Educational (1904) Department.

ORDINARY PRINTED.

G.O., No. 304.

DATED 17—5—04.

INDEXED.

14

ORIGINAL

[Despatch Abstract.]

Basel Mission Educational Council. Cabinet.

Authorizing the Collector of Malabar to make over to the — . the land acquired under G.O. No 624 Edl. Dy 15-12-03 on the Council executing a deed of Conveyance on Stamped paper of the requisite value.

BACK PAPERS.

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

FURTHER PAPERS.

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

Government {1904} of Madras.

EDUCATIONAL.

Read. } 1904. *Enclosures*

Regd. *Spare copies*

ORIGINAL

G.O., No. 304, 17th May 1904.

N. P.

MAY.

Basel Mission Educational Council, Calicut.

Authorizing the Collector of Malabar to make over to the — the land| acquired under G.O., No. 624, Educational, dated 15th December 1903, on the Council's executing a deed of conveyance on stamped paper of the requisite value.

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

Read—again the following paper :—

G.O., No. 221, Educational, dated 6th April 1904.

Read—the following paper :—

From H. KNOBLOCH, Esq., Manager, Basel German Mission High School and the Basel Mission Educational Council, Calicut, to the Secretary to Government, Educational Department, dated 28th March 1904, No. 30.

I beg to place before you the following for your kind and favourable consideration :—

(1) I submit that at the request of the Collector of Malabar I deposited Rs. 12,500 at the local treasury on the 8th September last.

(2) I understand that early in February last the owners and tenants of the piece of land intended for the site of the proposed school-house were all paid, and that the land is now in the hands of the Collector.

(3) I beg to submit that the houses on the said land have all been vacated some time, and that white ants are eating them up since there are no occupants to look after them.

(4) I beg to submit that in Malabar this is the best season for commencing building operations, and that it is necessary at least to lay the foundation before the rains set in.

(5) A professional lay missionary has been specially brought down to Calicut to look after the building operations and is awaiting the transfer of land.

(6) I beg to submit that in our present building we are put to the greatest inconvenience for want of sufficient accommodation. Besides this building is to be given up to the Basel German Mission Girls' high school, which is at present located in a temporary shed and this can be done only when we remove to the new building. It is therefore our earnest desire that we should finish the proposed building within as early a date as possible.

Under the above circumstances I pray that you may be pleased to give us permission to enter upon the land, to clear the ground, to collect materials, and to commence operations, pending the formal execution of the necessary documents.

Order—No. 221, Educational, dated 6th April 1904.

As requested at the concluding portion of Mr. Knobloch's letter the school authorities will be permitted to enter upon the land, to clear the ground, and to collect materials, pending its formal transfer.

(True Extract.)

A. G. CARDEW,
Ag. Secretary to Government.

To the Manager, Basel German Mission High school, Calicut.
„ Collector of Malabar.

Read—also the following papers :—

G.O., Nos. 649, 650, Revenue, dated 5th April 1904.

Read—the following papers :—

From A. F. PINHEY, Esq., I.C.S., Collector of Malabar, to the Secretary to Government, Educational Department, dated Calicut, 13th February 1904, Ref. on C. No. 1914-P.

With reference to the last paragraph of G.O., No. 307, Educational, dated 24th June 1903, I have the honour to report that I passed my award on the 10th instant in respect of the land required for the Basel Mission school at Calicut. The area acquired is 6·44 acres and the total compensation awarded to the janmi and tenants is Rs. 12,161-2-1. One of the tenants, who is now residing in Bangalore, did not appear, and there is a dispute as to the title of two claimants to receive the compensation. The amount involved in these three cases is Rs. 384-10-1 which I have kept in deposit. The compensation awarded to the remaining claimants, namely, Rs. 11,776-8-0 has been accepted by them. I have accordingly disbursed that amount out of the sum of Rs. 12,500 deposited by the mission authorities. In the event of any of the three parties referred to above applying for a reference to the Civil Court under section 18, Land Acquisition Act I of 1894, I shall take action accordingly and deposit in Court the amount in dispute.

2. I await the orders of Government before transferring the land to the Mission and solicit orders whether a special document evidencing the conditions of the transfer should not be executed.

Official Memorandum No. 87, Educational, dated 1st March 1904.

At the request of the Basel Mission Educational Council at Calicut, an association registered under the provisions of section 26 of the Indian Companies Act, 1882, with limited liability but without the addition of the word "limited" to its name, the Government has acquired under the Land Acquisition Act, 1894, a piece of land in Calicut measuring 6·44 acres and the Council has paid the compensation awarded for it amounting to Rs. 12,161-2-1. As the land has now to be transferred to the Council the Government Solicitor is requested, with reference to section 41 of the Land Acquisition Act, 1894, to prepare a draft agreement providing for the transfer of the land to the Basel Mission Educational Council on the conditions (1) that the Council shall use it for the erection of a school building, (2) shall not appropriate it for other than educational purposes without the sanction of Government, (3) shall pay the ordinary assessment on the land.

2. G.Os., No. 307, dated 24th June 1903, and No. 624, dated 15th December 1903, are herewith forwarded for reference, and return.

A. G. CARDEW,
Ag. Secretary to Government.

To the Government Solicitor.

From SUTHERLAND ORR, Esq., Government Solicitor, Madras, to the Secretary to Government, Educational Department, dated 8th March 1904, No. 211.

I have the honour to acknowledge receipt of your memorandum of the 1st instant, No. 87, with the papers which accompanied same which I herewith return.

2. I shall be much obliged if you will kindly let me know when the Basel Mission Educational Council was registered as a company, and whether any agreement was ever entered into with such company as required by section 39 of the Land Acquisition Act, 1894.

3. I see that in the memorandum No. 219 of 23rd February 1903, quoted in page 3 of G.O., No. 307, Educational, dated 24th June 1903, enquiry was made as to whether the Mission would execute the formal agreement therein referred to and that the manager's reply was in the affirmative. But there is nothing in the papers to show me whether any formal agreement to such effect was entered into with the Company when constituted.

