

E.&P.H.

(1948) Department.

PLS
SERIES.

G.O. NO. Ms.111 P.H.

Edw.

16th January 1948.

Dated

[Despatch Abstract.]

Land - Madura Municipality - Madichiam Extension - Sale to
Municipal Employees at concession rates - Proposal sanctioned.

Back Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.
Co.	491	P.H.	18.2.1946			
Co.	621	P.H.	20.3.1946			

Further Papers.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	D.
(M)	1747	LA	dated 8/12/59				

P8-5263/44.

Municipal Office, Madura.
Dated 17-4-1946.

From

Dr.T.S. Adisubramaniam M.B.B.S., B.S.Sc.,
Commissioner Delegate,
Madura Municipality,
M A D U R A.

To

The Secretary to Government,
Education and Public Health Department,
M A D R A S.

Through

The Chairman, Municipal Council, MADURA.

Sir,

26533

Sub: Land - Madura Municipality - Madichiyam Extension - sale
to Municipal Employees at concession rates - proposal
sanctioned - G.O.No.M.S. 491 P.H. dated 18-2-46.

The Government in sanctioning the proposal of the Council to sell to its employees the house sites in the Madichiyam extension at concession rates in their above order G.O.No.M.S. 491 P.H. dated 18-2-46 have also said that in addition to the conditions mentioned therein the sales should also be subject to the conditions contained in G.O.No. 621 L.A. dated 20-3-44.

2. Among the various conditions laid down in the said G.O.s. condition No.4 in G.O. 621 L.A. dated 20-3-44 says that the site so sold should be made in-alienable for a period of 15 years by the grantee or his successors and conditions Nos. 7 and 8 in the other G.O. namely G.O.No.Ms.491 P.H. dated 18-2-46 that buildings should be constructed on the sites and that the site will be liable to be resumed by the Municipal Council without payment of compensation if any of the conditions of sale are violated. It is evident that the object of the said conditions are to see that the employees do not abuse and make an undue profit out of the concession shown to them but should themselves get the benefit of the concession.

3. But our municipal Standing Counsel is of opinion that the above said conditions offend sections 10 and 11 of the Transfer of Property Act and also the General Principles of law relating to a sale and as such they are void and cannot be enforced and that the sales shall take effect as if the said conditions were not imposed. A copy of his opinion is also herewith submitted for reference. At the same time he also says that although the said conditions are not valid and cannot be enforced in the case of a sale, they may be validly inserted in the case of a lease and so what he suggests is that instead of making a sale, the employees may be granted 15 years lease subject to the above conditions for a premium fixing it at the concession sale price and that sales may be executed at the end of 15 years treating the premium as the sale price.

4. But the municipal employees represent to me that they have no enough funds with them for constructing the buildings within the time specified and that they will have necessarily to raise funds with the Building Cooperative Societies only on the security of the sites proposed to be granted to them and that in case the grant is made in the form of a lease subject to the above conditions they will not be able to construct any building within the time allowed and will have to necessarily lose the benefit of the concession granted to them.

(P.T.O.)

5. In the circumstances I request that the following points may be elucidated.

- (1) Whether in the circumstance pointed out by our Standing Counsel sales can be executed or only Leases as suggested by him.
- (2) If only leases are to be executed and not sales what steps are to be taken to help the municipal employees to raise funds and construct buildings as per conditions,.

Forwarded.

Chairman.

ns.18.4.

Commissioner-Delegate.

Copy of the Standing Counsel's opinion.

Sale of house sites at concession rates to Municipal employees G.O.No.621 L.A. dated 20-3-44-G.O.No.M.S. 491 P.H. dated 18-2-46.

1. One of the conditions laid down in the above G.O. No. 621 L.A. dated 20-3-44 is that the sites so sold to the Municipal employees should be made inalienable for a period of 15 years by the employee or his successors. In addition to the conditions laid down in the above G.O. there are also other conditions laid down in G.O.M.S. 491 P.H. dated 18-2-46 regarding the sales so xx to be made to the municipal employees. Conditions 7 and 8 of the said G.O. say that the buildings should be constructed by the employees within 2 years of their taking possession of the sites and that in case any of the conditions of the sale are violated the site is liable to be resumed by the municipal council without payment of compensation. The object of the Government in laying down the said conditions seems to be that the municipal employees should not be allowed to abuse and make a profit out of the concession shown to them but themselves should benefit by it.

2. But the question arises whether such conditions are valid in law and can be enforced and whether by the insertion of the said conditions in the sale the object with which the said conditions are introduced can be achieved.

3. I shall first take up the condition restraining the power of alienation for 15 years. According to section 10 of the Transfer of Property Act a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property transferred is void and will not bind the transferee. A municipal Council shall also like any other transfer be subject to and be governed by the said section. But a further question may arise whether a condition restraining alienation only for a particular specified period shall amount to absolute restraint as contemplated in section 10 of the said act or only partial restraint. The general trend of the English law on the point is that a restraint on alienation even for a limited period is an absolute restraint and such is void. There is no decided Madras case on the point. But of the other Indian High Courts have followed only the English law on the point. Please see 11 Indian cases (page 301), 121 Indian cases page 298 and 143 Indian cases page 315. Of course in a case reported in A.I.R. 1935 Lahore Page 503 it has been held that a restraint on alienation of a portion of a property transferred during the time of a person is valid as partial restraint. But it is submitted that this view is not correct and cannot be followed as good law. In Privy Council decision in A.I.R. 1932 Privy Council page 158 on which this case rested for its conclusion, dealt with a restraint not as to

time but as to the persons to whom the property might be transferred. So in the absence of any decided Madras case on the point I think it is better we follow the English Law. The Transfer of Property Act itself is based only on the principles of English Law.

4. Then Coming to the other two conditions laid down in the other G.O.M.S.491 P.H. dated 18-2-46, I am of opinion that they too are not valid in law and cannot be enforced. The said conditions not only offend section 11 of the Transfer of Property Act but also the general principles of law relating to a sale. When there is a transfer of ownership the transferor has no interest left in him to impose any condition restraining either the power of alienation of the transferee or his enjoyment and if any such conditions are imposed they are only void and cannot be enforced. In no event can there be a condition for resumption in the case of a sale although there may be an agreement to retransfer.

5. So from the above it will be clear that the insertion of the above conditions in the sale will be of no avail and that the sale will take effect as if the said conditions were not imposed.

6. But I may also note here that although the said conditions can have no effect in the case of a sale, law allows such conditions in the case of a lease. So what I would suggest is to lease the sites for a period of 15 years containing all the conditions mentioned in the above two G.O.S. for a premium which may be fixed at the concession sale price and also containing a condition that after the expiry of the 15 years a sale deed shall be executed by the Municipal Council at the cost and expense of the grantee provided that in the meanwhile the lease is not cancelled for any of the reasons mentioned therein. At the time of the execution of the sale the lessee shall not be required to pay any further sale price but the premium itself which he pays for the lease shall be taken as consideration for the sale.

7. But in granting such a lease it may be said that there may be much difficulty caused to the municipal employees in raising funds for the construction of buildings and they may not be really benefitted by the grant because most of them may not have sufficient monies with them for putting up the construction but will have to raise money only on the security of the land granted to them. But this is a matter for the Commissioner and the Government to consider and not for me.

(True Copy)

From

I.D.N.Sahi Esq., I.C.S.,
Commissioner, Madura Municipality,
MADURA.

