M.R.O. 1—77,005—8-6-37.

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MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. 522. Press Mis.

252-253.

Dated 30-3- 1874.

24/25

Not to be folded or roughly handled

No. 252. Read the following letter from J. HUNTER-BLAIR, Esq., Collector of Madras, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 28th October 1873, No. 235 :—

I have the honour to submit the report called for in paragraph 9 of G. O., No. 385, of 21st March last, Financial Department. The delay has been caused by the absence of the Government Pleader on leave and my consequently not receiving an answer to my letter of 23rd September last.

2. The moot questions regarding the municipal assessment of Government buildings are—

(1.) What is the proper mode of determining the annual value of buildings not rented out? Whether their annual value may be calculated at a fixed percentage of the actual cost of the buildings as is done by the Municipality, or whether it should be calculated on the basis of the actual rentals of other buildings similar in character and situation ?

(2.) By whom should the annual value be determined—by the Commissioner or the Assessor ?

3. At the hearings of the appeals preferred to the President last year he held that the fixing of the annual value at a percentage of the outlay was correct and that the fixing of that value was legally not the business of the Commissioners but that of the President, who had delegated it to the Assessor.

4. The questions were referred to the Advocate-General. He was of opinion that assessing buildings on the cost of their production was clearly wrong ; that the annual value should be fixed by the Commissioners themselves; and that the President was not competent either to perform this duty himself or to delegate it to others. Copies of his Opinions are enclosed.

Enclosures 1 and 2.

5. At the hearings of the appeals preferred to the Magistracy only the first objection was urged by the Government Pleader. Mr. Handley did not argue the second point as he thought there was nothing in it.

See letter from Government Pleader, copy sent, Enclosure 3.

6. The Government may perhaps have seen in the papers* the judgments delivered by the Magistrates, and I beg to forward copy of the Deputy Collector's report† on the subject.

* Herewith sent.
Enclosure 4.
† Do. 5.

7. It will be seen that the Magistrates have not upheld the principle on which the Municipality fixed the annual value, but their judgments do not seem to furnish any clear precedent regarding the proper mode of fixing it. The Senior Magistrate does not go into the question of the proper mode at all; but the Junior Magistrate, who dwells upon it at some length, states, " It appears that generally houses in Madras yield a rent of not more than twelve per cent. per annum on the purchase-money," that is, the market-value of the building, and calculates the annual value of the Monegar Choultry at this percentage on its market-value. This method is certainly more reasonable than that adopted by the Municipality,

as one ground of appeal the wrong principle of assessment to which he had objected before the Commissioners. The Magistrates' summons, however, did not mention this ground of objection, nor was this ground of appeal specified when subsequently the summons was amended on the Deputy Collector's motion.

2. The Deputy Collector now wishes to have the summons amended in this particular, but the Government Solicitor considers that this cannot be done as this ground of appeal was not specified in the written appeal to the President of the Commissioners under Section 78.

3. I do not feel so clear about this as the Government Solicitor appears to do, and it might, I think, be contended, with some reason, that, as Section 78 says nothing about the grounds or nature of the appeal, an appellant who had once brought himself before the President by an "application in writing" as directed by the section is at liberty to raise what grounds of appeal he chooses at the time.

4. The section is, however, so loosely worded that it is impossible to say with certainty what view a Magistrate might adopt, and it is possible that he might take the view put forward by the Government Solicitor.

5. It appears to me, however, somewhat absurd that two branches of the Administration should be holding each other at arm's length and spending the money and time of Government in squabbles over the technicalities of a badly-expressed enactment. If, as the Deputy Collector states, the Commissioners admit that their assessment is based, not on the estimated gross annual value, as directed by Section 72, but on the estimated cost of production, they ought, of course, to rectify their mistake without the intervention of legal proceedings. I recommend that it be suggested on the part of Government to the President of the Municipality that the present proceedings be abandoned and that the assessment, based on the correct principle, be ascertained and paid. If the President and the Deputy Collector cannot settle this matter between them they might refer to me to arrange it for them. If the assessment is right the Deputy Collector ought not, of course, to object to pay it; if it is wrong the Municipality ought not to attempt, by means of a legal technicality or otherwise, to enforce it. The matter appears to be capable of adjustment between two Government officials without recourse being had to a Court of law.

21*st February* 1873. (Signed) H. S. CUNNINGHAM,
Advocate-General.

From J. W. HANDLEY, Esq., Government Pleader, to J. HUNTER-BLAIR, Esq., Collector of Madras, dated Madras, 23rd October 1873, No. 149.

I have the honour to reply to your letter of the 23rd ultimo, No. 588. I have been prevented from replying at an earlier date by my absence from Madras.

2. The reason why I did not urge the particular objection to the legality of the assessment on the Monegar Choultry to which you refer was that I was of opinion that there was nothing in it. The assessment, by whomsoever originally made, had been ultimately adopted by the Commissioners and confirmed by the President, and the only question which was before the Magistrates was whether that assessment was a proper and reasonable one adopting the system of valuation laid down by the Act.

THE COLLECTOR OF MADRAS *versus* THE MADRAS MUNICIPALITY.

At the Egmore Police Court yesterday Captain Weldon and Mr. Srinavasa Row delivered the following judgment in the case in which Mr. Ragoonatha Row, the Deputy Collector of Madras, appealed against the rate of assessment that had been levied on the Monegar Choultry and Chepauk buildings.

