[L. & M.
9,000-8-8-96.]

Local & Munl. (1895·) Department.

MISCELLANEOUS.

G.O., No. 1142 L.

DATED 1st July 1895

[Despatch Abstract.]

Land.

Approving, with remarks, the suggestion of the President, District Board, Chingleput, in respect of the ---- encroached upon by Chinnayya Mudaliyar of Saidapet and ordering that steps to remove encroachments regarding which no prescriptive right has risen be adopted.

BACK PAPERS.

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

FURTHER PAPERS.

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

Recd. 15/3/95

Apparently report shd be called for

To

The Hon. Mr. H. W. BLISS, I.C.S.C.I.E.,
3rd in Council Fort St. George,
Madras.

The humble Petition of Saidapet CHINNIAH MUDALIAR, *residing at No. 217, Pillayar Covil Street, Saidapet, in the District of Chingleput.*

SHOWETH,

1. That the Petitioner on the 18th of August 1893 applied to the President, Taluk Board, Saidapet, to have the Petitioner's house inspected as he had recently purchased it and as he was about to re-build the same.

2. That the Taluk Board, Saidapet, passed the following resolution on the 4th of October 1893:—"The Board permits the petitioner to occupy the encroached portion of about one cent on payment of an annual rent of 10 annas."

3. That the portions marked A and B in the annexed plan, which the Petitioner prays may be read as part of this humble petition, are what are referred to by the Board as "the encroached portion." That the said portions form part of the house and ground purchased on the 13th July 1892 by the Petitioner from one
nada Mudaliar and have been in the enjoyment of the Petitioner and the
Mudaliar and his ancestors and vendors for a period of over 70

rent of 10 annas, the Petitioner
to and enjoyment and possession,
, and to avoid litigation the Peti-

e two-storied house on the land in-
12,000 and has been paying the rent

the Petitioner was served with a notice
g upon the Petitioner to pull down the
resident therein states that the Govern-
power to grant such a lease as aforesaid
and threa
f he fails to pull down the building with-
in 30 days of the date
the notice, *i.e.*, within 30 days of 11th February 1895.

FROM CIRCULATION
WITH REMARKS.

Office

Issue and put up a draft circular on the lines proposed by H.M.

27-11-

27/6

Despatched

The circular will be drafted after the order is despatched. Please send this to me after despatch.

1/7

RN 1/7

7. That the Petitioner humbly begs to submit that the said decision of the Government was arrived at *ex-parte* sixteen months after the sanction was given, without any opportunity being given to the Petitioner to show cause to the contrary.

8. That the Petitioner respectfully submits that he believes that all the facts of his case have not been brought to the notice of the Government before they arrived at the said decision.

9. That of the portions marked A and B in the annexed plan, A is a Verandah measuriug 8'-5" by 43' and B is a platform 1'-10''×43'; that the Verandah A is in a line with the adjacent houses in the street in which it is located as will be seen in the plan; but that B which is in a line with the dust bin of the adjacent house to the north is the only portion which is encroaching on the street and is perhaps open to objection.

10. That should the Government be pleased make proper enquiries, it will be evident that only B which is 1'-10" in breadth is the only encroachment the building on which the Petitioner is willing to pull down if so desired.

11. That if the Petitioner is compelled to pull down the construction on A and B which are 10'-3" in breadth, the Petitioner would have to pull down the whole of his two-storied house and the Taluk Board would have to pay him a compensation of not less than Rs. 12,000, the cost of the building.

12. That considering that the so-called encroachment has been in the enjoyment of the petitioner, his vendor and predecessors for over 70 years, and that it is in no way inconveniencing the public as it is in a line with the adjacent houses, the Petitioner humbly submits that upholding the license granted by the Taluk Board, if not entirely, at least to the portion marked A, will be reasonable and just under the circumstances.

THE PETITIONER THEREFORE PRAYS

1. That the Government should be pleased to make proper enquiries and to do justice in the matter by confirming the sanction granted by the Taluk Board of Saidapet.