22 JUL 1946

The Secretary to Government,
Education & Public Health Department,
MADRAS.Through
the Chairman, municipal Council, Madura.

Sir,

Sub.: Land - Madura Municipality - madichiam Extension -
Sale to Municipal employees at concessional rates -
Sanctioned.Ref.: My letter No. 8-5268/44 dated 12-4-46.
Govt. Memorandum No.25683-5-P2 P.H. dated 28-6-46.

The Government in G.O.No.MS.491 P.H. dated 18-2-46 accorded sanction to the proposal of the Municipal Council, to dispose of certain house sites in madichiam extension to its employees at concessional rates subject to the conditions laid down in the said G.O. and also those in G.O.No.621 L.A. dated 20-3-44. Condition No.4 and of G.O.No.621 L.A. dated 20-3-44 reads that the site so sold should be made inalienable for a period of fifteen years by the grantee or his successors.

As the Municipal Standing Counsel was of opinion that the above condition and another one requiring the grantees to construct buildings on the sites within a period of two years from the date of grant, may validly be incorporated only in the case of a lease deed and not otherwise under the Transfer of Property Act; and as the municipal employees represented that they did not have enough funds with them nor could they raise loans, without mortgaging the sites, proposed to be granted, for erecting a building within a specified period, I addressed you in my reference No.P8-5268/44 dated 12-4-46, requesting to let me know if I can convey the properties by sale or lease. You have replied in your reference cited that the matter is still under consideration.

The employees, now, represent that they will be able to raise loans from building Co-operative societies for putting up constructions even if the lands are initially given to them on lease-hold terms and say that to start with they are prepared to take the property on lease for a period of 15 years provided it is sold to them unconditionally at the end of that period. They request to permit them to mortgage their leasehold rights to a building Co-operative society for raising sufficient funds. They also undertake to discharge the said loans within the expiry of the lease period.

I am of opinion that this course can be adopted and at the end of the period of 15 years, the leasehold may be converted into a downright sale at the cost of the vendees. I request that the above proposal may be accepted and orders communicated early so that these municipal employees may have the benefit of having residential buildings especially now when the housing problem is very acute in the City.

Commissioner.

Forwarded.

Chairman.

34/26

From the Muni! Commr. Madras
No. P. & - 5268-44-2717.4.46 &
14.7.46.

Memo No 26533-8 P.H dated 2.8.46

Land - Madras Muni-
cipality - Sale of house site
in Madichiam Extension, to
Municipal employees.

After a very careful consi-
deration of the proposals contained
in the Municipal Commissioner's
letters read above the Govt. have
come to the conclusion that the
object which the Council has
in view, namely, the provision
of ~~easy~~ housing accommodation to
Municipal employees, can be
achieved ~~effectively~~ only if the
Council undertakes and executes
at its cost, a well-planned
housing scheme under which
they may erect compact little houses
or other suitable tenements which
can be let to the employees at a
reasonable rent. The Govt.
would therefore commend for the
consideration of the Council the
preparation of such a scheme
in consultation with the Dir
of Town-Planning.

on a concessional
basis

2. The ~~Govt~~ Comm^r is informed that if a housing scheme is undertaken, as suggested in paragraph 1, it will be unnecessary to consider the points of law raised in his letter read above - He is requested to place the suggestion before the Council at a very early meeting and submit a report to Govt. as to the Council's decision in the matter.

37.7.46

SRK
2/8/46

✓ The Comm^r
Madura
Kro R. Ch.

✓ Copy to the
D. T. P.

Department Received Registered
I.D.N. Sahi Esq., I.C.S.
Commissioner,
Madura Municipality,
MADURA.
The Secretary to Government,
Public Health Department,
MADURA S.
Through
The Chairman, Municipal Council, Madura.

Enclosures: No. P8-5268/44 dated 3-10-1946.

Sir,

Sub.: Assignment - Land - Madura Municipality - Medi-
chiam Extension - Sale to Municipal employees -
sanctioned.

Ref.: Government Memorandum No. 26533-8-P.2 P.H. dated
2-8-46 and a reminder dated 4-9-46.

I placed the suggestion of the Government before the
Council for consideration with my note dated 14-8-46 (copy enclosed).
In M.C.R. 567 dated 12-9-46 (copy enclosed), the Council referred
the matter to a Committee consisting of five members. In M.C.R. No. 643
dated 27-9-46, (copy enclosed) the Council approved the proceedings
of the Sub Committee (copy enclosed) disagreeing with Government's
suggestion.

I request that early orders may be passed in the
matter.

Forwarded to
RK.5.10.A. 9/10/46
Chairman 7/10/46
COMMISSIONER.

Copy of my note to the Council d/14-8-46.

This scheme can be made remunerative - considering that the
class of persons who will occupy the buildings will not be so down
and out as to be unable to pay a fair rent.

I also think rented quarters are better than sales outright.
Rented quarters will be available to all generation of Municipal employee
as long as they are in service. Sales of sites outright will mean
inviting the same problem after the present set go out of the Muni-
cipality.

There may even be cases when sale outright will produce para-
doxical results. A Municipal employee, who is shown this concession
to-day, may to-morrow resign his job here or be dismissed from it
and go away on foreign service. It would serve no principle to perpe-
tuate this concession even in favour of such men merely because of the
accident of their having been Municipal servants once.

Regarding costs, as I have said, this scheme for providing
quarters can be made remunerative. Even otherwise we will be more than
recompensed in the shape of a contented service.

Even though the area of the two sites is estimated to house only
40 employees, it does not mean that because of the limited accommoda-
tion the Council need not make a beginning if it is in the right direction.
A start can be made, and the housing of our employees in rented quarter
can be pushed as and when further opportunities present themselves.
To begin with - since we cannot rent out the quarters to all our employ-
ees we may allot the available houses to those who have no houses of
their own with order of seniority taking care to see that as far as
possible, all departments are given the benefit of the scheme.

Copy of M.C.R.567/ 12-9-46.

SUBJECT: Govt. Memorandum No.26533-8 F.L. P.H. dated 2-8-46 the proposal of sale of house sites in Madichiam to Municipal employees at concessional rates and the note of the Commissioner thereon.

RESOLUTION: The site may be given to the persons as already resolved; but now, a Committee is formed with the following members to discuss and to bring to the next meeting, the manner in which the property is to be given.
Committee: Messrs. Chairman, Vice Chairman, Muniswara Iyer, K.M.S.Lakshmana Iyer and A.Venugopal.

Sd./ M.V.Nallamuthu Pillai,
Chairman.

(True copy)

Copy of the Proceedings of the Sub Committee formed in M.C.R.567/12-9-46.

The proposed housing scheme from out of the Municipal finance as suggested in Govt. Memo No.26533-8-F.2 P.H. dated 2-8-46 is not practicable or profitable under the existing financial and other circumstances especially in view of dearth of building materials and high cost of labour. Further the site to be assigned is not sufficient for comprehensive housing scheme for all the members of the staff.