Captain Weldon read the following judgment:—The Collector of Madras appeals, under Section 83 of the Municipal Act, against an assessment by the Madras Municipality of Rupees 8,400 as the annual rental of the Monegar Choultry on which the municipal house-tax should be levied. The evidence on which we are to form our judgment is somewhat meagre; but we have,

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30th March 1874.

on the part of the appellants, the testimony of a professional auctioneer and valuator, a gentleman who is, moreover, evidently a shrewd man of business. The Municipal Commissioners offer no evidence in support of the assessment beyond a reference to certain papers which show that the assessment has, since the introduction of the present Municipal Act, risen from Rupees 3,900 to Rupees 8,400, the sum now disputed. No doubt there have been many improvements and alterations effected. A good deal of irrelevant matter has been introduced, and certain technical objections as to the mode by which the Commissioners arrived at their conclusion, &c., have been raised; but the substantive question we have to decide is, in the language of the Act, "whether the sum of Rupees 8,400 represents the gross annual rent at which the premises in question might reasonably be expected to let." The fact that it may be the policy or good fortune of private individuals to accept or obtain certain sums as rent for other buildings situated in totally different parts of the town cannot affect the case of the Monegar Choultry. We must take that institution as it now stands and consider what would be a fair rental. The assessment in 1872 is Rupees 8,400, being an increase of Rupees 1,200 over the previous year. It was sought on behalf of the respondents to limit the inquiry to the propriety of this increase, it being alleged that when the Collector appealed to the President of the Municipal Commissioners, as he was bound to do, this sum of Rupees 1,200 was the only item in dispute, and that, in fact, the Collector had been willing to admit some increase but not to the extent sought for by the Municipality. However, when the appellants wished to give oral evidence as to what transpired at the hearing of the appeal made to the President of the Municipality, this course was strenuously opposed by the Counsel for the respondents, who contended that the Municipal record of appeals was the only proper evidence. The notice of appeal sent to the President states that the Collector of Madras, in accordance with the provisions of the Act, appeals against the assessment of certain buildings, the Monegar Choultry being one. Subsequently a suggestion is made as to what would not be objected to by the Collector as a fair sum. The Municipal Register of Appeals shows that the appeal was against the assessment fixing Rupees 8,400 as the gross rental for 1872. Both the Collector of Madras and the President of the Municipal Commissioners have been for a considereble time trying to come to an understanding, but the negotiations have failed to effect an agreement between the parties and therefore all proposals made with a view to avoid litigation fall to the ground and both parties are justified in opening up the whole question when they find themselves driven into Court. The conclusion to which we arrive is that a gross annual rent of Rupees 8,400 is excessive and is considerably more than the premises in question might reasonably be expected to let for. We are of opinion that a sum of Rupees 4,800 would be a liberal estimate of the gross annual rent at which the said premises should be assessed, and we give judgment accordingly for the appellants. The respondents have not shown any desire to meet the case on the merits. They declined to admit that even the obvious technical preliminaries had been gone through by the appellants, and put the appellants to strict proof of every step, as no doubt they were entitled to do. The respondents must pay the appellants' costs. We have been urged by the Counsel for the respondents to state a case for the opinion of the High Court, but there does not appear to us any special difficulty which would warrant our taking up the valuable time of the Judges.

Mr. Srinavasa Row then read the following judgment:—Mr. Srinavasa Row said—This is an appeal, under Section 83 of the Madras Municipal Act IX. of 1867, preferred by the Deputy Collector of Madras on behalf of Government against the rate assessed by the Municipality on the building called the "Monegar Choultry," a charitable institution situated in Madras, for the year 1872 in the sum of Rupees 630, being 7½ per cent. on the estimated annual value of the said building, viz., Rupees 8,400. A preliminary objection was taken by the respondents to the effect that this appeal cannot be heard with reference to the whole amount of the assessment, viz., Rupees 650, as the appeal which the Collector of Madras made to the Municipal Commissioners was confined simply to the increase of Rupees 90 which was made in 1872 over and above the assessment of 1871, viz., Rupees 540. But it is clear from the Municipal Appeal Register, entry No. 540, and appeal No. 63, that the Collector's appeal embraced the whole amount (Rupees 630) fixed for 1872. The objection, therefore, is of no avail, and the present appeal

