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10-12-8-04.

Educational (190 4) Department.

ORDINARY PRINTED.

G.O., No. 634

DATED 20. 10. 04

INDEXED

N.P.

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ORIGINAL

[Despatch Abstract.]

Building Grant.

Approving with remarks the revised form
of mortgage deed to be executed by the managers
of schools, before — is paid.

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Government {1904} of Madras. EDUCATIONAL.

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1904.

Spare copies

ORIGINAL

G.O., No. 634, 20th October 1904.

N. P.

OCTOBER.

Building Grant.

Approving, with remarks, the revised form of mortgage deed to be executed by the managers of schools before — is paid.

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

READ—again the following paper:—

G.O., No. 513, Educational, dated 16th August 1904.

ABSTRACT.—Accepting, with remarks, the proposal of the Director of Public Instruction for the substitution of a deed of acceptance in certain cases for the mortgage-deed required to be executed by the managers of schools receiving building grants.

READ—also the following paper:—

From SUTHERLAND ORR, Esq., Government Solicitor, to the Secretary to Government, Educational Department, dated Madras, 30th August 1904, No. 694.

I have the honour to acknowledge receipt on the 20th instant of the G.O., No. 513, Educational, dated the 16th instant, and regret that press of work should have prevented my dealing with the matter therein referred to before.

2. I understand the intention in future as regards securities for grants-in-aid is—

- (a) In cases where the grant is Rs. 500 or under to have a simple form of deed of acceptance signed by the managers of the institution who receive the money irrespective of who the owners may be.
- (b) In the cases where the grant is over Rs. 500 but does not exceed Rs. 1,000 to use and have registered by the managers and not the owners the fuller deed of acceptance.
- (c) In case where the grant is over Rs. 1,000 to have a deed of trust executed and registered in the name of the owners.

3. I see, however, that in paragraph 2 of the Government Order above referred to the Director is requested as far as possible to see that the managers hold formal powers-of-attorney from the owners. I rather gathered that the whole intention of the deed of acceptance was to obviate the necessity of any powers-of-attorney in cases below Rs. 1,000, but if the above paragraph 2 is intended to relate to cases under (a) and (b) I would suggest that as mere possession of such powers by the managers would not be any additional protection to Government (unless the managers purported to specifically act under them and copies of such powers were duly deposited with Government), it would be advisable if it is intended in any case coming under (a) and (b) that the owner is to be formally bound that the form of deed of trust should be used whenever the managers have proper authority to act for the owner; or a modified deed of acceptance by the owner could be used, but there seems no advantage in such a deed over a deed of trust.

4. As to the form of the deed of trust in which further alterations are under the above Government Order to be made, the position is now far different to what it was when such deed was originally drawn, the same having been prepared on the same lines as former deeds in this office and with the view of being executed by managers in whom by virtue of their office the title to the lands and buildings referred to in such deed were duly vested. It now, however, turns out that there are very few cases in which the managers of an educational institution have any legal interest in the properties which are to be made security for grants from Government to such managers in respect of which the managers are called upon to execute agreements in accordance with the Grant-in-Aid Code.

5. I understand that the present intention of Government is for the deed of trust to be a formal and valid mortgage from the actual legal owner of the property, and if so, the deed should certainly be amended so to come from such owners instead of the managers of the institution.

6. I enclose therefore a fresh form of deed of trust applicable to a case of a grant for the purpose of erecting school buildings which if approved can be adopted to meet the other three cases which arise under the Grant-in-Aid Code and I have included the alterations required by the Government Order above referred to.

7. I do not understand that it is ever intended to make a grant of over Rs. 1,000 in any case where the legal owner cannot execute the mortgage through himself or his attorney or which does not come within the various exceptions suggested by the Director, but if any such occasion arises a still further form would be required to be prepared. As, however, it is somewhat a difficult matter to prepare forms to provide for unascertained facts, I would suggest that any further form should be considered when required.

8. The Grant-in-Aid Code, as I have already stated, will have to be amended when the various forms of documents have been finally settled but such Code will not of course affect the validity of any documents which may be executed before the Code is altered.

ENCLOSURE.