So the Committee is of opinion that the Government may be addressed to allow the Municipal Council to sell the sites subject to the conditions mentioned in G.O.No.621 L.A. dated 20-3-44 and G.O.No.Ms.491 P.H. dated 18-2-46 as already sanctioned by the Government in the above said G.O.No.Ms.491 P.H. dated 18-2-46; or

If it is not possible, to allow the Council to grant leases to these employees for a period of 15 years subject to the conditions mentioned in the above two G.Os. (No.621 L.A. dated 20-3-44 and G.O.No.Ms.491 P.H. dated 18-2-46 and also with the condition that after the expiry of the 15 years period sale deeds shall be executed to the grantees or their successors at their cost and expense as suggested by the Standing Counsel.

(True copy)

Copy of M.C.R.No.643/27-9-46.

SUBJECT: Proceedings of the Committee dated 20-9-46 formed in M.C.R.No.567 dated 12-9-46.

RESOLUTION: Approved.

(Sd.) M.V.Nallamuthu Pillai,
Chairman.

(True copy)

No.P8-5268/44.

Municipal Office, Madura,
17--6--1947.

From I.D.N.Sahi Esq., I.C.S.,
Commissioner & Special Officer,
Madura Municipality, MADURA.

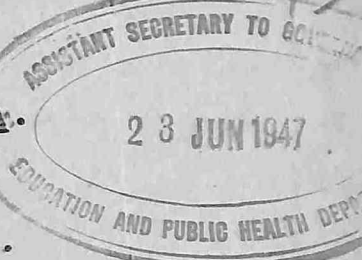
To The Secretary to Government,
Public Health Department, MADRAS.

Sir,
Sub.: Assignment - land - Madura Municipality - Madichiam extension - sale to Municipal employees - Proposal.
Ref.: My letter No.P8-5268/44 dated 3-10-46, and reminder letters dated 6-11-46, 16-1-47 and 15-5-47.

I invite your kind attention to my references cited and request the favour of an early reply.

RK.18.6.p.

Commissioner and
Special Officer.



12

P8-5268/44.

Municipal Office, Madura,
11-10-47.

From

Dr. R. SAMBAMURTHY, M.B.B.S., B.S.Sc.,
Commissioner & Special Officer,
Madura Municipality, MADURA.

To

The Secretary to Government,
Public Health Department, MADRAS.

Sir,

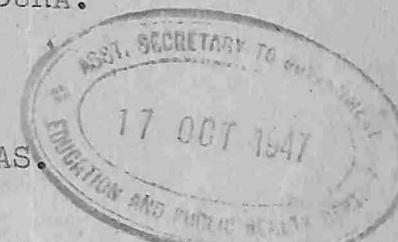
Sub.: ASSIGNMENT - Land - Madura Municipality - Madichiam
extension - sale to Municipal employees - Proposal.

Ref.: My letter No. P8-5268/44 dated 3-10-46.
Govt. Memorandum No. 26533-F2/46 -9 P.H. d/4-9-47.

I invite your kind attention to my reference cited and re-
quest you to send an early reply.

RK.14.10.p.

Commissioner
&
SPECIAL OFFICER.



83028

File sent to
Legal

12/10/47

14
E.P.H.(72).

Please see the reminder from
the Commr. & Co., Madurai City, overleaf.
The main file on the subject was
sent to Legal S.W.O. on 4/20/47.
Its return may be awaited till
1-11-47.

21/10/47.
23/2/47.

27.7)

C.No. 26533/46.

PP. 1, 5 & 9 C.7.

5-
16/11

Revised Draft. 15 E.P.H.(72).
Land - Madurai Municipality -
Madichiam Extension - Sale to
Municipal employees at Concession rates -
Proposal sanctioned.

From the Commr., Madurai City, P.S.
5268/44, dated 17-4-46, 14-7-46
and 3-10-46.

Order No. 111. (P.H.) dated, 16-1-48
11/8

P. 17.1.7.06 ©

In partial modification of
para 1 of G.O. 491.P.H., dated,
18-2-46, the Govt. accept the
proposal of the Municipal Council,
Madurai to sell to its employees
the house sites, in T.S. Nos. 100,
109/B-1, 117, 119, 120, 121 and 122 and 459
and 460 of Ward No. 10 in the Madichiam
Extension at the Concessional rates
of Rs. 25/- per cent for superior
servants and Rs. 12-8-0 per cent
for inferior servants. The
proposal is sanctioned subject
to the following conditions: -

B. on p. 23 N.7.

- (H)
Condition (1) on p. 25 N.7.
- 1) All the conditions except
Condition (5) prescribed in G.O.
621.L.A., dated 20-3-44.
 - 2) More than one dwelling house
shall not be constructed on a
plot, nor shall any plot be
sub-divided. No dwelling

16
 an open space not less than 10 feet wide in front between the street edge and the dwelling house and an average minimum open space of 10 feet in ^{the} rear and unless the dwelling house is detached and has an open space of 5 feet on each of its remaining two sides or open space of 10 feet on one of its remaining two sides;

4) More than two-thirds of a plot shall not be built upon;

5) Building of any kind other than a Compound wall of 5 feet (above the adjoining road level) shall not be constructed between the building line and the street edge;

6) Thatch shall not be used for roofing and

7) the following condition.

"The site sold including the buildings, if any, erected thereon, shall not be alienated by the grantee or his successors, after a period of fifteen years from the date of sale by the Madura Municipality, to any person unless it has been first offered for sale to the said municipality at the prevailing market price and the municipality has declined or neglected to purchase it at the price so offered."

The Govt. also direct that the sale proceeds of the sites be utilised for some building or works in order to provide municipal scavenger.

condition (3) on p. 25 N.7.
 condition (4) on p. 25 N.7.
 condition (5) on p. 25 N.7.
 Pl. Sec. for sig. draft.

To the Commr.,
 Madura Mty. (Hosr)
 the chairman
 The D. T. P.
 The collector
 of Madura.
 (25.5.46)

Depd
 20.5.46

Note File

10 E.H. Jt (72)

Cm. 26533 from the Municipal Commr.
 Madura - No. P-8-5268-44
 D. 17.4.46.

Subject: - Land - Madura Mty

Sale to Mun! Employees in Madichiyam
Extension - Conditions Legality

The case is explained in the Commissioner's letter in Re of the Municipal Standing Counsel is of opinion that condition 4 contained in G.O. 621 L.A. D. 20.3.44, that the sites sold should be made inalienable for a period of 15 years and conditions 7 and 8, mentioned in G.O. 491 P.H. D. 18.2.46, are not enforceable in law, in respect of the sale of land in Madichiyam to Municipal employees - The Standing Counsel's opinion is on pages 2-3 of.

Before considering the other point raised, that is, whether sale or lease of the lands can be permitted, L.A. & Legal may see for remarks.

By N.S.E. Legal J.A.

ASSISTANT SECRETARY
 22 MAY 1946
 LEGAL DEPARTMENT.

3509

PH
 533-172 PH
 22.5.46

Legal Department.

Legal Department.

The conditions to which the Standing Counsel of the Madura Municipal Council takes objection are the following:--

1. The land sold should be made inalienable

- 1 Council takes objection are the following:--
- (1) that the site sold should be made inalienable for a period of 15 years by the grantee or his successors;
 - (2) buildings should be constructed by employees within 2 years of their taking possession of their sites;

if any of the conditions are violated.