must proceed with reference to the entire assessment. It is an admitted fact that the Monegar Choultry is liable to be rated at 7½ per cent. on the annual value of the buildings, but the Government disputes the correctness of the principle upon which the annual value is ascertained by the Municipality, and the rate founded upon such principle is, therefore, called into question. The Municipal Act (Section 71) provides that the estimated gross annual rent at which houses, as might reasonably be expected, to let from year to year shall be held to be the annual value of such houses. The law being thus as clear as possible there arises no question of law, and we, therefore, do not consider it proper to trouble the High Court by stating a case for their decision on a bare question of fact as suggested by respondents' Counsel. The sole question of fact, then, to be decided in this case is whether, or not, the amount arrived at by the Municipality, viz., Rupees 8,400, represents the annual rent at which the Monegar Choultry might, in the words of the Act, be reasonably expected to let from year to year. The building in question not having been purchased or rented at any time the appellants endeavour to prove the unreasonableness of the amount fixed by the Municipality by showing, firstly, what amount of rent this building is likely to fetch if it is to be let out; secondly, what is the present market-value of the said building; and, thirdly, what is the rent paid on other buildings more or less similar to the one under consideration. As to the first point, the evidence adduced by the appellants shows that the Monegar Choultry is inconveniently out of the way, near the Old Jail and burial-ground; that a sum between 210 and 300 Rupees a-month would be the fair rent payable on the building if tenanted, but that if it is used as a hospital the rents may rise to 400 Rupees per mensem, *i. e.*, Rupees 4,800 per annum. Secondly, whatever may be the actual cost of the building the appellants' witnesses estimate the present market-value thereof at a sum between 30,000 and 40,000 Rupees, and explain that a person laying out so much money upon buildings naturally expects an annual return of about twelve per cent. Twelve per cent. upon 40,000 Rupees would be Rupees 800, a sum which corresponds exactly with the amount mentioned above as the probable rental of the building. And, thirdly, as to the buildings, the testimony of the appellants' witnesses is perfectly consistent with the foregoing calculations of rent. It is sworn that the premises called "Pater's Garden," purchased by the present owner for Rupees 56,030, yield a rent between 300 and 400 Rupees a-month; that Maclean's Garden, which the present owner bought for Rupees 33,100, fetches a monthly rental of Rupees 343; that the owner of the house now occupied by the Deputy Collector, for which he (the owner) had to pay Rupees 32,000, gets a rent of Rupees 204 a-month thereon, and a rent of only Rupees 164 per mensem is obtained on the Pritchard's house, which the present owner purchased for Rupees 13,000 and improved at a cost of Rupees 20,000. It thus appears that generally the houses in Madras yield a rent of not more than *one per cent. per mensem* (twelve per cent. per mensem) on the *purchase*-money, *i.e.*, on the market-value of the building—a proportion which is exactly the same as that taken in the two preceding paragraphs for ascertaining the rent of the Monegar Choultry, viz., 400 Rupees a-month, as market-value of the building, 40,000 Rupees, *i.* e., one per cent. per mensem or twelve per cent. per annum. All these circumstances, one and all, do clearly show that Rupees 400 a-month (*i. e.*, 4,900 Rupees a-year) is the fairest and most liberal amount of rent at which the Monegar Choultry may be reasonably expected to let, and there is not a particle of evidence adduced on behalf of the Municipality to contradict the aforesaid testimony of appellants' witnesses. The Commissioners content themselves with stating, firstly, that the rate in question had been struck by calculating the gross cost of the building and taking eight per cent. on that amount as the annual value of the same, and, secondly, that this principle has long been allowed by Government. As regards the first contention, I have to observe that, although we ought not entirely to disregard the actual cost of a building in estimating the annual value thereof, yet the annual value estimated with reference solely to the cost of the building cannot but be enormous. It is not right to look at the cost of a building as an invested capital upon which one can always get interest at the usual rates. The demand for a building depends upon a variety of circumstances, such as the accommodation, usefulness for different purposes, and so forth, and consequently a variation in the amount of rent according to the time and circumstances is inevitable.

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Mr. Faciolle, who has had extensive experience in the sale and selling of buildings for rent, states that he would not value buildings on the cost price, and particularly so with reference to the Monegar Choultry, which could have been built with half the money actually spent for its construction, and that he has known a house which cost 15,000 Rupees sold only for 8,000 Rupees. And, as regards the respondents' second contention, I do not see how the Government is stopped from disputing the rate assessed by the Municipality for 1872. The annual value of a building is not a permanent thing, unchangeably fixed for ever; but it is liable to fluctuations according to the demand which exists for its occupation. A house which at one time fetched a handsome rent may be wholly deserted at other times. The houses in the old Cantonment of Cuddapah afford very good examples on the subject. I would also add here that such a contingency is actually contemplated and provided for by the Municipal Act (Section 82). Then, as to the alleged acknowledgment of the correctness of the rate fixed for the Monegar Choultry in the budget sanctioned for 1871, it is hardly necessary to observe that the object of a budget is to make provision for the payment of all possible demands and to fix an amount above which no extra expenditure could be allowed under ordinary circumstances, so that it is quite open to Government equally with a private individual to withhold payment of the whole or a part of a sum specified in the budget if such course be deemed reasonable and expedient. For these reasons I come to the conclusion that the amount of Rupees 4,700 (and not Rupees 8,400) fixed by the Municipality represent the fair annual value, or, in other words, the annual rental, of the Monegar Choultry, and that, therefore, the rate payable to the Municipality at 7½ per cent. on the annual value of that building should be Rupees 360 and not Rupees 630 as demanded by them.

The respondents should bear all costs.

Judgment for appellants with costs. Gross annual rent estimated at Rupees 4,800.

Assessment of the Chepauk Palace.

After delivering judgment in the above case the same Magistrates heard the appeal of the Collector of Madras against the assessment of Rupees 2,226-8-0 levied by the Municipality on the Chepauk Palace for the year 1872. Mr. Handley instructed by Mr. Cowdell appeared for the appellant and Mr. Miller instructed by Mr. George Branson for the respondents. It was contended on behalf of the appellant that the assessment was exorbitant, and evidence was produced to show that the rent of the Madras Club and Shadee Mahal was much less than the annual rent fixed for the Chepauk Palace. The Counsel for the respondents argued that the assessment was reasonable and had been fixed in proportion to the value of the property. Mr. Franck was called to prove the sum for which the Chepauk Palace had been purchased, the additions and alterations that had been made to it, and that the probable rent which the building would let at was exactly what the Municipality had fixed. Their Worships were of opinion that the Chepauk Palace was undoubtedly valuable property, and they came to the conclusion that the assessment was not exorbitant. They therefore confirmed the assessment and dismissed the appeal with costs.—*Madras Mail*, 1*st July* 1873.

From R. RAGOONATHA ROW, Deputy Collector of Madras, to J. HUNTER-BLAIR, Esq., Collector of Madras, dated Madras, 12th July 1873, No. 497.

I have the honour to state that the Magistrates of the Egmore Police Court have reduced the rate for 1872 on the Monegar Choultry building from 630 to 360 Rupees but have confirmed the rate fixed by the Municipal President for the same year on the Chepauk Park and buildings.

2. On the 6th December 1872, when I conducted the appeal in the Monegar Choultry case, I stated to the Magistrates that the annual value of the property had not been fixed as prescribed in Section 73 of Act IX. of 1867 by the Commissioners but by the Assessor independent of the Commissioners and under the instructions of the President, and, second, that the annual value had not been calculated in the mode prescribed by Section 72 of the aforesaid Act, by ascertaining the

estimated gross annual rent at which these buildings might reasonably be expected to let from year to year.

