

Home (1917) Department.
Education

Ordinary SERIES.

G.O. No. 483

DATED 20-4-17

INDEXED

[Despatch Abstract.]

Building grant.-

Requesting the Director of Public Instruction to invite the attention of the Government Solicitor to the Advocate-General's opinion regarding the transfer of certain hostile mission properties and stating that orders will issue in Public (War) Department granting consent to the mortgage of certain property by the Church of Sweden Mission.

PAPERS PUT UP WITH CURRENT No. **546**

Papers of the department to which the current belongs.

Number.	Date.	Original (= O) or spare copy (= S.C.).	Remarks. (In this column such of the papers as have been removed for copying, printing, etc., should be marked with a cross.)	Initials of Referencer with date in token of return to Reference department
369 1041	2.10.16.	O.		

Papers of other departments.

Department.	Number	Date.	Original (= O.) or spare copy (= S. C.).	Initials with date of (1) Referencer acknowledging returns of the paper concerned or (2) Despatcher to denote the return of the papers to the department concerned
Public	369	28.2.16	SC	

H o m e (Education)

DEPARTMENT.

Received



Registered

3 2 1917

Subject.

Requesting orders of Government regarding the payment of building grants to the Lutheran Mission schools at Shiyali and Tanjore.

ENCLOSURES

No. _____
Spare copies _____

Ref. on Cur. No. 6368/16.

Station Madras, Dated the 30th January 1917.

From (Name) The Hon. Mr. J. H. Stone, M.A., F.R.H.S., C.I.E.

(Designation) Director of Public Instruction,
Madras.

To The Secretary to the Government of Madras,

Home (Education)

Department.

Sir,

In G.O. No. 1041 Home (Education), the Government sanctioned the payment to the Church of Sweden Mission, of certain building grants due to the Lutheran Mission Schools at Shiyali and Tanjore. The Correspondent of the schools concerned was required to execute a mortgage deed in respect of the grants. He accordingly prepared and sent a draft mortgage deed for approval. The Government Solicitor to whom the draft deed was sent for scrutiny states that the Hostile Foreigners (Repatriation) order cannot affect the Leipzig Evangelical Lutheran Mission and

⑥ seems to doubt the propriety of G.O.No. 369 Public dated 28th February 1916 licensing the transfer of all the property belonging to the Evangelical Lutheran Mission to the Church of Sweden Mission, Vide Government Solicitor's letter No. 130, dated 23rd January 1917 (copy enclosed) In these circumstances, I have the honour to request the favour of orders.

I have the honour to be,

S i r,

Your most obedient servant,

R. A. Arne

for Director of Public Instruction

P.V.S.

20.1.17

No. 130.

Madras,

23rd January 1917.

From

Henry Brightwell,

Government Solicitor,

Madras.

To

The Director of Public Instruction,

Madras.

S i r,

I have the honour to acknowledge the receipt of your letter No. 6368 of 1916 dated the 18th January 1917 with enclosures which I have perused and considered and return herewith.

2. I note that all the property of the Leipzig Evangelical Lutheran Mission has been transferred to the Church of Sweden Mission. The transfer of this property has not been sent to me for perusal.

⑥ 3. A more serious question arises in the Orders of Government No. 369 Public, dated the 28th February 1916 by which it is ordered that the transfer of amongst others all the property belonging to the Leipzig Evangelical Lutheran Mission to the Church of Sweden Mission is licensed under clause 3 of the Hostile Foreigners (Repatriation) Order dated the 14th October 1915 subject to the conditions therein mentioned.

4. I have referred to the Hostile Foreigners Repatriation Order dated the 14th October 1915 and it appears that "repatriated foreigner" is defined as any subject of the German Empire or of the Dual Monarchy of "Austria-Hungary who is to be repatriated by Order of Government". From the previous draft mortgage which was sent to me I find that the Leipzig Evangelical Lutheran Mission is a Corporation created by law, and located in the City of Leipzig in the Kingdom of Saxony in the Empire of Germany so that a Corporation cannot I am of opinion be held to be a repatriated foreigner under the

Home (Education) Department

C. No. 546.

Memorandum No. 546-283
6.3.17

Under clause 3 of the Hostile Foreigners' (Repatriation) Order, dated the 14th October 1915, the Government issued a licence authorizing the transfer of property by the Leipzig Evangelical Lutheran Mission to the Church of Scotland Mission. The grant of this licence was based on the opinion of the Advocate General No. 789, dated the 17th February 1916, in which it was stated that the term "foreigner" in the order above referred to not only included individuals but also associations forming German Mission bodies. In the accompanying letter from the Director of Public Instruction R.C.No. 6368/16, dated the 1st February 1917, it is, however, pointed out that a Corporation cannot be held to be a "repatriated foreigner" under the Hostile Foreigners' (Repatriation) Order and that the order cannot therefore affect the Leipzig Evangelical Lutheran Mission so as to enable them to effect a valid transfer of their property. The Hon'ble the Advocate General is requested to advise the Government at an early date on the point raised.