THIS INDENTURE is made the day of One thousand nine hundred and BETWEEN

(hereinafter called the Mortgagor) of the one part and THE RIGHT HONOURABLE THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called "the Secretary of State") of the other part WHEREAS the Mortgagor ^{is}_{are} well and truly entitled to and possessed of the piece or parcel of land particularly described in the schedule hereunder written and ^{is}_{are} desirous of erecting and building a school-house and other buildings thereon at an estimated cost of Rupees AND WHEREAS the Mortgagor ^{has}_{have} in accordance with the provisions of the Grant-in-Aid Code of the Madras Educational Department now in force in the Presidency of Madras applied to the Secretary of State for a grant in aid of the sum of Rupees being part of the said sum of

Rupees so required for the purposes hereinbefore mentioned to enable ^{him}_{them} to erect the said school-house and other buildings AND WHEREAS the Secretary of State hath consented and agreed to make the said grant in the manner provided in Chapter VIII of the said Grant-in-Aid Code upon the Mortgagor entering into the covenants on ^{his}_{their} part and giving the security hereinafter contained NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the covenant on the part of the Secretary of State hereinafter contained ^{he}_{they} the Mortgagor ^{doth}_{do} hereby for ^{himself}_{themselves} ^{his}_{their} heirs executors administrators and legal representatives covenant with the Secretary of State his successors and assigns that ^{he}_{they}

the Mortgagor or ^{his}_{their} heirs executors administrators or legal representatives will within the day of cause to be duly erected the said school-house and buildings in accordance with the plans and estimate submitted to the Government of Madras in respect thereof AND will from time to time and at all times so long as the said buildings to be so erected shall be used for the purposes of the said school conduct and manage such school or cause such school to be conducted and managed by the person for the time being in charge of same in accordance with the rules and regulations for the time being in force in the Madras Educational Department so far as the same respectively are applicable to the said school AND will not prior to the lapse of 20 years from the date of the payment of the said grant or the last instalment thereof as the case may be divert or allow to be diverted the said buildings to other than educational purposes approved by the Government of Madras AND will during such period keep such buildings in good and substantial order and repair so that the same may be always efficient for use for the purposes of the said school AND will in the event of the said buildings at any time prior to the lapse of the said period ceasing to be required for the purposes of the said school or being diverted to other than educational purposes approved by the said Government of Madras forthwith repay to the Secretary of State his successors or assigns the said sum of Rs. or so much thereof as shall be determined by arbitrators to be appointed as provided by Rule 116 of the said Grant-in-Aid Code AND will further in the event of such repayment not being made within one month from the determination of the amount of same if so required to do by the Secretary of State his successors or assigns sell to the Secretary of State his successors or assigns the said

piece or parcel of land with the school and buildings thereon at a valuation to be determined by the said arbitrators who in making their award shall deduct from the price thereof such portion of the said grant as may seem to them equitable PROVIDED always that nothing in the last preceding clause contained shall release the mortgagor ^{his}_{their} executors administrators or legal representatives from the repayment of the said amount to be fixed by arbitration as aforesaid in the event of the Secretary of State not being desirous of purchasing the said piece or parcel of land and buildings PROVIDED also that in the event of the mortgagor ^{his}_{their} executors administrators or legal representatives failing to appoint an arbitrator the amount to be so repaid to the Secretary of State his successors or assigns or deducted as the case may be shall be the said sum of Rs. PROVIDED also that nothing herein contained shall be deemed to prevent the use by the

mortgagor ^{his}_{their} executors administrators or legal representatives or the person or persons for the time being in charge of the said buildings out of the hours during which the same should be used for the objects of such school for such other reasonable and proper purposes other than educational as the mortgagor ^{his}_{their} executors administrators or legal representatives or the person or persons for the time being in charge of the said buildings may direct AND THIS INDENTURE ALSO WITNESSETH that in further pursuance of the said agreement and in consideration of the covenants on the part of the mortgagor hereinbefore and of the transfer hereinafter contained He the said Secretary of State doth hereby for himself and his successors covenant with the mortgagor ^{his}_{their} heirs executors administrators and legal representatives that he the said Secretary of State or his successors will upon the submission of the certificate referred to in Rule 114 of the said Grant-in-Aid Code as to the completion or progress of the erection of the said buildings pay to the mortgagor ^{his}_{their} executors administrators and legal representatives the said sum of