3. The case was subsequently put into the hands of the Counsel, who, however, did not urge the first objection although it appeared to me most important. The second objection alone was pressed upon the Court both in the Monegar Choultry and the Chepauk Palace cases. The Counsel for the Municipality contended that the mode adopted for fixing the annual value at a certain percentage on the cost of buildings was perfectly consistent with the provisions of Section 73 of the Act and was one acquiesced in by Government.

4. On the part of Government evidence was adduced to show that the Monegar Choultry buildings would not fetch 700 Rupees a-month if leased out and that this estimated gross rental was excessive when the actual rents obtained by buildings nearest to the locality and by those situated in better places were compared with the rate fixed by the President on the Monegar Choultry buildings.

5. I gather from the judgments delivered by the Magistrates that they did not consider to be correct the principle of comparing the actual rents for other buildings with the rent fixed by the Municipality, nor did they think that a percentage on the *cost* of buildings represented their annual value. The Senior Magistrate said, "The fact that it may be the policy or good fortune of private individuals to accept or obtain certain sums as rent for other buildings situated in totally different parts of the town cannot affect the case of the Monegar Choultry," while the other Magistrate observed that "generally the houses in Madras yield a rent of not more than one per cent. per mensem on the purchase-money, *i. e.*, on the market-value of the building." They were of opinion that all that was necessary for them to decide was whether the rates demanded by the President were, or were not, excessive in whatever manner they might have been arrived at.

6. They therefore decided that the annual value of the Monegar Choultry was 4,800 Rupees and not 8,400 Rupees and the rate payable thereon was 360 and not 630 Rupees.

7. In the other case the same arguments were used by both the parties, but on the part of Government no oral evidence was adduced as to the probable rental of the Chepauk Palace, Park, and buildings; but evidence was given to show that the Madras Club, the Shadee Mahal, and Pater's Gardens were buildings of a similar nature to those of the Chepauk Palace; that the Club was very nearly equal in dimensions to the former and yet the annual value of the Club, according to the municipal accounts, amounted to 13,860 Rupees; that the Shadee Mahal, a building similar in character to the Chepauk Palace, was five times as large as the latter but was let at 12,000 Rupees a-year; and that the buildings known as "Pater's Gardens" were nearly equal to the Chepauk buildings in size but fetched a rental equal to one-fifth of the annual value fixed on the latter.

8. On the side of the Municipality Mr. Franck, the auctioneer, was examined, and he stated that he thought that the buildings in question would fetch a rental of about 30,000 Rupees a-year.

9. The Senior Magistrate stated that the Chepauk Palace was undoubtedly valuable property, and the other Magistrate added that in valuing this property the provisions of Section 69 of the Municipal Act should be taken into consideration; that the Park around the buildings covered eighty-two cawnies or 1968 grounds; that, if the maximum rate of 4 Rupees per ground mentioned in the section be adopted, the Park by itself would yield an annual value of 7,872 Rupees. They therefore confirmed the annual value of these buildings as fixed by the President at 29,700 Rupees and dismissed the appeal with costs.

10. The two objections to the legality of the procedure adopted by the President which were raised on the part of Government were based on the opinions given by the Advocate-General; but one of them, viz., that the Municipal Commissioners, and not the President or anybody under him, should have fixed the annual value not having been pressed during the hearing the Magistrates have not determined whether, or not, it was good.

11. The Municipality and the Magistrates admit the principle of the second objection, viz., that the annual value represents the gross annual rental which buildings are expected to realize from year to year, but on the mode in which this should be ascertained each appears to hold a different opinion. On the part of Government it was urged that the actual rental of other buildings

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should guide one in fixing it, the Municipality contended that a certain percentage on the cost represented it, and the Senior Magistrate has put out of his consideration rents on other buildings, while the Junior Magistrate appears to think that a percentage of not less than twelve per cent. per annum on the market-value, and not on the cost of the building, represents the gross rental, and that in fixing the annual value of the buildings with large compounds the extent of the compound should be separately valued under Section 69 of the Act.

12. Under these circumstances, I beg that you will be so good as to issue definite instructions to me as to the conduct of the appeals, numbering eighty, now pending before the Municipal President.

OPINION.

Section 72 of Act IX. of 1867 appears to me to leave no doubt as to the principle upon which the annual value of buildings liable to assessment is to be calculated. The Commissioners, in fixing the annual value, are bound to look exclusively to the gross annual value at which the buildings in question might reasonably be expected to let from year to year, excluding from the consideration any machinery contained in the building.

2. The probable gross rental of a building must be calculated from the actual rentals of other buildings as similar as may be in character and situation to those in question.

3. It is impossible to lay down any more rigid standard of calculation: the Commissioners must judge what rental the buildings might, in their opinion, be reasonably expected to fetch. I may point out that in appeal it is provided in Section 79 that the Commissioner who is to sit with the President is to be, by preference, summoned from the division in which the property to be assessed is situated, in order, I presume, that he may give the President the benefit of precise local information as to the value of property.

15*th August* 1873. (Signed) H. S. CUNNINGHAM,
Advocate- General.

OPINION.

I am of opinion that the Madras Pier is not properly assessable to the tax provided in the case of houses, buildings, and lands by Section 69 of Act IX. of 1867 (M.)