Condition (1). The Standing Counsel takes the view ~~that~~ that this condition is opposed to section 10 of the Transfer of Property Act according to which a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property transferred is void and will not bind the transferee. The scope of section 10 was considered by the Privy Council in A.I.R. 1932 P.C. 158. In that case the Privy Council held that where a person was given a share in property upon the express condition that it shall not be alienated outside the family there is no condition or limitation absolutely restraining the transferee. This decision was followed in A.I.R. 1935 Lahore 503. In that case it was held that a condition that a person should not alienate the property transferred to him during the life of ^{time} his father could not be said to be an absolute restraint upon his powers. In view of these decisions a condition to the effect that the transferee should not alienate the property for a period of 15 years cannot be held to be void.

Standing Counsel takes the view

to be void.

3 Conditions (2) and (3). The Standing Counsel takes the view that these conditions ^{are opposed to} ~~are~~ section 11 of the T.P. Act. and also the general principles of law relating to sale. The position stated by him seems to be correct.

27 JUN 1963

20/6/46 S

The position stated by
DEPARTMENT OF COMMERCE
EDUCATION AND PUBLIC HEALTH
27 JUL 1945
PH

344

In view of the legal note on the previous page the Com. may be informed that the Govt. after an examination of the legal points raised by the Standing Council with regard to the three conditions referred to are ~~of~~ of opinion that the first condition will be legal, and conditions (2) and (3) should not

- danger imposed, that is, embodied in deed of transfer.
 no yet in that way the proposed Rat-
 - condition (2) is a serious and im-
 portant, as it may be necessary
 for the Council to which the Board grants
 the authority to its employees at Con-
 - of the Council to take action to compel the
 persons in question to work in the
 buildings in the sites. This
 condition could be imposed by means
 of executive proceedings by the Munici-
 - pal Council, though it may be in
 view of the legal's note, the
 inclusion of this condition of
 -

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p. 17. cf. (c)

3. Conditions (7) and (8)
Contained in G.O. No. 491 P. 24
of the 18th Feb. 1946 may
~~be~~ be omitted for the G.O.
which may now be modi-
fied. A Condition that the site
should be inalienable for a period
of 15 years can be imposed,
in view of the Safeguard
Contained

4/

Contained in such a condition,
 it seems unnecessary for the
 Council to go back on its
 decision to sell the lands
 outright. If this view is
 accepted, there seems to be
 no need to advise the Council
 that the site may be leased.
 LA may see for
 remarks.

28.6.46 Office work above suggests
 a way out - that is, by an
 ignominious retreat! But, if the
 lands in question did belong to Govt. & not
 the Municipal Council, all the covenants
 that have been imposed, would have been
 valid by virtue of the provisions of
 the Crown Grants Act, 1895. And I
 presume, if the lands belonged to Govt.
 originally, it was alienated to the Mpl
 Council, it would still be open to
 Govt. to impose the covenants under
 which the Mpl. Council will be
 allowed to ^{part with} sell and third parties
 allowed to obtain possession of,
 the land in question (depending on the
 covenants of the original alienation.).

A

Before I start digging into
 the past, will Legal please advise
 if my presumption at A above is
 correct.

SRK
 29.6.46
 Legal.

Legal. No. No.
 4597-1
 16.7.46

4597
 30.6.46

12 Legal Dept ⁵

In view of H.M. L.A.'s minute in the top
 file, the point raised by D.S. E & P.H. in
 the previous page has not been examined in
 this Dept. The file may be returned to E & P.H.

15/7/46

15/7/46 E & P.H.

Legal. No. No.
 4597-1
 16.7.46

38496

A

(PTD)

C.No 4493
276-46

Land - Madura Municipality - Madichiyam extension -
sale to municipal employees at concession rates.

**
E & P.H. C.No.
26533-1 F2 P.H.
dated 22-5-46.

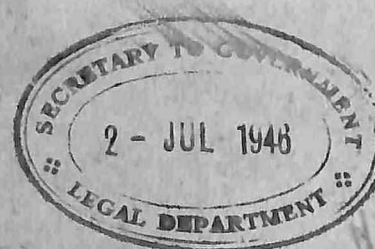
The above file ** was referred to this Department by E & P.H. for remarks and a copy of this Department's note in that file is placed below. When the file was informally submitted to H.M. Law for perusal, he made certain observations, which he wishes H.M. L.A. to see. The note containing his observation is attached. This may be submitted to H.M.L.A.

26/6/46

26/6/46

H.M.(L.A)

The file appears to be a duplicate of the original papers, in which his reference arose. 1/7.

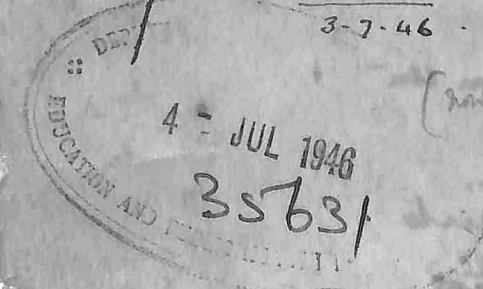


Please call for the original file
27/7/46

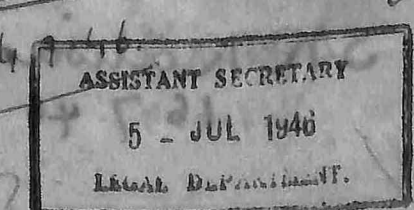
E & P.H. are requested to put up the file referred to at A above

Legal No. 4493-1
3-7-46

27/7/46 E & P.H. (72)



The main file on the subject was sent to Legal with copy 26533-6 72. Legal may be informed accordingly.



SRK

4746

Legal

E & P.H. C.No.
26533-7F2
4-7-46

The file ref'd by H.M. L.A. is put up -
to see the linker file. This may now
be sent to H.M. L.A.

8/7/46 S 1007/8/7/46 HTM(LA.)

By & large, I agree with the observations
of the Linker to Law Minister. A copy
of this ~~document~~ ^{note} may be sent. (The
Commissioner, Madras Municipality;
make suitable modifications in scheme)

15/7

The file may now be sent to
R.P.H. for taking action as above

15/7/46 S

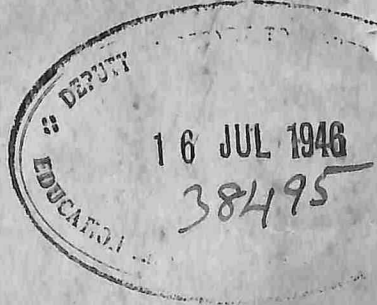
1007/15/7/46 R.P.H.

Edw. P.H.

The case was not
shown to HTM (P.H.M.) before it
was submitted to HTM (L.A.).
Circulated for orders. If HTM agrees
action will be taken as proposed.

HTM (P.H.M.)

S.R. Kanwar
16.7.46



Deputy Secretary, Legal.

I have noted below the observations of H.M. (Law) on
the file below:-

"The whole scheme is ill conceived. The decision of
the Mty., to benefit its employees is laudable enough, but
the experience has been, that directly the land is sold
at concessional rates, they sell them away to third parties,
so that in a very short time, what was intended to be a
Municipal Servants Colony, becomes a colony of all sorts
of persons. The main object of the Mty., to help its
employees is therefore frustrated. I think the scheme should
contain conditions of pre-emption, giving right to the Mty.,
to have the first chance to buy the house at the market
rate at the time its sale is to be effected, so that the
Mty., may buy it and again give it to other employees,
who would be willing to take such a house. In this way,
the occupation of the colony by M. Servants may be
perpetuated."