It seems therefore that this Order cannot affect the Leipzig Evangelical Lutheran Mission.

5. With reference to the title to the properties it does not appear that the properties are vested in the Leipzig Evangelical Lutheran Mission and the only way in which I can see that the Mission can have a title is by adverse possession.

6. A further point arises that the Church of Sweden Mission has no power to mortgage the lands except with the consent of Government.

I have the honour etc.,

/Sd/ Henry Brightwell,

/True Copy/

N. G. Arivu.

For Director of Public Instruction.

P.V.S.

8.1.17.

80.369.B
28.2.16 (G)

page 4 of 20

Read to copy
with annex
20/1/17
8.3.17

To the Government Solicitor,
Madras, (with copy of C.F.)

ca
573/17
6.3.17

No. 58

OPINION

Re. Memorandum No. 546--2, Home (Education)
Department, dated the 6th March 1917.

-----0:---

The general question has been dealt with in my previous opinion No. 789 dated the 17th February 1916. The application to the particular case depends of course upon its own circumstances.

2. The Leipzig Evangelical Lutheran Mission is, it is said, a corporation located in the city of Leipzig in Germany. I presume that the Mission has an office, agency or place of business within British India, that subjects of the German Empire or of Austria -- Hungary are members or officers of the corporation residing in India and carrying on its business and controlling its activities here and that they would be the persons entitled to transfer or deal with the property of the Mission on its behalf. I further assume that they are to be repatriated by the order of Government. On these assumptions the Leipzig Evangelical Lutheran Mission would be a hostile -- foreigner and hostile firm within the Hostile Foreigners Trading -- Order and the Ordinance V of 1916 since repealed and Act X of 1916.

3. A corporation is capable of having a residence in British India and it has such residence if it has an office, agency or place of business in British India and carries on business here ((1899) A.C. 433; (1902) 1 K.E. 342; (1904) 2 K.E. 136; and (1906) A.C. 455). If an enemy corporation is capable of residence in British India, -- it is, I think, capable of being removed or repatriated; and it can certainly be prohibited from carrying on business or from dealing -- with its property. Section 3(A) of the Ordinance III of 1914 as -- amended leads, in my opinion, to this conclusion. The definition -- of 'repatriated foreigner' in the Hostile Foreigners (Repatriation) Order clearly includes members or officers of enemy corporations -- residing in India and controlling or carrying on the business -- -- of such corporations here. The effect of sections 3 and 3(A) of

the Ordinance III of 1914 and of the Order is, I think, that, as far as may be applicable, the Hostile Foreigners (Repatriation) Order will extend to any company, association or body of individuals, whether incorporated or not, of which any member or - - officer is a hostile foreigner and which has an office, agency or place of business in British India. If therefore an order of repatriation is issued against any members or officers of the -- Mission as such officers or members and if they are hostile - - foreigners in charge of the office, agency or place of business - entitled to transfer its property, to that extent the Order will apply and the corporation cannot carry on business or deal with any property except in accordance with the terms and conditions of - a license issued by the Local Government; and any transfer - - therefore in accordance with the license will be valid.

Madras. }
11th March 1917)

S. Srinivasa Iyengar,
Advocate-General

(True copy)

Henry Nightwell

Government Solicitor.

HOME (EDUCATION) DEPARTMENT

Henry Brightwell

Government Solicitor,

M a d r a s.

The Secretary to Government

Home (Education) Department

M a d r a s.

Dated 12th March 1917)

Received)

No. 379.

Forwarded with reference to the
Memorandum of Government No. 546-2 --
dated 6th March 1917 Home (Education)
Department.

Henry Brightwell

Government Solicitor

NOTES.

Home (Education) Department.

Leipzig Evangelical Lutheran Mission schools,
Shiyali and Tanjore.

(C.546).

From the Director of Public Instruction, R.C.No.6368,
dated the 1st February 1917.

For the Registrar.

(C) In G.O.No.369, Public, dated the 28th February 1916, the transfer of the property effected by the Leipzig Evangelical Lutheran Mission to the Church of Sweden Mission was licensed (subject to certain conditions) under clause 3 of the Hostile Foreigners' (Repatriation) Order. As the property of the Leipzig Evangelical Lutheran Mission schools at Shiyali and Tanjore were among the properties so transferred, the Director of Public Instruction was informed in G.O. No.1041, dated the 2nd October 1916, that there was no objection to the payment to the Church of Sweden Mission of certain building grants which had already been sanctioned for these schools.