2. It does not fall within the definition of "building" in Section 2, and, though the meaning given to "land" is extensive enough to include everything, I think that, looking to the definition of "street" as including "a roadway over any public bridge or causeway within the town" and to the fact that the Pier is, as I understand, a public thoroughfare, the Pier ought to be regarded as falling within the definition of a "street." It would then be a "public street, the property, and kept under the control, of Government" within the meaning of Section 100; and would not, as it appears to me, be assessable under Section 69, which clearly contemplates houses and buildings with the lands adjoining them.

3. It is right that I should mention that the Bombay Government, acting on the advice of its Advocate-General, has adopted the view that it is not competent to a local Legislature under the Indian Councils' Act to impose any tax on the property of Government and that therefore any such tax imposed by such a Council would be invalid. (See Proceedings, Bombay Government, 11th September 1872, page 72). I do not concur in this opinion, and have submitted separately to Government my opinion on this point. I therefore only allude to it now for the purpose of saying that I cannot recommend the Collector to resist the assessment on this ground.

20*th February* 1873. (Signed) H. S. CUNNINGHAM,
Advocate-General.

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30th March 1874.

No. 253. ORDER THEREON, 30th March 1874, No. 522.

Ordered that these papers be communicated to the Legislative Department and to the Committee appointed in G. O., dated the 12th July 1873, No. 975, for the submission of proposals for the amendment of the Madras Municipal Act No. IX. of 1867.

2. Ordered also that the papers be communicated to the Commissioners of the Madras Municipality and that it be suggested to them, pending the revision of the Act, to adopt the course pointed out in paragraph 5 of the Advocate-General's Opinion, dated the 21st February 1873, in the settlement of the assessment to be levied on Government property.

(True Extract.)

Acting Chief Secretary.

To the Legislative Department.
" Committee for the Amendment of Madras Act IX. of 1867.
" Collector of Madras.
" President of the Madras Municipal Commission.

Exd. A. S. Rodgers.

Govt. of [1874] Madras.

FINANCIAL.

To

The LEGISLATIVE DEPARTMENT,

&c., &c., &c.

Dated March, 30th.

Read.

Read.

G. O., 30th March 1874, No. 522.

MARCH

Nos. 252-253.

Madras Municipality.—Certain papers on the subject of the principle on which the assessment on Government buildings is to be computed, communicated to the Legislative Department and the Committee appointed in connexion with the amendment of Act IX. of 1867. Meanwhile the amicable settlement of the question without recourse to the Courts of law, suggested to the President.

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Opinion.

1. The facts in this case appear to be that the Deputy Collector appealed under Section 78 of the Municipal Act 1867, against an increased assessment and asked for a reduction on particular groundo. His appeal was in writing in conformity to the requirements of that Section. While the appeal was being heard, the Deputy Collector states, he ascertained that the assessment had been based on a different principle from that prescribed in Section 72, and on learning this, he at once appealed on this ground also. The appeal however was dismissed: the Deputy Collector then appealed to the Magistrates under Section 83, orally, as allowed by the Act, and mentioned as one ground of appeal the wrong principle of Assessment to which he had objected before the Commissioners. The Magistrate's Summons, however did not mention this ground of objection, nor was this ground of appeal specified when subsequently the Summons was amended on the Deputy Collector's

Motion.

motion.

2. The Deputy Collector now wishes to have the summons amended in the particular, but the Government Solicitor considers that this cannot be done, as this ground of appeal was not specified in the written appeal to the President of the Commissioners under Section 78.

3. I do not feel so clear about this as the Government Solicitor appears to do: and it might, I think be contended with some reason that, as Section 78 says nothing about the grounds or nature of the appeal, an appellant who had once brought himself before the President by an "application in writing" as directed by the Section, is at liberty to raise what grounds of appeal he chooses at the time.

4. The Section is, however, so loosely worded that it is impossible to say with certainty what view a Magistrate might adopt, and it is possible that he might take the view put forward by the Government Solicitor.

5. It appears to me however somewhat absurd that 2 branches of the Administration should be holding each other at arms

length

length and spending the money and time of Government in squabbles over the technicalities of a badly expressed enactment. If as the Deputy Collector states, the Commissioners admit that their assessment is based, not on the estimated gross annual value, as directed by Section 42, but on the estimated cost of production, they ought of course to rectify their mistake without the intervention of legal proceedings. I recommend that it be suggested on the part of Government to the President of the Municipality that the present proceedings be abandoned, and that the assessment, based on the correct principle be ascertained and paid. If the President and the Deputy Collector cannot settle this matter between them, they might refer to me to arrange it for them. If the assessment is right the Deputy Collector ought not of course to object to pay it. if it is wrong the Municipality ought not to attempt, by means of a legal technicality, or otherwise, to enforce it. The matter appears to be capable of adjustment between 2 Government

Officials

officials without recourse being had to a Court of Law.

/Signed/ H. L. Cunningham.
Advocate General.
21. 2. 73

/True copy/
/Signed/ Ernest Barclay.
Ag. Government Solicitor

/True copy/
/Hunter Blair/
Collector of Maldives

Opinion. 817

I am of opinion that if Sections 9, 73, 79 and 86 are read together, it is clear that the annual value of assessable property is to be fixed by the Commissioners and not by the President; and that the President accordingly is not competent either to perform that duty himself or to delegate it to others.

2. The officer appointed under Section 9 of Act IX of 1864 now takes his style under Section 5 of Act 5 of 1871, but the latter enactment does not appear to have modified his position as regards the point now referred.

/Signed/ H. L. Cunningham
Advocate General.
24-1-73.

/True copy/
/Signed/ H. G. Pritchard.
Government Solicitor.

/True copy/
/Hunter Blair/
Collector of Maldives

No. 149. 99

Madras
23d. October 1873.

From,

The Government Reader
Madras.

To.

The Collector of Madras.

Sir,

I have the honor to reply to your letter of the 23d. ultimo No. 588, I have been prevented from replying at an earlier date by my absence from Madras.