Rupees so agreed to be advanced by him as aforesaid either in whole or by such instalments as the Government of Madras may determine AND THIS INDENTURE FURTHER WITNESSETH that in further pursuance of the said agreement and in consideration of the said grant-in-aid to be paid as aforesaid the mortgagor ^{doth}_{do and each of them doth} hereby grant convey and assign unto the Secretary of State his successors and assigns all that piece or parcel of land particularly described in the schedule hereunder written together with all and singular the buildings and erections now being or which may hereafter be thereon expressly including the said buildings to be erected as aforesaid AND all rights easements and appurtenances whatsoever usually held or connected therewith or reputed to belong or be appurtenant thereto AND also all furniture fixtures fittings maps and other school apparatus school books and chattels for the time being in and belonging to or used or to be used for the said school and all the estate right title interest claim and demand of the ^{Mortgagor}_{Mortgagors and each of them} in to and upon the said hereditaments and premises TO HAVE and TO HOLD the said piece or parcel of land hereditaments chattels and effects and all other the premises expressed to be hereby assured unto the Secretary of State his successors in office and assigns according to the nature and tenor thereof respectively UPON TRUST to permit the same hereditaments and premises to be used by the mortgagor ^{his}_{their} executors administrators or legal representatives or his or their nominee or nominees as a school for

And with power in case there shall be a breach of any of the covenants hereinbefore contained and on the part of the mortgagor ^{his}_{their} executors administrators or legal representatives to be observed and performed or any breach by the person or persons for the time being in charge of the said school of the said Rules and Regulations of the Madras Educational Department or if the mortgagor ^{his}_{their} executors administrators or legal representatives shall fail to pay on demand the said sum of Rs. or other the amount so to be fixed by

arbitration in manner hereinbefore provided within the period hereinbefore mentioned or to sell the said premises to the Secretary of State as also hereinbefore provided as the case may be then and in any of such cases to forthwith sell and absolutely dispose of the said hereditaments and premises and apply the proceeds of such sale after payment thereof of all costs and expenses attending the same in or towards recouping or reimbursing to the said Secretary of State his successors or assigns the said grant-in-aid or sum of Rs. or other the amount so to

be fixed by arbitration as aforesaid and to pay the surplus if any to the mortgagor ^{his}_{their} executors administrators legal representatives or assigns PROVIDED always and it is hereby agreed and declared that at the expiration of the said period of twenty years hereinbefore referred to the said Secretary of State or his successors or assigns as the case may be shall in the event of the covenants hereinbefore contained on the part of the mortgagor ^{his}_{their} executors administrators or legal representatives having been in the meantime duly performed and observed reconvey and reassign unto the mortgagor ^{his}_{their} executors administrators or legal representatives or as he or they may direct all and singular the piece or parcel of land hereditaments chattels goods or other premises hereby expressed to be hereby granted conveyed or assigned IN WITNESS whereof the said

and

The Director of Public Instruction for the Presidency of Madras by the order and direction of the Governor in Council of Fort St. George acting for and on behalf of the said Secretary of State have hereunto set their respective hands and seals the day and year first above written.

Schedule to which the above-written indenture refers.

ALL that piece or parcel of land situated at
in the zillah of
and taluq of
and in the sub-registration district of
and registration District of

bounded
on the north side thereof by
on the south side thereof by
on the east side thereof by
on the west side thereof by
and containing together in the whole by admeasurement

(be the same little more or less) and all which said piece or parcel of land was formerly in the occupation of but is now in the occupation of

SIGNED sealed and delivered by the
abovenamed
in the presence of

SIGNED sealed and delivered by the
abovenamed
in the presence of

ORDER—No. 634, Educational, dated 20th October 1904.

The presumption in paragraph 2 of the Government Solicitor's letter read above is correct. It will suffice if deeds of acceptance are executed in all cases in which the grant does not exceed Rs. 1,000.

2. The revised form of mortgage deed now submitted by the Government Solicitor is approved. When any additional grant exceeding Rs. 1,000 is paid to an institution while a former grant is in force, a supplemental deed should be executed in this form. It is not intended that a grant of over Rs. 1,000 should be made in any case where the legal owner cannot execute the mortgage in person or by attorney, nor should the Director recommend any smaller grant where there is reason to doubt the *bona fides* of the manager of the institution concerned.

(True Extract.)

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

To the Director of Public Instruction.
Government Solicitor.

Exd. Shaik Karim.

NOTES CONNECTED WITH G.O., No. 634, EDUCATIONAL, DATED
20TH OCTOBER 1904.

[SUBJECT.—*Building grants agreements.*]

From the Government Solicitor, No. 694, dated 30th August 1904.

The question raised by the Government Solicitor is whether paragraph 2 of G.O., No. 513, dated 16th August 1904, is intended to apply to cases in which deeds of acceptance are executed or only to cases where deeds of trust are required.