I do not understand the restriction on sale of the
sites only. The superstructure of the house may be sold
from time to time to third persons, but what about the
site. The site must go along with the house or building
thereon, and be enjoyed by the purchaser, though it may
not formally be included in the sale deed. I do not
understand the purpose of such a restriction.

As regards the other conditions about building within
2 years and forfeiture thereon, I do not see any difficulty
in including these conditions, in a form which will bring
it under the 2nd clause of Sec. 11 of the T.P. Act. What
I would suggest is, that a building scheme should be
drafted for the colony as a whole and plans for the whole
site with amenities also be provided for and the sites may
be sold to each one of the employees as part of the whole
scheme in which case no restriction such as the one requiring
the building be made within two years may well be incor-
porated. See the 2nd clause of Sec. 11 of the T.P. Act.

The condition to build on the land within two years may be beneficial to adjacent lands, which are parts of the whole scheme."

S.R.
F.O. to H.M. (Law)

I agree with H.M. (Law) that the Municipality should have the first preference to buy the houses. But why all this bother - The Municipality can erect tenements or compact little houses for its employees to live in on a reasonable rent. If this cannot be done I agree to Mr Bhashyam's suggestion ^{in reply} to No 1 of the objections of the Standing Counsel of the Madras Municipal Council. Conditions 2 & 3 may be agreed to. I.C.

R.L.
22.7.46



From the M.C. Comm. Madras No P.C. 5265-46
Dt 14-7-46

Apparently H.M. (Law) & H.M. (P.H.M.) desire that a suggestion should be made to the Municipal Council that it should undertake a housing scheme for the classes of employees for whom the sites are now proposed to be sold at concessional rates, and the matter further considered after knowing the Council's reaction to it. H.M. (P.H.M.) may perhaps see the case again for order on this point.

2. In view of the Standing Counsel's legal objection to the three conditions mentioned at M on p.2 ante, the Comm. has now come up to

to go to Govt. with a suggestion that the sites in question may be leased ~~to them~~ ^{to them} for a period of 15 years at the end of which period the sites are to be sold to them outright, and that the employees may be permitted to mortgage their leasehold rights to a Building Cooperative Society for raising the funds necessary for the construction. The Comm. favours such a course, and it would appear that all necessary conditions can be imposed in this case.

LA & legal may see for remarks before circulation.

27.7.46

Please carry out H.M.'s orders. 3 H.M.'s have seen it & there is no need to consider any other matter. Of course, the procedure followed by legal in submitting this case to H.M. (Law) & then to H.M. (Ld) was all irregular.

S.M.
26.7.46

As directed, a draft memo is submitted for approval.

S.R.K.
2.8.46

G.O. No 621 LA
20.3.44
P.H.M. Secy
24.5.41
P.H.M. Secy
24.5.41
P.H.M. Secy
24.5.41

[Memo No. 26533-872 P.H. Dt 2.8.46]

12
Cm. 60088 From the Comm. Madras 72
Reply 18-5-68/CC 230.46
16-9-46

Please see the Commissioner's reply on pages 9 and 10 c.f. to our Memo on 7 and 8 c.f.

In our memo dated 2-8-1946, the Commissioner Madura Municipality was informed that the Government have come to the conclusion that the object which the Council has in view, namely, the provision of housing accommodation to Municipal employees on a concessional basis can be achieved only if the council undertakes ^{and} the executes at its own cost, ^{may} but well planned housing scheme in which they erect compact little houses or other suitable tenements which may be let solely to the employees on a reasonable rent. Government therefore commended for the consideration of the council. ^{such action} The preparation in consultation with the Director of Town Planning was also requested to place the suggestion before the council and submit a report to Government as to the Council's decision in the matter.

Accordingly the Commissioner placed the suggestion of the Government before the Council for consideration. A sub-committee was appointed to consider the matter. The sub-committee concluded that the proposed housing scheme ^{is not} practicable or profitable in the existing financial

other circumstances, especially in view of the dearth of building materials and high cost of labour. Further the sub-committee viewed that the site to be sanctioned is not sufficient for comprehensive

housing scheme for all the members of the staff. So the committee has expressed its own opinion that the Government be requested to allow the Municipal Council to sell the sites on the conditions as already sanctioned by government in G.O. No. 491 P.H. Dated 18-2-46 or if it is not possible to allow the Council to grant leases to its employees for a period of 15 years subject to the conditions in G.O. 21 L.A. dated 20-3-44.

13
and G.O. 491 P.H. Dated 18-2-46 and also with the condition that with the expiry of the 15 years period sale deeds shall be executed to grantees or their successors at their cost and expense. The Municipal Council Madura approved the suggestions of the Sub-Committee.

4 Attention is invited to the Minutes of H.M. (Law) and H.M. (P.H. & M.) on pages 9 and 10 ante.

5 In the circumstances stated by the Municipal Council/Madura it is for consideration whether the Government will accept the recommendation of the Municipal Council so as to give effect to G.O. 491 P.H. dated 18-2-46.

6 The file may be circulated to H.M. (P.H. & M.) and H.M. (Law.) Legal may perhaps see before circulation.

18/12/46
The Rte is not adequate for a comprehensive housing scheme for all Municipal employees, it will lead to invidious distinctions and to rent being y of the ~~city~~ Municipal Council ~~finds it~~ is unable to put up houses in view of the dearth of material and the high cost of labour, to employees will find it even more difficult to secure ~~houses~~ houses constructed. without a proper scheme, there will be chaos.

The whole proposal may be turned down, and to enter for at (C) cancelled. The Municipal Council may be asked to revert to proposal when circumstances are more favourable.

5-12-46
E.G.P.H. L.A. No. 26537/46-9. P. 24
2. 4/12/46.

ASSISTANT SECRETARY
DEC 1946
LEGAL DEPARTMENT.

Please see this depts note
on pp 12-13 ante ✓ the order in
circulation ^{imp^u anti} ~~stagnant~~. It has been
ordered in circulation that the M.C.
Council, Madurai shall be allowed
to sell the sites & the sale pro-
ceeds shall be utilized for some
building ^{scheme} ~~change~~ in order to provide
accommodation for Municipal scavengers
and other municipal employees.
In G.O. 491 P.H. & 18.2.46,
the Govt. accepted the proposal of
the M.C. Council to sell to its
employees the sites in question
subject to ~~the~~ certain conditions
mentioned in the G.O. & the conditions
in G.O. 621 L.A. & 20.3.44. The
Standing Council, Madurai has
taken objection to the inclusion
in the sale deed of the conditions
(4) in G.O. 621 L.A. & 20.3.44 &
conditions (7) & (8) in G.O. 491 P.H.
& 18.2.46. Legal Dept. which
was consulted has opined that
conditions (4) in G.O. 621 L.A. & 20.3.44
to the effect that the transferee
shall not alienate the property
for a period of 15 years cannot be
held to be void. & that conditions
(7) & (8) in G.O. 491 P.H. & 18.2.46
relating to construction of building
within two years & forfeitures are
illegal. Attention is in this
connection invited to the minutes
of H.M. (Law) & H.M. (P.H.) & M.
on pp 9 & 10 ante. H.M. (P.H.) M.

agrees to H.O. (Law) is suggesting that a condition should be included in the sale deed giving right to the Municipality to have the first chance to buy the house at the market rate at the time the sale is to be effected. She has considered this suggestion as a reply to the objection raised by the Standing Council to Condition (4) in G.O. 621 L.A. 30 20.3.44. The Home Minister has also minutes as follows:-

"Condition 2 & 3 may be agreed to" Condition 2 & 3 refer to Condition (7) & (8) in G.O. 491 P.H. 18.2.46 which the Standing Council objects to. Legal agrees. In minutes of H.O. (Law) as at A on 10.9.46. It is not clear whether in view of this minute, Condition (7) & (8) of G.O. 491 P.H. 18.2.46 are to be agreed to. Legal may submit a draft which will bring these conditions under the second clause of Section 11 of the T.P. Act. 10.3.47 J.S.