2. The reason why I did not urge the particular objection to the legality of the assessment on the Monegar Choultry to which you refer was that I was of opinion that there was nothing in it. The assessment by whomsoever originally made, had been ultimately adopted by the Commissioners, and confirmed by the President, and the only question which was before the Magistrates was whether that assessment was a proper and reasonable one, adopting the system of valuation

said

laid down by the Act.

I have &c

(Signed) J. W. Handley

Government Pleader.

True copy

(Signed) J. Hunter Blair

Collector of Madras

No. 497. Dy. Collector's Office 421

Madras 12th July 1873.

From,

The Deputy Collector of Madras.

To,

The Collector of Madras.

Sir,

I have the honor to state that the Magistrates of the Egmore Police Court have reduced the rate for 1872 on the Monegar Coultry Building from 630 to 360 Rupees, but have confirmed the Rate fixed by the Municipal President for the same year on the Shepauk Patta and Buildings.

2. On the 6th December 1872 when I conducted the appeal in the Monegar Coultry case, I stated to the Magistrates that the annual value of the property had not been fixed as prescribed in Section 73 of Act 9 of 1865 by the Commissioners, but by the Assessor, independent of the Commissioners, and under the instructions of the President; 2nd That the annual value had not been calculated in the mode prescribed by Section 72 of the aforesaid Act, by ascertaining the estimated Gross annual

Rent

Rent at which these buildings might reasonably be expected to let from year to year.

3. The case was subsequently put into the hands of the Counsel, who however did not urge the first objection, although it appeared to me most important. The second objection alone was pressed upon the Court both in the Monegar Chauttry and the Chepauk Palace cases. The Counsel for the Municipality contended that the mode adopted for fixing the annual value at a certain percentage on the cost of buildings was perfectly consistent with the provisions of Section 73 of the Act and was one acquiesced in by Government.

4. On the part of Government, evidence was adduced to show that the Monegar Chauttry Buildings would not fetch 700 Rs a month, if leased out; that this estimated gross rental was excessive, when the actual rents obtained by buildings nearest to the locality and by those situated in better places were compared with the rate fixed by the President on the Monegar Chauttry buildings.

5 I gather from the judgments delivered by the Magistrates that they did not consider to be correct, the principle of comparing the actual rents for other buildings with the rent fixed by the Municipality, nor did they think that a Percentage on the cost of buildings represented their annual value. The Senior Magistrate said, "the fact that it may be the policy or good fortune of private individuals to accept or obtain certain sums as rent for other buildings situated in totally different parts of the Town, cannot affect the case of the Monegar Chauttry"; while the other Magistrate observed that "generally the houses in Madras yield a rent of not more than one per cent per Mensem on the purchase money or on the market value of the building". They were of opinion that all that was necessary for them to decide was whether the rates demanded by the President were or were not excessive in whatever manner they might have been arrived at.

6. They therefore decided that the annual value of the Monegar Chauttry was 4800 Rupees and not 8400, and the rate payable thereon was 360 and not 630 Rupees.

7. In the other case the same arguments were used by both the parties, but on the part of Government no oral evidence was adduced as to the probable rental of the Chepauk Palace, Park and buildings; but evidence was given to show that the Madras Club, the Shadee Mahal, and Paters Gardens were buildings of a similar nature to those of the Chepauk Palace, that the Club was very nearly equal in dimensions to the former and got the annual value of the Club, according to the Municipal accounts amounted to 13,860 Rs, that the Shadee Mahal, a building similar in character to the Chepauk Palace, was 5 times as large as the latter, but was let at 12,000 Rs a year, and that the buildings known as Pater's gardens were nearly equal to the Chepauk Buildings in Size, but fetched a rental equal to 1/5 of the annual value fixed on the latter.

8. On the side of the Municipality Mr. Frank the Auctioneer was examined, and he stated that he thought that the buildings in question would fetch a rental of about 30000 Rs a year.

9. The Senior Magistrate Stated that

25 V 13

the Chepauk Palace was undoubtedly valuable property, and the other Magistrate added that in valuing the property the provisions of Section 69 of the Municipal Act should be taken into consideration, that the Park around the buildings covered 82 Cawnies or 1968 grounds; that if the maximum rate of 4 Rupees per ground mentioned in the Section be adopted, the Park by itself would yield an annual value of 7.872 Rs. They therefore confirmed the annual value of these buildings as fixed by the President at 29,700 Rs, and dismissed the appeal with costs.

10. The two objections to the legality of the procedure adopted by the President, which were raised on the part of Government were based on the opinions given by the Advocate General; but one of them, Viz, that the Municipal Commissioners and not the President or any body under him should have fixed the annual value, not having been pressed during the hearing, the Magistrates have not determined whether or not it was good.

11 The Municipality and the Magistrates admit

admit the principle of the second objection, viz that the annual value represents the gross annual rental which buildings are expected to realise from year to year, but on the mode in which this should be ascertained each appears to hold a different opinion on the part of Government, it was urged that the actual rental of other buildings should guide one in fixing it, the Municipality contended that a certain percentage on the cost represented it, and the Senior Magistrate has put out of his consideration rents on other buildings, while the Junior Magistrate appears to think that a percentage of not less than 12 per cent per annum on the market value and not on the cost of the building, represents the gross rental, and that in fixing the annual value of the buildings with large compounds, the extent of the Compound should be separately valued under Section 69 of the Act.

2/12. Under these circumstances I beg that you will be so good as to issue definite instructions to me as to the conduct of the appeals numbering

80

80, now pending before the Municipal President.

I have &c.

(Signed) R. Rajoonatha Row

Deputy Collector.