2. If it be held to apply to deeds of acceptance the parties, where the information is available, might just as well be called on to execute the complete deed of trust, the form of deed of acceptance having been designed to meet cases in which the grant is of a petty nature or the title of the manager *qua* proprietor, doubtful. Form (i) is really, when executed by the committee of management, of no more legal force than form (ii). The Director, however, should not recommend any grant where there is reason to doubt the *bonâ fides* of the manager.

3. The Government Solicitor may be informed that the presumption in paragraph 2 of his letter is correct, but, with reference to his paragraph 2, the Director of Public Instruction may in his discretion see that the fuller deed of trust is executed where the managers are the owners, or have proper authority to act for them even in cases of small grants.

The revised deed of trust may be approved.

4. A question arises as to whether, when any second grant is made to an institution while a former grant is in force, a fresh deed of trust should be executed, or whether a deed of acceptance will suffice. I consider that the general rule may apply, and that if the amount exceeds Rs. 1,000, a supplemental deed should be executed. Otherwise Government would have no lien on the buildings after the expiry of 20 years from the *first* grant.

H. D. TAYLOR—10-10-04.

I discussed the matter with Mr. Orr when he was here: and I agree with the opinions he now gives. What he proposes is quite sufficient for all practical purposes. Please draft accordingly for approval.

G. S. F[ORBES]—11-10-04.

Draft please.

H.D.T.—12-10-04.

The draft placed below is submitted for approval.

P. T. THARYAN—12-10-04.

A. GALLETT—13-10-04.

Please type as revised.

H.D.T.—14-10-04.

Typed and resubmitted.

P.T.T.—14-10-04.

Honourable Member.

H.D.T.—14-10-04.

What we arranged as sufficient was the suggestion in the first sentence of paragraph 3 of the Government Solicitor's letter; that in cases below Rs. 1,000 only a deed of acceptance need be prepared, dispensing with powers of attorney. Won't the order require revision in this light?

G.S.F.—15-10-04.

The draft is revised and submitted for approval.

2. It is perhaps unnecessary that the typed words underlined at the end of paragraph 1 should be inserted.

H.D.T.—18-10-04.

Yes: better omit the words referred to.

G.S.F.—18-10-04.

Issue.

H.D.T.—20-10-04.

[G.O., No. 634, Educational, dated 20th October 1904.]

[$\frac{E.}{1}$]

1,000-5-12-02.

Educational (1904) Department.

CURRENT No. 1566

From

[Name] Sutherland Orr Esq.

[Designation] Government Solicitor,

[Station] Madras

No. 694

Dated 30. 8. 1904

Enclosures 1

Received 2. 9. 1904

Registered 8. 9. 1904

SUBJECT.

Regarding the Building Grants agreement.

BACK PAPERS.

FURTHER PAPERS.

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Read again G.O. No. 513, dated 16th August 1904.

" also C.No.1566, from the Govt. Solicitor, No.694, d/30-8-1904.

148

ORDER:-- no.634210-10-04
P.S.

desp in ms
other printed
no 7/10/74

It will suffice if deed of acceptance
is executed in all cases ^{in which}
the grant does not exceed Rs.1000.
(enc. 4/10/04)

Stz.
1/10
Oval
8/7

17/10
The deed of trust has not
been submitted to P.S. Please
note that when it is printed
up into copies for the
6th of Oct. 1904.

Sgt

S. C. V. desk
31/10/04

To Mr. Solicitor

3rd desk
see note above
22-10-04

The presumption in para.2 of the Government Solicitor's letter read above is correct, but the Director of Public Instruction should require the mortgaged deed to be executed ~~even~~ in cases of grants not exceeding Rs.1,000 where the managers are also the owners of the institution or have full and proper authority from the owners to act on their behalf.

2. The revised form of mortgage deed now submitted by the Government Solicitor is approved. When any additional grant exceeding Rs.1,000 is paid to an institution while a former grant is in force a supplemental deed should be executed in this form. It is not intended that a grant of over Rs.1,000 should be made in any case where the legal owner cannot execute the mortgage in person or by attorney, nor should the Director recommend any smaller grant where there is reason to doubt the bona fides of the manager of the institution concerned.

1409
14.10.04

First copy sent to Press.

Returned for signature.

Despatched in print.

READ AGAIN G.O., No.
120

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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

N.B.—

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

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*Print with notes
of 8th Nov 1914*