A draft order is submitted. Legal may advise whether Condition (7) & (8) of G.O. 491 P.H. 18.2.46 may be enforced in view of that the (Law) has minutes at A on 9.9.46. And if so whether the conditions may be included in the

present form and require alterations to bring them within the scope of Section 11 (2nd clause) of the T.P. Act.

27.3.47 J.S.
28.3.47

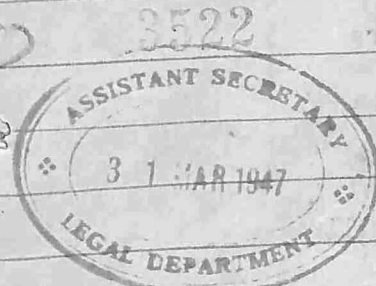
Legal

Legal Department

The second clause of section 11 of the Transfer of Property Act has to be read as supplementary to section 40 and so read these two provisions together enact the rule of English law in regard to restrictive covenants. According to this rule, as explained in decisions such as 8 Q.B. Division 403 and 20 Chancery Division 562, it is only covenants which are negative in character that could be enforced against subsequent purchasers of the property with notice. Positive covenants like a covenant to repair or to build will not bind a subsequent purchaser. What the second clause of section 11 provides is that covenants of the nature referred to earlier could be enforced and it also saves the ordinary remedies available under the law for a breach of the covenant. Enforcement and remedy are by means of a suit for injunction or for damages.

Taking the several conditions as they are called in G.O. No. 491 P.H. dated 18-2-46, conditions (1) to (6) are really in the nature of negative covenants and by slight alterations they could be expressed in the form of negative covenants. Condition (7) is a positive covenant which as indicated above will not bind a subsequent purchaser of the property, whether with or without notice. It will no doubt be binding as between the municipal council and the purchaser of the plot from the council. But condition (8) is not a covenant regarding the application or enjoyment of the property. It is a provision dealing with the consequences of a breach of the other clauses and as such it will not come within the class of covenants referred to in the first clause and falling under the say of

K.P.N. No. 26523/46-47
P.P.N. 27.2.47



X

10.3.47 J.S.

10.3.47 J.S.

provision in clause two of section 11. A provision like this which imposes the penalty of liability to resumption for trifling breaches like failure to leave full 5 feet open space on either side or using thatching materials for the roof will be regarded as a penalty by a Court of law and as such unenforceable. Such a provision is also unnecessary in the case of clauses (1) to (6), because they could be enforced by means of an injunction.

If it is considered essential that failure to build within 2 years should enable the municipality to take back the land, the only possible course is to introduce it as a condition subsequent on the happening of which the interest of the purchaser will come to an end and the land will revert back to the municipal council. The result of introducing such a condition will be that if the site is not built upon, it will on the expiry of two years automatically revert to the Municipality and the purchaser's right will come to an end.

It may also be pointed out that the condition giving the municipality a right to purchase the land expressed as at A on page 16^{ante} will require modification in order to make the intention clear and precise.

1000
26/4/47 EPH

Legal No. 3522/47.3
26.4.47.



el - 170
alant m
cleer
m
Hume

PTO

Municipal Office, Madura,
18-1-1948.

P8-5268/44.

From Sri V.N. SUBBARAYAN, B.A., Municipality,
Commissioner, Madura, MADURA.



To The Secretary to Government,
Public Health Department,
MADRAS.

Through The Chairman, Municipal Council, Madura.

Sir,

Sub.: ASSIGNMENT - Land - Madura Municipality - Madichiam
Extension - Sale to Municipal employees - proposal.
Ref. My letter No. P8-5268/44 dated 3-10-46.

I invite your kind attention to the reference cited and request the favour of an early reply to it.

RK.19.1.p.

COMMISSIONER. 19/1

Forwarded.

CHAIRMAN DELEGATE. 19/1

Orders have already been issued in P.H. (Fa)
 No. 111 P.H., dated 16.1.1948 with which this may be filed. MB.
 2. As the notes in Co. (H) contain a discussion
 on conditions laid down in Co. No. 6 & L.A. dated 20.1.44, (C)
 A may perhaps be interested to peruse Co. (H).
 on orders whether the Co. may be sent to S.A. for
 approval and return.
 23.1.48
 23.1.48

174

16-9-104

17-184 (C)

(H)
 17-184 (C)

The facts of the case are as follows:- 20
 In our memo dated 2-8-46 the Commissioner, Madura Municipality, was informed that the Government have come to the conclusion that the object that the Council has in view viz., the provision of housing accommodation to municipal employees on a concessional basis can be achieved only after the Council undertakes and executes, at its own cost, a well-planned housing scheme in which they may erect compact houses or other suitable tenements which will be let solely to the employees at a reasonable rent. Government would therefore ~~recommend~~ ^{recommended} for the consideration of the Council the preparation of such a scheme in consultation with the Director of Town Planning and also requested to place this suggestion before the Council and submit a report to Government as to the Council's decision in the matter. Accordingly the Commissioner placed the suggestion of the Government before the Council for consideration. A sub-committee was appointed to consider the matter and the Sub-committee is of opinion that the proposed housing scheme from and out of the Municipal finances as suggested by Government is not practicable or profitable especially in view of the dearth of building materials and high cost of labour. Further the Sub-Committee observe that the site to be sanctioned is not sufficient for a comprehensive housing scheme for all the members of the staff. So the Committee has requested Government to allow the Municipal Council to sell the sites on the conditions as already sanctioned by Government in G.O.No.491, P.H., dated 18-2-46 and if it is not possible to allow the Council to grant leases to its employees for a period of 15 years subject to the conditions in G.O. No.21, Local Administration, dated 20-3-44 and G.O.No.491, P.H., dated 18-2-46 and also with the condition that with the expiry of 15 years period

sale deeds shall be executed to grantees ^{or their successors} at their cost and expense. The Municipal Council, Madura, approved the suggestions of the Sub-Committee and addressed Government to sanction its proposals.

It has been ordered in circulation that the Municipal Council, Madura, should be allowed to sell the sites and the sale proceeds should be utilized for some building scheme in order to provide accommodation for Municipal scavengers and other menial employees.

In G.O.No.491, P.H., dated 18-2-46, the Government accepted the proposal of the Municipal Council to sell to its employees the sites in question subject to certain conditions mentioned in the G.O., and the conditions in G.O.621, L.A., dated 20-3-44. The Standing Council, Madura, has taken objection to the inclusion in the sale of the condition (4) in G.O.621, L.A., dated 20-3-44 and conditions (7) and (8) in G.O.No.491, P.H., dated 18-2-46. The Legal Dept., was consulted and has expressed its opinion that condition (4) in G.O.621, L.A., dated 20-3-44 to the effect that the transferee should not alienate the property for a period of 15 years cannot be held to be void and that conditions (7) and (8) in G.O.491, P.H., dated 18-2-46 relating to construction of buildings within two years and forfeiture are illegal.