4. Apparently under section 39 of the Act the validity of the acquisition proceedings depends on the previous execution of such an agreement, so if there is none, I would suggest that the question as to what further proclamation should be issued should be referred to the Advocate-General.

Telegram from the Acting Secretary to Government, Educational Department, to the Collector of Malabar, dated 11th March 1904, No. 27.

Your No. 1914, dated 13th February, has Basel Mission Educational Council registered as company under license granted in G.O., No. 1924, Judicial, dated 17th December 1903? If so, when; if not, please direct it to register immediately.

From A. F. PINHEY, Esq., I.C.S., Collector of Malabar, to the Secretary to Government, Educational Department, dated Calicut, 12th March 1904, F. Ref. on C. No. 1904/P. of 1903.

With reference to your telegram No. 27, dated 11th instant, I have the honour to report that the Basel Mission Educational Council was registered as a company on 8th January 1904.

2. The Mission authorities request me to hand over to them as soon as possible, the land acquired for the school so that they may store the necessary materials on the site and proceed with the construction of the school without delay. They are ready to begin the work and their Engineer has already come down for the purpose. I beg therefore that Government will be pleased to pass very early orders on my letter Ref. on C. No. 1914/P. of 1903, dated 13th February 1904, regarding the transfer of the land to the Mission authorities.

3. I may add that the whole of the compensation awarded for the site has been disbursed to the claimants with the exception of a sum of Rs. 146-6-1 payable to a tenant who is now residing in Bangalore. A notice has been issued to him in the matter and the money will be paid to him as soon as he applies for it. It has been placed in deposit.

Memorandum No. 132, Educational, dated 16th March 1904.

With reference to his letter No. 211, dated the 8th instant, the Government Solicitor is informed that the Basel Mission Educational Council was registered as a company on the 8th January 1904, and that no agreement has yet been entered into with this company. He is also informed that the land in question was originally acquired for a public purpose, that it is now wanted for a company, that no further proceedings will be taken until the agreement has been executed and that while the provisions of section 39 of the Land Acquisition Act, 1894, were not applicable to past proceedings they will be observed in future proceedings. The proclamation suggested in paragraph 4 of the Government Solicitor's letter is therefore not necessary, and he is requested to prepare and submit as early as possible the draft agreement called for in memorandum No. 87, Educational, dated the 1st instant.

A. G. CARDEW,
Ag. Secretary to Government.

To the Government Solicitor.

Official memorandum No. 133, Educational, dated 16th March 1904.

With reference to his letter F. Ref. on C. No. 1904/P. of 1903, dated 12th March 1904, the Collector of Malabar is informed that the Government Solicitor is preparing a draft of the agreement which the Basel Mission Educational Council has to execute under section 41 of the Land Acquisition Act, 1894. As soon as that agreement has been executed by the Council the land acquired for the Council may be handed over to it.

A. G. CARDEW,
Ag. Secretary to Government.

To the Collector of Malabar.

From SUTHERLAND ORR, Esq., Government Solicitor, Madras, to the Secretary to Government, Educational Department, dated 16th March 1904, No. 234.

I have the honour to acknowledge receipt of your memorandum of to-day's date, No. 132.

2. I shall be obliged if you will return to me the enclosures forwarded with your memorandum of the 1st instant, No. 87, and sent back with my letter of the 8th instant.

Endorsement— dated 18th March 1904.

Returned accordingly.

A. G. CARDEW,
Ag. Secretary to Government.

From SUTHERLAND ORR, Esq., Government Solicitor, Madras, to the Secretary to Government, Educational Department, dated 19th March 1904, No. 243.

I have the honour to acknowledge receipt to-day of your memorandum of the 18th instant with its enclosures.

2. I note from your memorandum of the 16th instant, No. 132, that the land was acquired not for a company but for a public purpose, but as in your memorandum No. 87 of the 1st instant it was stated that it was at the request of the company that the land was acquired, the question of the validity of the proclamation seemed to me to arise.

3. I regret to say I still find difficulty in carrying out your instructions as, if the land has been already validly acquired by Government for a public purpose, there seems no necessity for any agreement to be prepared with reference to section 41 of the Land Acquisition Act, 1884, or for any further proceedings under the Act, the proper deed being a conveyance of the land to the company for the consideration and upon the terms arranged.

4. I see such a transfer appears to be contemplated in the note of 1st December 1903 amongst the papers which I herewith forward for reference and return to me with your further instructions.

5. I shall be glad to see the memorandum and articles of the company before completing the required conveyance.

Order—No. 649, Revenue, dated 5th April 1904.

The Government of India will be requested to sanction the transfer of the land to the Mission.

(True Extract.)

J. N. ATKINSON,
Ag. Secretary to Government.

Letter—No. 650, Revenue, dated 5th April 1904, to the Secretary to the Government of India, Department of Revenue and Agriculture.

The Basel German Mission maintains a school at Calicut in the district of Malabar. It was established in 1848 and has been aided from Provincial funds since 1867. It has been an Upper Secondary school since 1879; its strength on the 31st March last was 598; and the Mission intends to add a College Department to the institution. The building occupied was extended in 1899 with the help of grants from Provincial and Municipal funds but the accommodation thus provided is still insufficient and there is no further building room on the premises. The Mission is therefore anxious to construct an entirely new building on a fresh site.

2. The owner of the site selected for the purpose was prepared to sell it to the Mission but being a Malabar stanam holder she could not alienate the property or give a valid title to the vendee. In these circumstances the Mission requested Government to acquire the site under the Land Acquisition Act, 1894, and the Governor in Council has so acquired it. The Basel Mission institution at Calicut is now an association formed under the Indian Companies Act, 1882, and is registered as a company under the name of the "Basel Mission Educational Council, Calicut." The Council has paid the compensation amounting to Rs. 12,161 awarded for the land which now vests in Government and which has to be formally transferred to the Council. The extent of the land is 6·44 acres and as its value exceeds Rs. 10,000, the transfer requires the sanction of the Government of India which I am directed to request may now be accorded. The land will be made over to the Council only on condition that it will revert to Government should it be used for other than educational purposes without the consent of Government.

