenient.

A. R. KNAPP—21-6-17.

Please see the Revenue Department note above. It does not help the disposal of the question raised in the Collector's letter. It is for consideration whether, as the question has been specifically raised, it may not be referred to the Advocate-General and settled once for all. If a reference to the Advocate-General is agreed to, the draft memorandum in the file is submitted for approval.

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Please examine why we should not lease the ground acquired to the institution for use as a playground as we have done in the case of Pachayappa's College. The ground will remain the property of Government.

C. RAMANUJA ACHARIYAR—27-6-17.

Submitted that in the case of the Pachaiyappa's College, Madras, referred to in the Registrar's note above the land required by the college for a playground was acquired by the Government—please see G.O. No. 157, Educational, dated the 13th February 1915. The ground remained the property of the Government, the institution being allowed only its use as a playground on condition of its maintenance in good condition—please see paragraph 9 of G.O. No. 1448, Educational, dated the 18th December 1914. There does not appear to have been any formal conveyance or lease of the property to the college authorities.

2. The case of the Nadar's High school does not appear to be similar to that of the Pachaiyappa's College. In the latter case the Government took upon themselves the responsibility of providing the institutions concerned with playgrounds, while in the former, they only distributed certain grants and left the institutions to make their

own arrangements to get the grounds they required. Accordingly the grant of Rs. 1,200 sanctioned for the Nadar's High school was its absolute property, subject, of course, to the forty years' mortgage contemplated by article 53 (ii) of the Grant-in-Aid Code and it was entirely in the discretion of the school authorities to secure any site they wanted and use it as a playground. If the school authorities had purchased a ground by private negotiations it would have remained their property subject to the forty years' mortgage stated above. The application of the Land Acquisition Act to the land was only a concession shown to the school by the Government; and it does not appear that on that ground the school should be deprived of its right in the land which would, as explained above, have otherwise been its.

3. As regards the alienation suggested by the Revenue Department, it may be pointed out that it is also open to objection. For, alienation is possible only of State lands. In this case, though the land now vests absolutely in the Government, it is doubtful whether it can be regarded as State land inasmuch as the compensation for the land was paid by the school authorities, for all practical purposes from the funds of the school including, of course, the grant sanctioned by the Government which naturally merged in the school funds and the land was acquired for the specific purpose of a playground for the school. If this view is concurred in, alienation does not appear to be a suitable disposal.

4. Article 54 of the Grant-in-Aid Code prescribes the maximum grant payable for the acquisition of land as one-half of the Collector's valuation. It is, however, in the discretion of Government to vary the maximum and there is no rule prohibiting them from paying a full grant. No distinction is, however, made in the rules of the Grant-in-Aid Code between schools receiving only half-grants and those receiving more than half. Similarly in the present case it does not appear that any distinction should be made in the manner of conveying the property on the ground that a full grant was sanctioned for its acquisition. The usual deed of conveyance appears to be sufficient. Moreover, to alienate or lease the land in such cases places the schools at a disadvantage when compared with those which secure lands by private negotiations and consequently enjoy their absolute right in them and also defeats the main purpose for which the application of the Act is generally invoked, namely, the attainment of an indefeasible title to the property. In the circumstances the transfer by a deed of conveyance appears to be all that is needed in all cases.

for the School concerned

4 NOTES TO G.O. No. 1022, HOME (EDUCATION), 7TH AUGUST 1917

5. If the above view is accepted and if it is considered that a reference to the Advocate-General is not necessary, the Director of Public Instruction may be requested to state whether he agrees with the conclusion arrived at above.

P.R.—3-7-17.

The file may at this stage be sent to the Director of Public Instruction for remarks as to what course he considers desirable.

C. RAMANUJA ACHARIYAR—5-7-17.

If I understand the case aright, it is not intended to vary the incidents of the tenure from that where a portion of the cost is met by the management. The only difficulty is one of conveyancing and as two lawyers differ, the reference to the Advocate-General may issue.

R. RAMACHANDRA RAO—5-7-17.

[Memorandum No. 17-B-3, dated the 6th July 1917.]

From the Advocate-General, dated the 6th July 1917, No. 139.

The Advocate-General's opinion is that a conveyance by way of sale is the proper form of transfer of the land in this case and that the conveyance does not require registration. Submitted that the Government may concur in this opinion and it may be communicated to the Collector of Tanjore and other Collectors for information and guidance.

Not necessary. Surely cases are few.

R.R.—27-7-17.

2. A draft order is submitted for approval. If approved, it may be sent to Revenue for acceptance.

P.R.—19-7-17.

T.K.—24-7-17.

Other issues raised in the Collector's letter of the 3rd April 1917 have to an extent obscured the main issue in this case, viz., whether the transaction should be a gift or a conveyance. The Advocate-General has in his opinion dealt with more elaborately the other issues. The Advocate-General takes the view, as regards the main issue, expressed at B on page 1 supra. The objection to this view is expressed at A in the same note. This aspect of the question has not been considered by the Advocate-General. If the view at B is accepted, the funds provided for the acquisition will be considered as private funds for purpose of conveyance and as Government funds for purpose of acquisition. It is for consideration whether this point should be placed before the Advocate-General.

C.R.—27-7-17.

Scarcely necessary. It is clear the money is Government money and so the Land Acquisition Act is satisfied. At present, the land has to be conveyed and now the money is really a part of the grant. So the Advocate-General's opinion may be accepted.

R.R.—27-7-17.

REVENUE DEPARTMENT.

The draft order may, it is submitted, be accepted in Revenue and the file returned to Home (Education).

A.S.R.—2-8-17.

V. A. ANANTARAMA AYYAR—2-8-17.

A. R. KNAPP—4-8-17.

HOME (EDUCATION) DEPARTMENT.

Submitted for orders as to whether the draft order may issue.

P.R.—4-8-17.

C.R.—5-8-17.

R.R.—6-8-17.

P[ENTLAND]—7-8-17.

Issue.

R.R.—7-8-17.

[G.O. No. 1022, Home (Education), dated 7th August 1917.]

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7 AUG 1917

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