The ^{then} H.M.(Law) minuted that the scheme should contain conditions of pre-emption giving right to the Municipality to have the first chance to buy the house at the market rate at the time its sale is to be effected. As regards the other conditions about buildings within 2 years and forfeiture thereon, he does not see any difficulty in including those conditions in a form which will bring it under the second Clause of section 11 of the Transfer of Property Act.

It is proposed to sanction the sale of sites in accordance with the ^{order} conditions of H.M.(Law), incorporating conditions (7) and (8) of G.O.No.491, P.H., dated 18-2-46.

and also the condition that the Municipality should have the first chance to buy the houses at market rate at the time their sale is to be effected.

The Legal Dept., which was consulted on the proposal is of opinion that it is only covenants which are negative in character that could be enforced against subsequent purchasers of the property with notice, and positive covenants like a covenant to repair or to build will not bind up ^a subsequent purchaser. Taking the several conditions in G.O.No.491, P.H., dated 18-2-46 Legal states that conditions (1) to (6), ~~are really in the nature of covenants and by slight alterations, they~~ could be expressed in the form of negative covenants. As for condition (7) they say, it is a positive covenant which will not bind a subsequent purchaser of the property, whether with or without notice. But it will no doubt be binding as between the municipal council and the purchaser of the plot from the Council. But condition (8) is not a covenant regarding the application or enjoyment of the property and it will not come within the class of covenants referred to in the first class and falling under the saving provision in clause (2) of Section 11 of the T.P.Act. Legal therefore consider that such a condition is unnecessary in the case of conditions (1) to (6) because they could be enforced by means of an injunction. Legal also point out that the condition giving the Municipality a right to purchase the land will require modification in order to make the intention clear and precise. For orders whether conditions (7) and (8) ^{for the reasons given} may be omitted altogether and condition giving the Municipality a right to purchase the land may be modified suitably in consultation with Legal to make the intention clear and precise. The file may be circulated to H.M.(P.H.), H.M.(L.A.) and H.M.(Home). ^{let legal see}

E.P.H. No. 26523/46-11 P.H. 9/10

14-5-47

12/5/47

12-5-47

Legal

Seen in Legal
1957

Legal Dept

E+PH

Summary of piece of
The file may now be circulated to HM(P.H.).
H.M.(L.A.) H.M.(Home). no point for orders
is at A on P 21 ante
28.5.47 J/S P.S. (w)
28.5.47

A on P. 21 may be done
28.5.47 HM(P.H.)

6/11/47 HM(L.A.)

1/2/48 HM(Home)

E+PH/F2

The file may now be sent to
Legal with reference to C on P 18
ante & X on P 21 ante. The
Dept may be requested to suggest
a draft condition to make the
intention clear & precise.

24.6.47

24.6.47 J/S P.S. (w)

E+PH. u
26.5.33/46-12-F2
25-6-47.

Legal

Legal Department.

Condition 7 in G.O. No. 491, P.H., dated

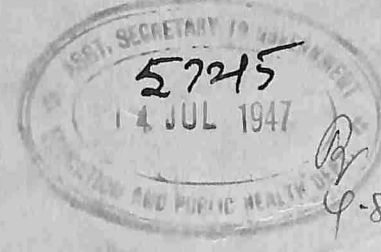


18-2-1946 and condition (5) in G.O. No. 621 L.A., dated
20-3-1944 are similar. As the former is proposed to be
omitted, the latter should also be omitted.

Condition (4) in G.O. No. 621 L.A., dated 20-3-1944
which provides that the site sold should be ^{made}inalienable for
a period of fifteen years by the grantee or his successors
is proposed to be retained. It is not therefore clear
whether the condition at 'A' on page 16 ante should be made
to operate only after the expiry of the fifteen years period.
E. & P.H. may kindly clarify the position.

12/7/47 E+P.H.

Legal u.o. 7031/47-1
12/7/47



E+PH/F2

Please see the Legal Dept's note on M-22-
23 supra. The proposal of legal in para 1
may be accepted.

As regards para 2 of their note it is
submitted that condition (4) in G.O. No. 621 L.A.
at 20.3.44 provides that the site should be
made inalienable for a period of fifteen
years by the grantee or his successors. But it
is proposed to ~~add~~ another condition in sale
deed giving right to the Mpty. to have the
first chance to buy the house at the market
rate at the time its sale deed is to be effected.
Legal enquire whether it is the intention of this
dept that this condition should be made to
operate only after the expiry of fifteen
years period.

It may be noted that the condition
namely the limit of fifteen years was
originally fixed to prevent the recipients of
the site from profiteering by selling the site at
a profit. In view of the intention leading to
the insertion of this condition, it is for
consideration whether this condition will be
relaxed. If it is to be relaxed and if the
Council is made to ^{agree} to the sale of the
houses before fifteen years period, it seems
necessary that condition relating to fifteen
years should either be omitted or

3rd V (H)

22
suitably modified. for orders. Legal
may see.

JD
12/8/47

Condition at A on page 16 ante should operate only after the period of 15 years.

Administrative signature
Deputy Secretary

Legal

Legal Department.

If the intention is that the condition at A on p.16 ante should operate only after the 15 years' period specified in condition (4) in G.O. No. 621 L.A., dated 20-3-1944, and that that condition should apply not only to the site sold but also to the buildings, if any, erected thereon, the condition at A on page 16 ante may run as follows:-

"The site sold including the buildings, if any, erected thereon, shall not be alienated by the grantee or his successors, after a period of fifteen years from the date of sale by the Madura Municipality, to any person unless it has been first offered for sale to the said municipality at the prevailing market price and the municipality has declined or neglected to purchase it at the price so offered."

It is presumed that condition (4) in G.O.No. 621, L.A., dated 20-3-1944, will be retained as it is.

BR
9/9/47

S. K. M.
9/9/47

Legal u.o. 9/29/47
9/7/47



E 4 P. H. u. o. 9/29/47
26533 F2/47-13-P.H.
21. 8. 47.

Please see the notes of legal on p. 24 ante. The draft condition suggested by legal may be accepted. A draft order is submitted with reference to orders at A on p. 21 ante.

JD
25/9/47

W. R. P. and J. R. will legal please indicate the slight alterations necessary?

2/8/47

Legal

Legal Department.

Condition (1) in G.O. No. 491, P.H., dated 18-2-1946 may be altered as follows:-

"(1) More than one dwelling house shall not be constructed on a plot, nor shall any plot be sub-divided;"

Apparently condition (2) of the conditions in that G.O. relates to the open space in front of and behind the building, and condition (3) to the open space on the remaining two sides of the building - see conditions (2) and (3) proposed in the letter of the Commissioner, Madura Municipality, at page 2 c.f. of the G.O. aforesaid. If so, conditions (2) and (3) may be combined into a single condition as follows:-

"(2) No dwelling house shall be constructed on any plot without an open space not less than 10 feet wide in front between the street edge and the dwelling house and an average minimum open space of 10 feet in the rear and unless the dwelling house is detached and has an open space of 5 feet on each of its remaining two sides or open space of 10 feet on one of its remaining two sides"

Conditions (4) to (6) may be renumbered as conditions (3) to (5) respectively and may run as follows:-

"(3) More than two-thirds of a plot shall not be built upon;

(4) Building of any kind other than a compound wall



14-12-1848
A

off 5 feet (above the adjoining road level) shall not be constructed between the building line and the street edge.