J. N. ATKINSON,
Ag Secretary to Government.

Official Memorandum, No. 181, Educational, dated 12th April 1904.

With reference to his letter No. 243, dated 19th March 1904, the Government Solicitor is requested to prepare a draft deed of conveyance of the land to the Basel Mission Educational Council at Calicut on the conditions that the Council shall pay the ordinary assessment on the land and shall use it for the erection of a school building, and that the land shall revert to Government if it be used for other than educational purposes without its consent.

2. G.Os., No. 1576, Judicial, dated 20th October 1903, and No. 1924, Judicial, dated 17th December 1903, containing the memorandum and articles of association of the Basel Mission Educational Council and G.Os., No. 307, Educational, dated 24th June 1903, and No. 624, Educational, dated 15th December 1903, regarding the acquisition of the land are herewith forwarded for reference and return, together with copy of G.O., No. 226, Revenue, dated 1st March 1902, which contains the material for the resumption clause.

A. G. CARDEW,
Ag. Secretary to Government.

To the Government Solicitor.

From SUTHERLAND ORR, Esq., Government Solicitor, to the Secretary to Government, Educational Department, dated Madras, 16th April 1904, No. 327.

I have the honour to acknowledge receipt of your memorandum No. 181, Educational, dated 12th instant, with the papers referred to in same, and now enclose for approval the draft deed of conveyance asked for.

2. I also return the papers which accompanied your memorandum.

3. The descriptions of the boundaries will have to be checked, as I am not sure as to whether the native names have been correctly copied.

4. As to the compensation payable in the event of the land being resumed by Government, I have provided that the amount shall be the sum paid in respect of the grant as well as the cost of the buildings, etc., as this is the form which has been adopted by my predecessor in former cases. But under G.O., No. 226 of the 1st March 1902, it does not appear that the whole amount paid for the grant must necessarily be repaid; and as it is quite conceivable that under altered circumstances the value of the land may have declined since the date of its grant by Government, it may perhaps be advisable to provide that the compensation for the land is to be paid on its value at the time of the resumption provided such value is not to exceed the amount received by Government on the original grant. I shall be glad to have further instructions on this point.

Enclosure.

This Indenture made the day of 1904 between the Right Honourable The Secretary of State for India in Council (hereinafter called "the vendor") of the one part and the Basel Mission Educational Council Calicut being an association registered under the provisions of section 26 of the Indian Companies Act 1882 (hereinafter called "the purchaser") of the other part.

Whereas the piece or parcel of land and premises hereinafter intended to be hereby granted conveyed and assigned was duly acquired by the vendor under the provisions of the Land Acquisition Act 1894 And Whereas the compensation awarded for such acquisition was paid partly by the Government of Madras on behalf of the vendor and partly out of the funds belonging to and paid to the Government of Madras by the Basel German Evangelical Mission And Whereas the purchaser has been incorporated for the purpose of carrying out in British India the objects and managing the affairs of such Mission in British India And Whereas it has been agreed between the vendor and the purchaser acting on behalf of the said Mission that in consideration of the sum of Rs. being the proportion of the said compensation paid by the said Mission to the Government of Madras the vendor shall execute in favour of the purchaser such conveyance of the said piece or parcel of land and premises as is hereinafter contained subject to the terms and conditions hereinafter contained Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of the sum of Rs. so paid as aforesaid the vendor doth hereby grant convey and assign unto the purchaser its successors and assigns all that piece or parcel of land situate in the district of Malabar in the taluk of Calicut in the Kalathinkunnu desom and amsom and being more particularly described in the schedule hereunder written together with all buildings fixtures trees commons hedges ditches fences ways waters watercourses liberties privileges easements advantages and appurtenances whatsoever to the said piece or parcel of land and premises or any of them in anywise appertaining or heretofore occupied or enjoyed therewith and all the estate right title interest property claim and demand whatsoever of the vendor into and upon the same premises to have and to hold the said piece or parcel of land and premises hereby granted conveyed and assigned or expressed so to be unto the purchaser and its successors subject nevertheless to the covenants restrictions stipulations and agreements hereinafter contained and the vendor doth hereby for himself and his successors covenant with the purchaser and its successors that notwithstanding any act deed or thing by the vendor done or executed or knowingly suffered to the contrary, he the vendor hath now good right to grant convey and assign the premises hereby granted conveyed and assigned or expressed so to be unto the purchaser its successors and assigns in manner aforesaid and that the purchaser and its successors shall at all times hereafter peaceably and quietly possess and enjoy the said premises subject as is hereinafter provided and receive the rents and profits thereof without any lawful

eviction interruption claim or demand whatsoever from or by the vendor or his successors or any person or persons lawfully or equitably claiming through under or in trust for him them or any of them AND that free from all encumbrances whatsoever made or suffered by the vendor or by any person or persons lawfully or equitably claiming as aforesaid AND further that he the vendor and his successors and all persons having or lawfully or equitably claiming any estate or interest in the said premises or any part thereof through under or in trust for the vendor or his successors shall and will from time to time and at all times hereafter at the request and cost of the purchaser and its successors do execute and register or cause to be done executed or registered all such acts deeds and things whatsoever for further and more perfectly assuring the said premises and every part thereof unto the purchaser and its successors subject as aforesaid as shall or may reasonably be required AND further that in case the said piece or parcel of land and premises shall at any time hereafter be resumed by the vendor or his successors under the provisions in that behalf hereinafter contained the vendor his successors or assigns will pay to the purchaser its successors or assigns as and by way of compensation for the same the said sum of Rs. [1] or the then ascertained value of the land whichever should be less [1] together with the actual cost or the then ascertained value whichever should be less in amount of any buildings or other works which shall then be in or upon the said piece or parcel of land.