(True copy)

J Hunter Blair

Collector of Mad[illegible]

Opinion

29/10

1. Section 72 of Act IX of 67 appears to me to leave no doubt as to the principle upon which the annual value of buildings, liable to assessment, is to be calculated. The Commissioners, in fixing the annual value, are bound to look exclusively to the gross annual value, at which the Buildings in question might reasonably be expected to let from year to year, excluding from the consideration any machinery contained in the buildings.

2. The probable gross rental of a building must be calculated from the actual rentals of other buildings as similar as may be in character and situation to those in question.

3. It is impossible to lay down any more rigid standard of calculation: the Commissioners must judge what rental the buildings might in their opinion be reasonably expected to fetch.

I may point out that in appeal it is provided in Section 79, that the Commissioners who is to sit with the President, is to be, by preference Summoned from the Division, in which the property

property to be assessed, is situated, in order, I presume, that he may give the President the benefit of precise local information as to the value of property.

/Signed/ H. S. Cunningham
Advocate General
15-8-73

/True copy/

/Signed/ Ernest Barclay
Ag. Government Solicitor.

/True copy/

/Illegible/ Hunter Bland
Collector of Madras

D.R.C.

X

Opinion

31 √ 16

1. I am of opinion that the Madras Pier is not properly assessable to the tax provided in the case of houses buildings and lands by Section 69 of Act IX of 1864 (M).

2. It does not fall within the definition of "building" in Section 2, and, though the meaning given to "land" is extensive enough to include every thing, I think that, looking to the definition of "Street" as including "a roadway over any public bridge or causeway within the town" and to the fact that the Pier is, as I understand, a public thoroughfare the Pier ought to be regarded as falling within the definition of a "street". It would then be a "public street, the property, and kept under the control of Government" within the meaning of Section 100; and would not, as it appears to me, be assessable under Section 69, which clearly contemplates houses and buildings with the lands adjoining them.

3 It is right that I should mention that the Bombay Government, acting on the advice of its Advocate General has adopted the

the view that it is not competent to a Local Legislature under the Indian Councils' Act to impose any tax on the property of Government, and that, therefore, any such tax imposed by such a Council would be invalid (Lee Proceedings Bombay Government 11th September 1872 para 42) I do not concur in this opinion, and have submitted separately to Government my opinion on this point. I therefore only allude to it now for the purpose of saying that I cannot recommend the Collector to resist the assessment on this ground.

/Signed/ H. L. Cunningham
Advocate General.
20-2-73.

/True copy/
/Signed/ Ernest Barclay,
Asst. Government Solicitor.

/True copy/
J Hunter Blair
Collector of Ahmedabad.

No. 235. Madras Collector's Office
28th October 1873.

252

From,

J. Hunter Blair Esqr.
Collector of Madras

To,

The Honorable H. Hudleston
Chief Secretary to Government
&c &c &c

Sir,

I have the honor to submit the report called for in para 9 of Government Order No. 385 of 21st March last, Financial Department. The delay has been caused by the absence of the Government Pleader on leave and my consequently not receiving an answer to my letter of 23rd September last.

2. The moot questions regarding the Municipal Assessment of Government buildings are

1. What is the proper mode of determining the annual value of buildings not rented out? Whether their annual value may be calculated at a fixed

35

Encl 1 to 5/13

In a letter from the Collector
of Madras to the Chief
Secretary to Government
dated 28th October 1873
No. 235.

fixed per centage of the actual cost of the buildings as is done by the Municipality, or whether it should be calculated on the basis of the actual rentals of other buildings similar in character and situation?

2. By whom should the annual value be determined, by the Commissioners or the Assessor?

3. At the hearings of the appeals preferred to the President last year he held that the fixing of the annual value at a percentage of the outlay was correct, and that the fixing of that value was legally not the business of the Commissioners but that of the President who had delegated it to the Assessor.

4 The questions were referred to the Advocate General; he was of opinion that assessing buildings on the cost of their production was clearly wrong; that the annual value should be fixed by the Commissioners themselves; and that the President was not competent either to perform this duty himself or to

Enclosure No 2.

to delegate it to others. Copies of his opinion are enclosed.

5. At the hearings of the appeals preferred to the Magistracy, only the first objection was urged by the Government Pleader. Mr. Handley did not argue the 2nd. point, as he thought there was nothing in it.

See letter from Govt. Pleader Copy sent. Enclosure 3.

6. The Government may perhaps have seen in the papers the judgments delivered by the Magistrates, and I beg to forward copy of the Deputy Collector's Report on the subject.

× Herewith sent Enclosure 4.

7. It will be seen that the Magistrates have not upheld the principle on which the Municipality fixed the annual value, but their Judgments do not seem to furnish any clear precedent regarding the proper mode of fixing it. The Senior Magistrate does not go into the question of the proper mode, at all, but the Junior Magistrate who dwells upon it at some length states "it appears that generally houses in Madras yield a rent of not more than

than 12 per cent per annum on the purchase money", that is, the market value of the building, and calculates the annual value of the Monegar Chantry at this percentage on its market value. This method is certainly more reasonable than that adopted by the Municipality, but an assessment calculated at such a percentage would still be very incorrect in many cases, as no two investments on house-property bring the same return. The returns from the very investments quoted by the Magistrate vary from 6 to 12 per cent.

	Investment	Annual rental	Percentage of return.
Patters Garden	56,030	4.800	8.5
Macleans Do	33.100	4.016	12
Do Collectors office Mount Road	32.000	2.448	7.65
General Pitchards house in Pantheon Rd	33.000	1.980	6

8. I think the only proper and legal mode which will produce equitable results, is to calculate the annual

annual value from the actual rentals of other buildings similar in character and situation, and the Advocate General whom I consulted on the subject after receipt of the Deputy Collector's report is of the same opinion. As however the Magistrates in deciding the Chepak Palace case do not seem to have attached any weight to the evidence given of actual rentals of similar buildings, I am afraid that the Municipality might follow the same course in deciding appeals preferred to them, and as there are several appeals pending before the President in connection with the assessment of this year, I beg that Government will be good enough to take the matter into their consideration and issue such orders as they may think proper.