(5) Thatch shall not be used for roofing;



Legal no. 10 730/47

87776 4/11/47

26533/46

ERPH

F₂

Please see the note of the Legal Dept. above. Legal has indicated the slight alterations to the draft order, as required in this Dept. note at page 25 ante. They have been carried out in the revised draft submitted. The revised draft is for approval.

The presumption of Legal at A on p.25 ante seems to be correct.

The alterations suggested by Legal in their note at pp.25-26 above have been carried out in the revised draft submitted below. The revised draft is for approval.

13/11/47

W. J. S.
14/11/47

I now find that 'X' of Legal Dept's note on 18/11/47 has not been commented upon by this Dept and prob. of for order. Why? (V.S. P.21 ante).

19/11/47

'X' of Legal Dept's note on p.18 ANTE refers to condition 8 of G.O. No. 491, P.H., dated 18-2-46 resulting from the violation of condition 7 mentioned in the said G.O. Attention is invited to the opinion of the Standing Council, Madura Mty. in regard to the enforcement of these conditions in a sale deed. He has stated that these conditions are not valid in law, and cannot be enforced and that they offend section 11 of the Transfer of Property Act and the general principles of law relating to sale. It is also stated that the

p.t.o. -insertion-

insertion of the above conditions in the sale will be of no avail and the sale will take effect as if the said conditions were ^{not} imposed. Legal Dept. in para 3 of their note on p.2 ANTE have accepted the position taken by the Standing Council, Madura Mty. Following these it was proposed to omit condition 7 and 8 of G.O. No. 491, P.H., dated 18-2-46 altogether and to modify suitably the condition giving Mty. a right to purchase a land in consultation with Legal. This position was approved in circulation after acceptance in Legal. 2. It is not quite clear as the condition in 'X' can be imposed in a sale deed in the present case. Legal may be requested to advise on this point and also to suggest a suitable condition if possible, not inconsistent with the principles of law.

ERPH no. No.
26533/46-17-P.H.
18/12/47

13867



17/12/47

Legal

Legal Department

The note of this Department on pages 17-18 ante dealt with the conditions in the G.O. at pages 17-18 c.f. of (C). As pointed out by this Department at M on page 17 ante, condition (7) will not bind a subsequent purchaser, whether with or without notice, but the provisions of that condition may be introduced in a modified form as at X on page 18 ante so as to bind the purchaser. However, the proposal at D on page 21 ante to omit condition (7) altogether has been approved in circulation. If, however, E. & P.H. desire to have the condition in a modified form as suggested at X on page 18, they may take orders in circulation including H.M. (Home) and if approved, they may send the file to this Department for drafting a suitable condition. (Though legally such a condition can be inserted, it is a very unusual condition and need not be inserted unless it is

quite essential).

12/11/47
S.

E P H

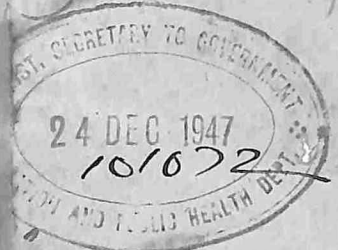
Legal no no 13867/47
23.12.47

Edw. & P. H. Deptt. (Eg)

Please see the opinion of Legal above. Though Legal considers that a condition as at 'X' on p.18 ANTE can be inserted in the sale deed, they have stated that it is a very unusual condition and need not be inserted unless it is quite essential. In case of ordinary assignment of lands such a condition will be a wholesome provision for enforcing the construction of the buildings contemplated within the period specified. But in case of sale deeds the provision will be opened to the objections mentioned in para 4 on p.3 c.f. and it will be difficult to enforce the condition except perhaps on the purchaser. In the circumstances it is for consideration whether the proposals already accepted in circulation may go forward. If so, the draft below is for approval.

12/11/47
J.S.

12/11/47



2/8/48
These have been accepted in circ.

*Consulting to S
Legal opinion
from the above
It is also of the
same nature as
the one above
7.11*

M.H.

12/11/47

12/11/47

12/11/47

17-(C)

2-89
F2
Lad. Madras Municipality. Madras
Chennai - Sale to Municipal employees
at Concessional rates. Proposal
Sanctioned

From the Comm. Madras Municipality.
P.S. 5263/44 of 17.4.46
Do of 14.7.46
Do of 3.10.46

only Mo. In partial modification
of G.O. 491 P.H. of 18.2.46, the
Govt. accepts the proposal of the
M.C. Council, Madras to sell to
its employees the houses sites in
T.S. Nos. 100, 109/13-1, 117, 119, 120,
121 and 122 and 459 & 460 of
Wav no. 10 in the Madichiam Ex.
tenure at the concessional rates
of Rs 25 per cent for superior
servants and Rs 12.80 per cent for
inferior servants. The proposal
is sanctioned subject to the following
conditions except condition (4),
prescribed in G.O. 621 P.H. of 20.3.46
(H) The condition prescribing in G.O.
491 P.H. of 18.2.46 and the
condition that the Municipality
shall have the first chance to
buy the house at market rate
at the time its sale is to be
effected. It is also desired that the
sale proceeds of the
sites should be utilized for
some building schemes in order
to provide accommodation for
Municipal scavengers & other
menial employees.

2. The Comm.
Madras Deptt
(the Comm)
Cttee. of Madras
12/11/47
12/11/47

12/11/47
J.S.

30/11/46 P

[Faint handwritten text in Tamil script, mostly illegible]

26533/46

[Handwritten note in Tamil script]

[Handwritten notes in Tamil script]

Land - Madura Municipality - Madichiam Extension - Sale to Municipal employees at concession rates - Proposal sanctioned

- From the Commissioner, Madura Municipality P8.5268/44 dated 17.4.46.
- From the Commissioner, Madura Municipality P8.5268/44 dated 14.7.46.
- From the Commissioner, Madura Municipality P8.5268/44 dated 3.10.46.

26

ORDER/MS

P.H. dated

In partial modification of para 1 of G.O.491 P.H. dated 18.2.46, the Govt. accept the proposal of the Municipal Council, Madura to sell to his employees the house sites in T.S.Nos.100, 109/B-1, 117, 119, 120, 121 and 122 and 459 and 460 of Ward no.10 in the Madichiam extension at the concession al rates of Rs.25 per cent for superior servants and Rs. 12.8.0 per cent for inferior servants. The proposal is sanctioned subject to applying of the following conditions :-

- 1) All the conditions except condition(5) prescribed in G.O. 621 L.A. dated 20.3.44.
- 2) The conditions prescribed in G.O.491 P.H. dated 18.2.46 except conditions (7) and (8) and F
- 3) The following condition:-

"The site sold including the buildings, if any, erected thereon, shall not be alienated by the grantee or his successors, after a period of fifteen years from the date of sale by the Madura Municipality, to any person unless it has been first offered for sale to the said municipality at the prevailing market price and the municipality has declined or neglected to purchase it at the price so offered."

The Govt. also direct that the sale proceeds of the sites be utilised for some building schemes in order to provide accommodation for Municipal scavengers and other menial employees.

To
The Commr., &
S.O., Madura
Municipality
D.T.P.
The Collector of
Madura

[Handwritten signature and date 25/11/46]

[Handwritten signature and date 28/11/46]