AND the purchaser doth hereby for itself its successors and assigns covenant with the vendor his successors and assigns that the purchaser its successors and assigns will at all times hereafter pay the assessments and taxes that may from time to time be levied upon the said piece or parcel of land and premises by the Government of Madras under the rules from time to time in force for the levy of assessments and taxes on lands and premises of a like nature AND will not save with the previous consent of the said Government use the said piece or parcel of land or any buildings now or hereafter erected thereon for purposes other than educational purposes approved by such Government AND will not save with the like consent grant convey or assign lease or let or part with the possession of the said piece or parcel of land and premises or any part thereof to any person or persons whomsoever other than the vendor his successors or assigns AND further that in case the said piece or parcel of land and premises shall at any time hereafter cease to be used save with the said consent of the said Government of Madras for other than educational purposes approved of by the said Government the said piece or parcel of land and premises and all buildings thereon shall at the option of the vendor his successors or assigns immediately revert to and become the property of the vendor his successors and assigns and that the purchaser its successors or assigns will forthwith upon being required so to do by the said Government of Madras execute in favour of the vendor his successors and assigns such conveyance or other assurance for vesting the said piece or parcel of land and premises and every part thereof with the buildings thereon and appurtenances thereto in the vendor his successors and assigns or as he or they shall direct AND that it shall be lawful for the vendor his successors and assigns to re-enter upon any part of the premises in the name of the whole and to resume possession thereof as of his former estate AND thereupon these presents and every article clause or thing therein contained on the part of the vendor his successors or assigns shall absolutely cease and determine.

IN WITNESS whereof Secretary to the Government of Madras in the Educational Department by order and direction of His Excellency the Governor-General of India in Council acting for and on behalf of the vendor hath hereunto set his hand and seal and the common seal of the purchaser hath been hereunto annexed the day and year first above written.

The Schedule to which the above written Indenture refers.

All that piece or parcel of land situate in the town of Calicut in the sub-registration district of in the registration district of Calicut bounded on the north by a public road, on the east by the road leading from Calicut to Cannanore, on the south by survey No. 53 of Satram Peramba and on the west by survey No. 53/1 Satrathinte Vadakke Peramba and containing on the whole by admeasurement 6·44 acres or thereabouts.

SIGNED, sealed and delivered by the abovenamed in the presence of }

The common seal of the Basel Mission Educational Council, Calicut, has been hereunto annexed in the presence of the manager of the said Council. }

[1-1] inserted by Government.

From L. ROBERTSON, Esq., I.C.S., Under Secretary to the Government of India, Department of Revenue and Agriculture (L.R.), to the Secretary to the Government of Madras, Revenue Department, dated Simla, 5th May 1904, No. 595.

In reply to your letter No. 650, Revenue, dated the 5th ultimo, I am directed to say that subject to the condition stated in paragraph 2 the Government of India sanction the transfer to the "Basel Mission Educational Council, Calicut" of the 6·44 acres of land acquired under the Land Acquisition Act, 1894, in the Malabar district.

ORDER—No. 304, Educational, dated 17th May 1904.

In continuation of G.O., No. 221, Educational, dated 6th April 1904, the Collector of Malabar is authorized to make over to the Basel Mission Educational Council at Calicut the 6·44 acres of land or thereabouts acquired under G.O., No. 624, Educational, dated 15th December 1903, on the Council's executing the appended deed of conveyance on stamped paper of the requisite value. After execution by the Council the deed should be forwarded to Government for completion of execution.

(True Extract.)

H. D. TAYLOR,
Ag. Secretary to Government.

To the Collector of Malabar with deed.
" Revenue Department.

Exd. P. Seetharam.

NOTES CONNECTED WITH G.O., No. 304, EDUCATIONAL, DATED 17TH MAY 1904.

[SUBJECT.—*Land for the Basel Mission School at Calicut.*]

I.

From the Collector of Malabar, R.C. No. 1914, *dated* 13*th February* 1904.

In its order No. 307, Educational, dated 24th June 1903, the Government sanctioned the acquisition under the Land Acquisition Act, 1894, of certain lands required for the erection of the Basel Mission school at Calicut and required the Collector of Malabar, after the acquisition had been completed, to report the fact with a view to the land being made over to the Mission.

2. The Collector now reports that the acquisition of the land has been completed and solicits orders whether, before transferring the land to the Mission, a special document evidencing the conditions of the transfer should be executed.

3. Under section 16 of the Land Acquisition Act, 1894, the land now vests in Government and it has to be formally transferred to the Mission. As the value of the land exceeds Rs. 10,000 the sanction of the Government of India is necessary to its transfer—*vide* paragraph 4 of the Board's Standing Order No. 24, page 54 of volume I.

4. The acquisition of the land was sanctioned on the understanding that the Mission should execute a formal agreement that the site should be used for the school and college buildings and that it should not be appropriated for other than educational purposes without the consent of Government—*vide* clause (6) of Mr. Knoblock's letter of the 15th April 1903 on page 4 of G.O., No. 307, Educational, dated 24th June 1903. The Government of India may therefore be asked to sanction the transfer of the land on the above conditions, the Mission having already paid the purchase-money.

A draft is placed below which, if approved, may be forwarded to the Revenue Department for acceptance and issue.

T. KANAKASUNDARAM PILLAI—20-2-04.

P. T. THARYAN—20-2-04.

The Rs. 12,161, no doubt, includes the usual 15 per cent. The actual value of the land would then be Rs. 10,574. As this exceeds Rs. 10,000 sanction is required.

2. Surely a draft agreement (with reference to section 41 of the Land Acquisition Act) should accompany the letter to the Government of India. The Government Solicitor may be asked to draw up an agreement. Presumably one of the conditions will be that the company should pay the assessment on the land.