2. The Director now requests orders in regard to the execution of the mortgage deed by the correspondents of the schools in respect of the building grants, as the Government Solicitor states

that the Hostile Foreigners' (Repatriation) Order cannot affect the Leipzig Evangelical Lutheran Mission and seems to doubt the propriety of G.O. No.369, Public, dated the 28th February 1916. It may be noted that this ^{GO}~~rule~~ was issued after obtaining the opinion of the Honourable the Advocate-General. In his opinion No.789, dated the 17th February 1916 (on page 4 of the G.O.) the Advocate-General has held that "every German Mission body is either an incorporated foreign body being either a subject of the German Empire or the Dual Monarchy or a mere association of individuals who are all foreigners or an association comprising both foreigners and persons not being foreigners. In the first case the corporation is a foreigner. x x x In other words the term "foreigner" includes not only individuals but also associations as far as may be possible x x x".

The Government Solicitor is however of opinion that a corporation cannot be held to be a repatriated foreigner under the Hostile Foreigners' (Repatriation) Order dated the 14th October 1915 and that this order cannot affect the Leipzig Evangelical Lutheran Mission which is a corporation created by

#3 c.f.

law and located in the City of Leipzig in the Kingdom of Saxony in the Empire of Germany. He also considers that the Church of Sweden Mission has no power to mortgage the lands except with the consent of the Government.

In this connection attention is solicited to Mr. Butterworth's note dated the 21st February 1916 on page 4 of the notes with G.O.No.369 Public, dated the 28th February 1916, in which he remarked as follows with reference to the opinion ^(quoted above) of the Advocate General--

"The point in doubt is not what is a foreigner but what is a repatriated foreigner, but I take the Advocate-General to mean that, if any member of a German Mission is a repatriated foreigner, the Hostile Foreigners' Repatriation Order applies to dealings by the Mission. x x "

Taking this to be correct he suggested the transfer of property by the Leipzig Mission to the Swedish Mission subject to certain conditions. The Hon'ble Sir A.G. Cardew, the Hon'ble Sir Harold Stuart and His Excellency the Governor agreed with the above view.

3. As pointed out by the Government Solicitor the consent of Government is required for the mortgage of the property by the Church of Sweden Mission

(G)

with reference to condition (1) in G.O. No.369 Public, dated the 28th February 1916. Orders granting consent to the mortgage of the property by the Church of Sweden Mission will have to issue in the Public (War) Section. In regard to the question whether the Leipzig Evangelical Lutheran Mission can be held to be a repatriated foreigner, the Government Solicitor has perhaps overlooked the Advocate General's opinion No.789 quoted above. It is therefore for consideration whether the Director of Public Instruction may be requested to invite the attention of the Government Solicitor to this opinion and ask him to state if he still adheres to the opinion expressed in his letter of the 23rd January 1917.

It is submitted that the file may be sent to the Public (War) section for remarks

Thurington
don't
9/2

B

103-465



Edl no 5264

12.2.7

RECEIVED
6/8
DU (War)

Regd. 12.2.17

Lil
9.2.17

Ca
11.2.17

9/2
12/2

P.T.O.
↓

Public Dept (War)

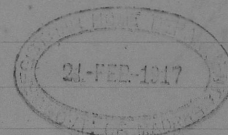
To Ch. Secy.

With reference to "A" on p. 4 supra
 subd. that orders may issue in this
 Dept. on receipt of Home Dept's orders on
 this case - together with a copy of these
 notes.

With reference to "B" supra (on p. 4)
 subd. that this Dept. may agree to the
 orders proposed to be issued to the
 D.P.D. Office would however venture to
 submit that the Govt. Solicitor need not
 be invited to say whether he adheres to his
 view as against that of the Advocate Genl.
 Counsel's opinion is entitled to greater
 weight than a Solicitor's: and Mr. Bright
 - will perhaps be informed of the
 Advocate Genl's. opinion with the remark
 that the Govt. have accepted, and have
 acted upon, that opinion and see no rea-
 son to depart from it.

Ch. Home (100) - The Unwarranted Minister
 16217 will endeavor to upon disposal

8000
 9/13



Pub. acc 6-18-145
 21.2.17

Noted in CR
 21.2.17

For Rep.

Home (503) Dept.

A draft order is subd. If approved it may be circulated to H.E. the Governor and H.M. Public.

SM
22.2.17.

CR
22.2.17
L

EL
22.2.17.

N.E.

N.M.2

Ch.
26.2.17

The Advocate General should I think see this again.

P
20.2.17.

13.7



For Rep.

A draft memorandum to the Advocate-General is subd.

SM
23.3.17.