× Copy sent of opinion dated 15th August 1873

9. There is another point which I would beg the Government to consider in connection with determining the annual value.

10. In deciding the Chepak Palace appeal

appeal, the Magistrates after taking evidence of the value of the buildings added to it the annual rent value of the land surrounding them at 4 Rupees per Ground under Section 69 of the Act. From this it follows that whenever buildings having compounds are assessed, the ground surrounding the buildings should be separately valued under the proviso in Section 69. I doubt whether the adoption of such a course is intended by the Act. The rentals of houses never depend upon the extent of Compound they have and valuing the compound separately under Section 69 under such circumstances would in fact, be valuing part of the property twice over.

12. As the Municipal Act is now undergoing revision[x] in consequence of the objections existing in it to the immediate levy of a water-rate, I venture to suggest that this opportunity be taken to revise the chapter on the assessment of rates on houses and lands so that it may fully and clearly exhibit the principles on which the assessment should be

[x] G. O. Nº 975 of 12th July 1873 which appeared in the papers not communicated to Collector.

be determined, both on property rented and not rented.

13. I think it should also be provided in the law whether the annual value is to be fixed by the Commissioners or the Assessor. In my opinion the Municipal Commissioners of the respective Divisions ought to fix it, as they are likely to possess the fullest local information on the subject. This is clearly the intention of the present law though its phraseology in Section 9 makes the meaning some what ambiguous. It is I think extremely inadvisable to entrust the Assessor with this duty as being a Servant of the Municipality; he cannot act with the same freedom and independence as the Commissioners and would naturally look more to the interests of the Municipal revenue than to the just claims of the rate-payers.

14 The annual value ought to be fixed by the Commissioners after due inspection by themselves, and there should be a Memorandum recording the various circumstances taken into consideration in fixing the value in each case. This Memorandum should bear

their

their signature and copies of the same
should be furnished to intending appellants.
The Collector and other rate payers will then
see the data on which the valuation of their
property is based and be in a position to
state clearly their objections if they have any.
15 I would also suggest for considera-
tion the following questions in amending the
present Act

(a) Exemption of the Pier[x] and Light
House from assessment.

The latter has never been assessed
by the Municipality but to prevent the
possibility of their ever doing it, an express
in latter case
provision should I think be made.

(b) At present, Section 71 provides
for a remission of a moiety of the assessment
on buildings which have remained unoccupied
for 60 consecutive days, but it does not
provide for any higher remission if the house
60
~~was~~ vacant for more than 60 days or for the
whole year. I think the assessment ought to
be remitted proportionately according to
the number of months the house was
consecutively

[x] Vide letter to Government
No. 119 of 9th May 1873
reporting on the result of
the appeal against the
assessment on the Pier.
Copy of Advocate General's
opinion on the liability
of the Pier to assessment is
sent herewith.

consecutively vacant. Under the present
System a house owner may have to pay
two half years taxes for an occupation of four
consecutive months.

I have the honor to be,
Sir,
Your most obedient Servant
J. Hunter Blair
Collector of Madras

D.96

4321/17

Finance Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Collector of Madras, dated 28th October 1873 No. 235.

Order thereon, 30th March 74 No. 522

Ordered that these papers be communicated to the Legislative Dept and to the Committee appointed in G.O. dated the 12th July 1873 No. 975 for the submission of proposals for the amendment of the Madras Municipal Act No IX of 1865.

2. Ordered also that the papers be communicated to the Commissioners of

Endorsement Dept. 1873. Letter from the Collector of Madras, dated 28th October 1873 No. 235. Submitting proposals for the amendment of the Madras Municipal Act No IX of 1865.

Dated 28th October 1873.
Received 31st October 1873.

No. 522 of 1874.

Legislative Dept.

Submits the proposals alluded to in para 9 of G.O. No. 385 of 21st March last, with reference to the recent question connected with the Municipal Commissioners' property.

No. 235

Endorsement on Letter from the Collector of Madras, dated 28th October 1873 No. 235.

Copies of the proposals submitted by the Collector of Madras, dated 28th October 1873 No. 235.

Endorsement Dept. 1873. Letter from the Collector of Madras, dated 28th October 1873 No. 235. Submitting proposals for the amendment of the Madras Municipal Act No IX of 1865.

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No. 235

Endorsement on Letter from the Collector of Madras, dated 28th October 1873 No. 235.

Copies of the proposals submitted by the Collector of Madras, dated 28th October 1873 No. 235.

Cl 18.
Rept
Copies
Rept

of the Madras Municipality, & that it be suggested to them, pending the revision of the Act, to adopt the course pointed out in para 6 of the Advocate General's opinion dated the 21st February 1873, in the settlement of the assessment to be levied on Government property.

To the Legislative Dept.
Committee for the Amendment of Madras Act IX of 1867.
Collector of Madras.
President of the Madras Municipal Commr.

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Govt. of {1874} Madras.

V)

Financial

To

The Legislative Depart:

&c.

Dated Mar. 30
Recd. } 1874, No. 522

Nos. 252. 253.

Madras Treasy. Certain papers on the Subject of the principle on wh. the Assessment on Govt. buildings is to be computed Comr. to the Govt. of the Courts appointed in connection with the amendment of Act 9 of 6[illegible] Meanwhile the amicable Settlement of the question without recourse to the Courts of law, Suggested to the Presidt