3. In any case the office draft will have to be revised: it says nothing about the Mission being a company.

A. GALLETTI—23-2-04.

As the office understands the case the Mission did not apply "as a company" and the acquisition was not "for a company". The Mission became a company on the 17th December 1903 (G.O., No. 1924, Judicial, dated 17th December 1903), but the provisions of the Land Acquisition Act, 1894, regarding acquisition "for a public

purpose" were put in motion before this date, *i.e.*, on the 15th idem (G.O., No. 624, Educational, dated 15th December 1903). It seems therefore that the fact of the Mission being a company now is of no consequence so far as the present correspondence is concerned. Please see also paragraph 3 of the Revenue note on page 3 of the notes in G.O., No. 307, Educational, dated 24th June 1903, and the Local and Municipal note of the 15th June on page 4 of the same.

P.T.T.—23-2-04.

All this I understood, but Government only brought the acquisition within the meaning of the term "acquisition for a public purpose" as used in section 6 of the Land Acquisition Act in order to have power to issue the preliminary notification before the Mission had formed itself into a company.

2. The office draft won't do, because it does not show how the proviso to 6 (1) of the Land Acquisition Act has been satisfied. We must either say we have paid Rs. 150 from public revenues or else say the Mission is a company. The straightforward thing to do is to say the Mission is a company and we have bought the land for the Mission. It isn't true that we have bought the land for public purposes in the sense in which public purposes are used in the Act; the Rs. 150 were paid with the object of evading the Act. The land has been bought for a private society which is going to use it for a work likely to be useful to the public *—a case expressly distinguished in the Act from the case of acquiring land wholly or partly for Government or a local authority; and now that the society has become a company, the Act may be simply applied instead of evaded. Why give the Government of India an opportunity of remarking that the purpose wasn't a public purpose within the meaning of the Act? If we say the land has been acquired for a company which is going to use it for a work likely to be useful to the public, there will be no flaw in our case †.

* Section 40.

† They might look up our notification under section 6 and notice that "for a public purpose" were the words used and not "for a company"; but they would not be likely to make fuss about that.

A. G.

A. GALLETTI—23-2-04.

I agree that this is the better course and the draft may be revised accordingly.

A. G. CARDEW—23-2-04.

A draft is placed below for approval requesting the Government Solicitor to prepare an agreement for the transfer of the land to the Mission, with reference to section 41 of the Land Acquisition Act, 1894. This agreement should accompany the letter to the Government of India which will be drafted after the agreement is executed by the Council.

2. G.O., No. 1924, Judicial, dated 17th December 1903, only permits the Basel Mission Educational Council to be registered under the Indian Companies Act, 1882, without the addition of the word "Limited" to its name. It may have been so registered, but there is no information to show that it has actually been so registered. Should the Collector be asked to report whether the Basel Mission Educational Council has been registered under the Indian Companies Act? There appears to be no real necessity for it. The agreement must anyhow be executed by the company, and if registration has not been effected before it will be on receipt of the draft agreement.

T. KANAKASUNDARAM PILLAI—25-2-04.

P. T. THARYAN—25-2-04.

We might, to save time, address India at once and say that an agreement under section 41 is being drawn up and that a copy will be submitted as soon as it is ready. Meanwhile, the Collector might be asked to tell the Mission to get itself registered at once if it has not yet been registered and he might be told that the Government Solicitor is drawing up an agreement which the Mission authorities will be required to sign before the land can be transferred to them.

A.G.—26-2-04.

I think so, and the draft to India may be revised accordingly, while the official memorandum to the Government Solicitor may issue.

A.G.C.—28-2-04.

[Memorandum No. 87, dated 1st March 1904.]

From the Government Solicitor, No. 211, *dated 8th March* 1904.

The Government Solicitor inquires when the Basel Mission Educational Council was registered as a company and whether any agreement was ever entered into with such company as required by section 39 of the Land Acquisition Act, 1894. The Collector of Malabar is now being asked whether the Council has got itself registered and if not to request it to do so without further delay. On receipt of his reply the Government Solicitor may be informed in terms of it. He may then be also informed that no agreement has yet been entered into with the Basel Mission Council.

2. The Government Solicitor states that under section 39 of the Land Acquisition Act, 1894, the validity of the acquisition proceedings depends on the previous execution of the agreement referred to in section 41 and suggests that if there is no such agreement the question as to what further proclamation should be issued, may be referred to the Advocate-General. It is submitted that no such reference is necessary. The acquisition was not actually "for a company" and no question arises as to the validity of the proceedings already taken. The Government Solicitor may be informed accordingly.

3. As directed in the notes on the preceding page, a memorandum to the Collector of Malabar and a revised letter to the Government of India are submitted for approval. The memorandum may issue at once but the letter should apparently wait till the Collector's reply is received. There seems, however, to be some difficulty in this matter. If we tell the Government of India that the land was acquired for a company that Government may turn round and say that in the absence of an agreement the acquisition was illegal. On the other hand section 6 allows of a declaration being made when the compensation is wholly or partly paid out of public revenues and under the same section a declaration once made is conclusive proof of the land being required for a public purpose. The Government of India cannot go behind these provisions of the Act. The letter has however to issue from Revenue and to save time a reference may perhaps be made to that department at once.

Yes; they probably would.

A. GALLETTI.

It may say that the procedure of the Government of Madras was a fraud on the Act which was expressly so framed as to prohibit acquisition for the benefit of private societies unless they were registered companies and executed an agreement and so supplied some guarantee.

A.G.

P. T. THARYAN—10-3-04.

Yes.

A. G. CARDEW—11-3-04.

The Official Memorandum to the Collector of Malabar may be sent by telegraph?

A 2. The Government Solicitor has noticed the flaw in the procedure. He may be told that the land was originally acquired for "a public purpose", that it is now wanted for "a company", that no further proceedings will be taken until the agreement has been executed, and that the provisions of section 39 will thus be observed in future proceedings while it (section 39) was not applicable to past proceedings.

Secondly he may be told that Government has not yet ascertained whether the Mission has been registered as a company but will let him know as soon as it has ascertained. He may be asked to prepare the deed at once and to treat the matter as very urgent; the date of registration, etc., can be filled in at any time; he may leave blank spaces.