CR
23.3.17
L

EL
23.3.17

Ch.
6.3.17

The Advocate General is of opinion that the definition of "repatriated foreigners" in the Hostile Foreigners (Repatriation) order clearly includes members or officers of enemy corporations residing in India and controlling or carrying on the business of such corporations here. As the Rev. Th. Meyner, President of the Leipzig Evangelical Lutheran Mission, Madras, held the power of attorney from the Leipzig Mission Board, to act on behalf of the Mission in all matters relating to the work and property of the Mission in Madras, it is clear that the Mission had "agency or place of business in British India", and that the Hostile Foreigners (Repatriation) order with ^{therefor} the applicable to the Mission. The transfer of property effected by the Leipzig Evangelical Lutheran Mission to the Church of Sweden, Mission under the license granted in G.O.

No 369 Public, dated the 28th Febry. 1916 is therefore valid.

2. It seems sufficient to ask the D.P.J. to refer the Govt Solicitor to the opinion of the Advocate General No. 58 forward with his letter No 3.

page 47 ^(W) 90146/201
24.12.15

dated the 12th March 1917.

3 A draft order is submitted for approval. It may be sent to the Public War Department for acceptance before circulation.

21.3.17 D.H.E. & Hon (Public).

22.3.17

Educⁿ 52612-3
28.3.17

1315
28/3/17.

27.3.17

Pub (War) no.

Public (war) dept

[Please see ~~para 10~~ notes on page 5 ante.]

From the closing portion of the Advocate-General's opinion on page 7 C.F., it is seen that a condition to be satisfied if the Hostile Foreigners' Repatriation Order should apply to the Leipzig Evangelical Lutheran Mission is that the order of repatriation should have been issued against any members or Officers of the Mission as such. In the notification issued by the G. of S. directing repatriation (No. 4348 of 3.11.15), the name only of the Hostile foreigners occurs, but not the office held by them in the Mission. It is not known whether this circumstance will seriously affect

Printed in No. 2564 J.
27.4.15

Flag N

The Validity of the orders issued by this Govt. in No. 369 Pubd 28.2.16 applying to the Hostile Foreigners Repatriation order to the Mission. Orders are solicited whether a further reference should be made to the Advocate-General on the point, ~~and~~ if, however, it is considered that the point is a minor one and ~~with out effect~~ need not be taken to affect the orders in No. 369 Pubd 28.2.16, the present draft order may, it is held, be accepted in Public (war) dept.

COM. On the subject in Public (war), 4.4.17 but all to be done if H.F. Public (war) should might be upon issue

Pub No. 1315 W-1
7.4.17

Notes in CA

11.4.17

Box 44
Circ 184.17
Refd 20.4.17



Home (Gen) Dept
For orders as to circulation to H.F. and H.M. (Public).

CA 14.4.17 H.M. 2
18/4/17

18 APR 1917

18.4.17

Issue
CA
20/4/17

Building Grant

Home (E) DEPARTMENT.

Requesting the Dir. of Public Instr.
to invite the attention of the Govt. Solicitor
to the Adv. Genl's opinion regarding the
transfer of certain hostile mission
properties and stating that order will
issue in Public (Wan) Dept. granting
consent to the mortgage of certain property
by the Church of Sweden Mission.

READ AGAIN G.O. No. 369 Public, dated 28th Feb. 1916. (G)
" " " " 1541 Eon, " 2nd Oct. 1916. (C)

READ ALSO:-

C. No. 546, From the D.P.P. P.C. No. 6368, dated 18th Feb. 1917.
(Pb-14.15)
" " Encl. No. 546-2 Eon, dated 6th March 1917.
(P507)
" " 1216, " Govt. Solicitor, 379, " 12th March 1917.
(Pb-6.17)

ORDER.

No. 483, dated 20. 4. 1917.

Mis.

The Dir. of Public Instruction
is requested to invite the attention
of the Govt. Solicitor to the opinion
of the Honble the Advocate General
No. 58, of 11th March 1917 forwarded
to Govt. with the Govt. Solicitor's
No. 379 of 12th March 1917.

2 Orders granting consent
to the mortgage of the property
by the Church of Sweden Mission
will issue in the Public (Wan) Dept.

To The Dir. of Pub. Instr. (99-I & II, A & IV & V)
The Public (Wan) Dept. (99-I, A & II & IV & V)
with copy of notes.

Copy with
encl. t
copy of notes
CO
20.4.17

SD
(73.1)
Jk
20.8.17

21.3.17
27.3.17

When given for copying

When copied

When examined

When signed

191

READ AGAIN G.O. No.
191

DATED

CURRENT No.

EXPOSURES TO C. No.

ORDER OF GOVERNMENT

ORDER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DISPATCH
IN ORIGINAL.

N.B.—

A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.