3. Probably nothing would be gained by addressing India before the agreement is ready as they would simply mark the paper "lie over till the agreement comes", and their attention would be drawn to the fact, which might otherwise escape their attention, that the land was acquired before the agreement was executed. It is for consideration whether the whole procedure will thus have to be explained to them, or we should sink the part about acquiring originally "for a public purpose." What office want to do—sink the part about acquiring for a company and about the formal agreement—won't do because the Government of India will most certainly observe that the land was really acquired for a private society and that the school to be built on it will be a private and not a public school and will ask for an explanation; also we want the agreement published in the *Gazette of India* under section 42. Probably honesty will be the best policy and a full confession, sinking nothing, should be made to the Government of India. We might make the confession now and say "agreement will follow", as I suggested before; but on reconsideration, I don't see how this would save time.

4. There will be a pitiful delay, but it seems to me that if we are to be strictly correct nothing can be done until the agreement has been executed and sent to the Government of India and published in the *India Gazette*. All we could do by way of minimising the delay would be to treat the matter as very urgent and ask the Government Solicitor and the Collector to do so too. Perhaps, however, the Collector might be told to hand over the land to the company as soon as the agreement has been signed; there would be nothing illegal in this as the land now vests absolutely in Government; it would only mean acting in anticipation of India's sanction; and India can't refuse sanction.

A. GALLETTI—11-3-04.

[Telegram to the Collector of Malabar, No. 27, dated 11th March 1904.]

From the Collector of Malabar, No. 1904-*P of* 1903, *dated* 12*th March* 1904.

In reply to the telegram sent to him on the 11th instant, the Collector of Malabar states that the Basel Mission Educational Council was registered as a company on the 8th January last and that the Mission authorities request that the site acquired for their school may be handed over to them as soon as possible.

2. In reply to his letter of the 8th instant, the Government Solicitor may now be informed that the Basel Mission Educational Council was registered as a company on the 8th January last; that the agreement referred to in section 39 of the Land Acquisition Act, 1894, has not been executed yet and that it is this agreement which he has been requested to prepare the draft of.

With reference to the doubt expressed by him as to the validity of the acquisition proceedings, he may be informed as at A on page 3 *supra*.

3. With reference to his present reference the Collector may be told that the Government Solicitor is preparing an agreement which the Basel Mission Educational Council has to execute under section 41 of the Land Acquisition Act, 1894, and that as soon as this has been executed the land will be handed over to them.

Two drafts are placed below for approval.

T. KANAKASUNDARAM PILLAI—15-3-04. A.G.—16-3-04.

P. T. THARYAN—15-3-04. A. G. CARDEW—16-3-04.

[Memo. No. 132, dated 16th March 1904.]

[Memo. No. 133, dated 16th March 1904.]

From the Government Solicitor, No. 243, *dated* 19*th March* 1904.

The Government Solicitor wants to see the memorandum and articles of association of the Basel Mission Educational Council. G.Os., No. 1924, Judicial, dated 17th December 1904, and No. 1576, Judicial, dated 20th October 1903, containing these have been obtained and are put up.

2. The Government Solicitor says that as the land was acquired for a public purpose there is no necessity for any agreement to be prepared with reference to section 41 of the Land Acquisition Act, 1884, but only a deed of conveyance of the land to the company for the consideration and upon the terms arranged and he solicits further instruction as to the kind of deed to be prepared. Orders are solicited.

T.K.—23-3-04.

It is once more submitted that the question is one for Revenue to decide.

P.T.T.—23-3-04.

Perhaps Secretary will see the Government Solicitor and explain the matter to him? If the deed is to be called a conveyance and not an agreement under section 41, it can't be published under section 42; and the Government of India will almost certainly say that the whole procedure was irregular.

2. Probably the Government Solicitor will say, if he is told the facts, that inasmuch as the land was not really acquired for what is meant in the Act by "a public purpose" all the steps taken hitherto are illegal, and will suggest that the whole procedure should be gone through again. Submitted that this would involve a waste of time not to be thought of and that he may be asked to call the deed an agreement under section 41 or a conveyance, whichever name is considered likely to be most palatable to the Government of India; but any way to let us have it at once. The papers he asks for may be sent at once.

A. GALLETTI—23-3-04.

For orders. There can be little doubt that, in acquiring this land for the Basel Mission Company by a declaration under section 4 of the Land Acquisition Act, a severe strain was put on the meaning of the phrase "a public purpose". But that has now been done, and the land has been acquired. All that is now needed is to transfer it to the company and this requires India's sanction, and it now seems to me that we should stick to the position taken up in G.O., No. 307, Educational, dated 24th June 1903, and not complicate* matters by attempting to proceed under section 41 of the Act. I think, therefore, that the Government Solicitor is right and that all that is wanted is a conveyance of the land to the company. The Government Solicitor may, therefore, prepare a conveyance, not an agreement, and the draft letter to the Government of India may be sent to the Revenue department for issue.

G.O., No. 307, dated 24th June 1903.

* We may, it is true, undergo the criticism of the Government of India for having acquired the land as for a public purpose. But that will not be so bad as to run the risk of invalidating a procedure under which Rs. 12,000 of the Mission's funds have already been paid away to the previous owners of the land.
A.G.C.

A. G. CARDEW—28-3-04.

J. T[HOMSON]—29-3-04.

The draft has been approved by Honourable Member and may be sent to Revenue department for acceptance and issue. An order to Government Solicitor will then be prepared.

A.G.C.—30-3-04.

To the Revenue Department.

REVENUE DEPARTMENT.

There seems to be no objection to the acceptance in this department of the order below.

C. RATNAVELU MUDALIYAR—31-3-04.

Draft for approval, as the order is to issue from this department.

F. B. EVANS—31-1-04.

I have passed the draft with an addition.

G. S[TOKES]—1-4-04.

With reference to the addition made by Honourable Member, orders are solicited as to whether there should be a further stipulation as to the amount of compensation payable on resumption. The usual condition is "should the property be at any time "resumed by the Government, the compensation payable therefor shall not exceed "the amount paid to the Government for the grant together with the cost or their "present value, whichever shall be the less, of any buildings erected or other works "executed on the lands".

These conditions are strictly enforceable only in the case of grants of land to local bodies on favourable terms. In the present case the land is to be sold to the Mission for full market value. There seems to be, however, no objection to these conditions being imposed but the consent of the Mission seems desirable.

Orders of the Government of India in G.Os., No. 1080, dated 12th November 1891, No. 273, dated 19th March 1892, and No. 226, dated 1st March 1902.

C.R.—3-4-04.

Issue the order. The further point raised by the Registrar can be discussed if necessary before the land is formally handed over. Meanwhile there will be no harm in getting India's consent. India will specify any further condition it thinks necessary.

F. B. EVANS—5-4-04.

[G.O., Nos. 649, 650, Revenue, dated 5th April 1904.]

II

EDUCATIONAL DEPARTMENT.

From the Manager, Basel German Mission High School, Calicut, No. 30, *dated* 28*th March* 1904.

The land required for constructing a new school-house for the Basel German Mission High school, Calicut, has already been acquired under the Land Acquisition Act, 1894, and it now vests in Government. For transferring it to the Mission, the sanction of the Government of India is necessary, the value of the land exceeding Rs. 10,000. A draft letter to the Government of India asking for this sanction has been prepared and is now in circulation. As soon as it has been approved, it will issue from the Revenue department.

2. Meanwhile the school authorities may be permitted, with the concurrence of the Revenue department, to enter upon the land, to clear the ground, etc., as requested in the last paragraph of the present current.

T. KANAKASUNDARAM PILLAI—30-3-04. A. GALLETTI—30-3-04.

P. T. THARYAN—30-3-04.

The draft letter to India has just been marked for Revenue. This file should be linked, and Revenue may be asked whether the proposal in paragraph 2 may be approved.

A. G. CARDEW—31-3-04.

To the Revenue Department.

REVENUE DEPARTMENT.

There seems to be no objection to the proposal in paragraph 2 being approved, but it will be safer if the sanction of the Government of India is awaited.

C. RATNAVELU MUDALIYAR—31-3-04.

No necessity to wait. India cannot possibly refuse.

F.B.E.—31-3-04.

I do not think it necessary to wait.

G. S[TOKES]—1-4-04.

To the Educational Department.

EDUCATIONAL DEPARTMENT.

Please draft accordingly.

A.G.C.—5-4-04.

A draft is placed below for approval.

T.K.—5-4-04. A.G.—5-4-04.

P.T.T.—5-4-04. A.G.C.—5-4-04.

[G.O., No. 221, Educational, dated 6th April 1904.]

III

Letter to India No. 650, dated 5th April 1904, regarding the formal transfer of land to the Basel Mission School at Calicut was issued yesterday. The original of G.O., Nos. 649, 650, Revenue, dated 5th April 1904, on the subject may, it is submitted, be sent to Educational for taking the necessary action with reference to page 5 of the notes thereunder.

A.Q.Q.—6-4-04.

C. RATNAVELU MUDALIYAR—6-4-04.

Yes.

F.B.E.—6-4-04.

To the Educational Department.

EDUCATIONAL DEPARTMENT.

As noted on page 5 *supra*, the Government Solicitor has to be asked to prepare a deed of conveyance. But as in that deed are to be embodied the conditions on which the land is transferred to the Mission, it seems best to await the sanction of the Government of India to the transfer as that Government may impose some further conditions as stated by the Revenue Under Secretary on page 6 *supra*. Orders are solicited.

T. KANAKASUNDARAM PILLAI—8-4-04.

2 It seems advisable to ask the Government Solicitor to prepare the draft deed of conveyance at once. Any further condition imposed by the Government of India can be inserted in the Government office or in his office before the draft is sent to the Collector of Malabar for execution (on stamped paper) by the Mission authorities.

3. A draft is accordingly placed below for approval. It is presumed that, if the land by any chance reverts to Government, the Mission is to forego the Rs. 12,000 which they have paid for it. This seems a very hard condition.

No; such a contract could not be enforced.

A. GALLETTI.

P. T. THARYAN—9-4-04.

Of course, Honourable Member did not mean this by his addition to the draft; compensation is always paid in these cases.

A. GALLETTI—9-4-04.

The addition made by the Hon'ble Mr. Stokes to the draft letter was not seen in Educational before the letter was despatched. Presumably if the condition (1) in paragraph 2 of Financial Resolution No. 914 A., dated 19th February 1902, which is recorded in G.O., No. 226, Revenue, dated 1st March 1902, is included, condition (2) should also be included. The Basel Mission could certainly not be dispossessed of the land without compensation.

A. G. CARDEW—9-4-04

[Memo. No. 181, Educational, dated 12th April 1904.]

From the Government Solicitor, No. 327, *dated* 16*th April* 1904.

In the draft deed of conveyance submitted by the Government Solicitor it is provided that, if at any time the land is resumed by Government, the amount payable to the Basel Mission Educational Council, Calicut, as compensation for such resumption, shall be the amount paid out of its own funds for the acquisition of the land, that is, the amount deposited by it with the Collector *minus* the grant of Rs. 150 paid by Government (G.O., No. 307, Educational, dated 24th June 1904). The Government Solicitor, however, raises the question whether it will not be advisable to provide that the compensation payable shall be the above amount or the value of the land at the time of its resumption whichever shall be less. It is submitted that the compensation should be limited to the value of the land at the time of resumption if that value is less than the amount now paid by the Basel Mission Educational Council, Calicut. If approved an addition will be made on page 4 of the draft deed as shown in pencil.

A.G.

2. The description of the boundaries of the land has been checked.

3. The deed has to be forwarded to the Collector of Malabar for execution by the Basel Mission Educational Council, but this, it is submitted, can be done only after the sanction of the Government of India to the sale of the land has been received. Meanwhile, Revenue may see the file u.o.

A.G.

P. T. THARYAN.—26-4-04.

A.G.—26-4-04.

Paragraph 2 (*a*) of India's resolution read in G.O., No. 226, dated 1st March 1902, lays down that the maximum compensation repayable for land if resumed shall not exceed the amount paid to Government, while in the case of buildings the cost or present value, whichever be the less, is specifically provided for. Deterioration in the value of the land can only, in all probability, take place owing to carelessness of the parties. The proposed addition to the draft deed may be approved. This is a matter which mainly affects Revenue.

H. D. TAYLOR—26-4-04.

To the Revenue Department.

REVENUE DEPARTMENT.

Submitted.

2. Attention is solicited to the Revenue department notes at page 5 *supra.*

E. RAJAGOPALACHARI—27-4-04.

There seems to be no objection to the proposed addition to the draft deed.

C. RATNAVELU MUDALIAR—29-4-04.

The addition (in pencil on page 4 of the draft deed) is correct and may be approved.

F. B. EVANS—2-5-04.

The addition is approved.

J. N. ATKINSON—2-5-04.

To the Educational Department.

EDUCATIONAL DEPARTMENT.

Orders of India are awaited.

H. D. TAYLOR—3-5-04.

From the Government of India, Revenue and Agricultural Department, No. 595, *dated* 5*th May* 1904.

REVENUE DEPARTMENT.

The application to India was made at the instance of the Educational Department. Submitted that the letter from the Government of India may, therefore, be transferred to that department u.o.

E. RAJAGOPALA CHARI—12-5-04.

Yes.

F.B.E.—13-5-04.

To the Educational Department.

EDUCATIONAL DEPARTMENT.

The Government of India sanction the transfer to the "Basel Mission Educational Council, Calicut," of the 6·44 acres of land acquired under the Land Acquisition Act, 1894, in the Malabar district, subject to the condition specified in paragraph 2 of G.O., Nos. 649-50, Revenue, dated the 5th April 1904. It is submitted that the deed of conveyance received with the Government Solicitor's letter of the 16th ultimo may therefore now be forwarded to the Collector of Malabar for execution by the Basel Mission Educational Council.

N. LAKSHMANA RAO—13-5-04.

P. T. THARYAN—14-5-04.

A. GALLETTI—14-5-04.

Yes; a fair copy may be typed.

H.D.T.—14-5-04.

A draft is submitted below for approval.

N.L.R.—14-5-04.

P.T.T.—16-5-04.

A.G.—16-5-04.

H.D.T.—17-5-04.

[G.O., No. 304, Educational, dated 17th May 1904.]

[E. 1]

1,000—5-12-02.

3 1

Educational (1904) Department.

CURRENT No. 720. 12

From

[*Name*]_____

[*Designation*] The Govt. Solicitor

[*Station*] Madras.

No. 327

Dated 16. 4. 1904.

*Enclosures*_____

Received 19. 4. 1904

Registered 19. 4. 1904

SUBJECT.

Submg for approval the draft deed of Conveyance of land acquired for the Basel Mission Educational Council.

BACK PAPERS.

FURTHER PAPERS.

Stock Form No. 152
4,000—21-7-03.

Revenue (1904) Department.

865

CURRENT No. 2754

From

[Name] Government of India

[Designation] Revenue & Agricultural Deptt

[Station] Simla.

No. 595.
Dated 5th May 1904
Enclosures

Received 13-5- 1904.
Registered 13-5- 1904.

SUBJECT.

Sanctioning subject to certain conditions the transfer to the Basel mission Educational Council, Calicut of 6.46 acres of land acquired under the Land Acqn. Act of 1894 in the Malabar Dt.

BACK PAPERS.

FURTHER PAPERS

3/26

No. 595

From

L. ROBERTSON, ESQUIRE, I.C.S.,

Under-Secretary to the Government of India.

To

The Secretary to the Government of Madras,

Revenue Department.

Simla, the 5-1th May, 1904.

Department of Revenue and Agriculture. (L.R.)

Sir,

In reply to your letter No. 650, dated the 5th ultimo, I am directed to say that subject to the condition stated in paragraph 2 the Government of India sanction the transfer to the "Basel Mission Educational Council, Calicut" of the 6.44 acres of land acquired under the Land Acquisition Act, 1894, in the Malabar district.

I have the honour to be,

Sir,

Your most obedient servant,

Under-Secretary.

[E. 3]

1,000—5-12-02.

4 EDUCATIONAL DEPARTMENT.

READ ~~AGAIN~~ G.O., No. ~~[illegible]~~, dated ~~15th December~~ 1903.

" " " " 649-50 Revs, " 5th april 1904.

" again " " 221 Edl 6th april 1904

READ ALSO:—

C. No. 720, From the Government Solicitor, No. 327, dated 16-4- 1904.

" " 865, " " Govt. of India, " 595, " 5-5- 1904.

" " " " " " 190.

ORDER No. 304, dated 17-5- 1904.

P.S.

Deep in usual fruniture & Calls. (Show before despatch.) & then send to Madras to be printed

P.J.g 17/5/4

In continuation of G.O. no. 221 Educational, dated 6th april 1904, the Collector of Malabar is authorized to make over to the Basel Mission Educational Council, at Calicut the 6.44 acres of land acquired ~~for it~~ under G.O. no. 624 Educational, dated 15th December 1903 on the Council's executing the appended deed of conveyance on ~~the prescribed~~ stamped paper of the requisite values. After execution by the Council the deed should be forwarded to Government for completion of execution.

H 16.5.4

H.D. 17.5.04.

P.J.g 18/5/4

To the Collector of Malabar (L+O). (with the deed)

" Revenue deptt. (P of the 1st Current, L of the 2nd " Series).

P.J.g 18/5/4

First copy sent to Press.

Returned for signature.

Despatched in print.

NUMBER OF COPIES REQUIRED. { Order complete. 40 / Letter only. / Order complete with Letter.

READ AGAIN G.O., No. 190 , DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT.

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED OF, BEING MEANT FOR DESPATCH IN ORIGINAL.

Print with notes & Short Print
29-5-04

26

N.B.—
A = Print in full.
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.