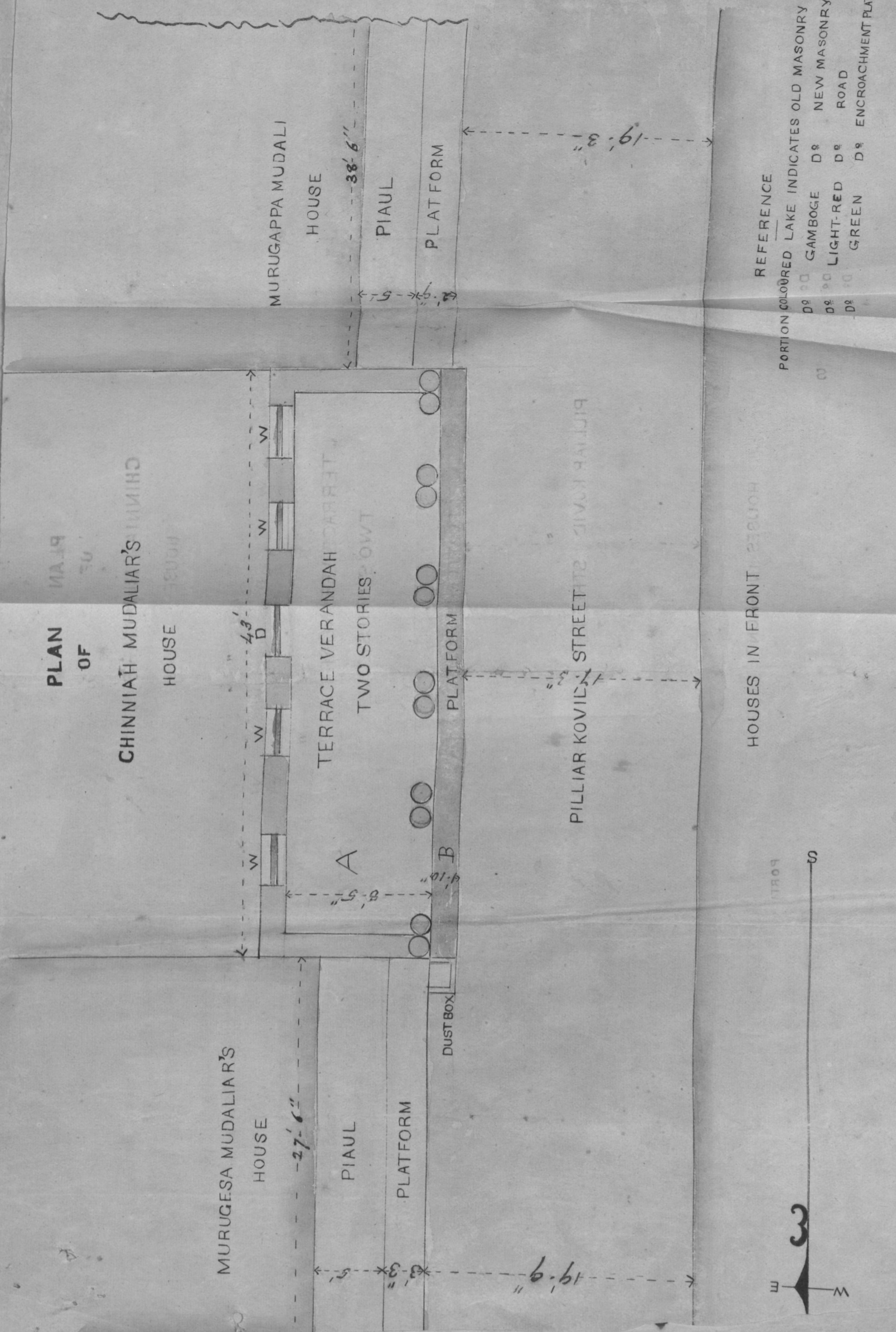
2. That pending the disposal of this Petition the President of the Taluk Board, Saidapet, may be directed to stay further proceedings.

3. That if the sanction granted cannot be confirmed, the Taluk Board may be directed to pay the Petitioner a compensation of Rs. 12,000.

Petitioner's Vakils.

Petitioner.

MADRAS, *8th March* 1895.



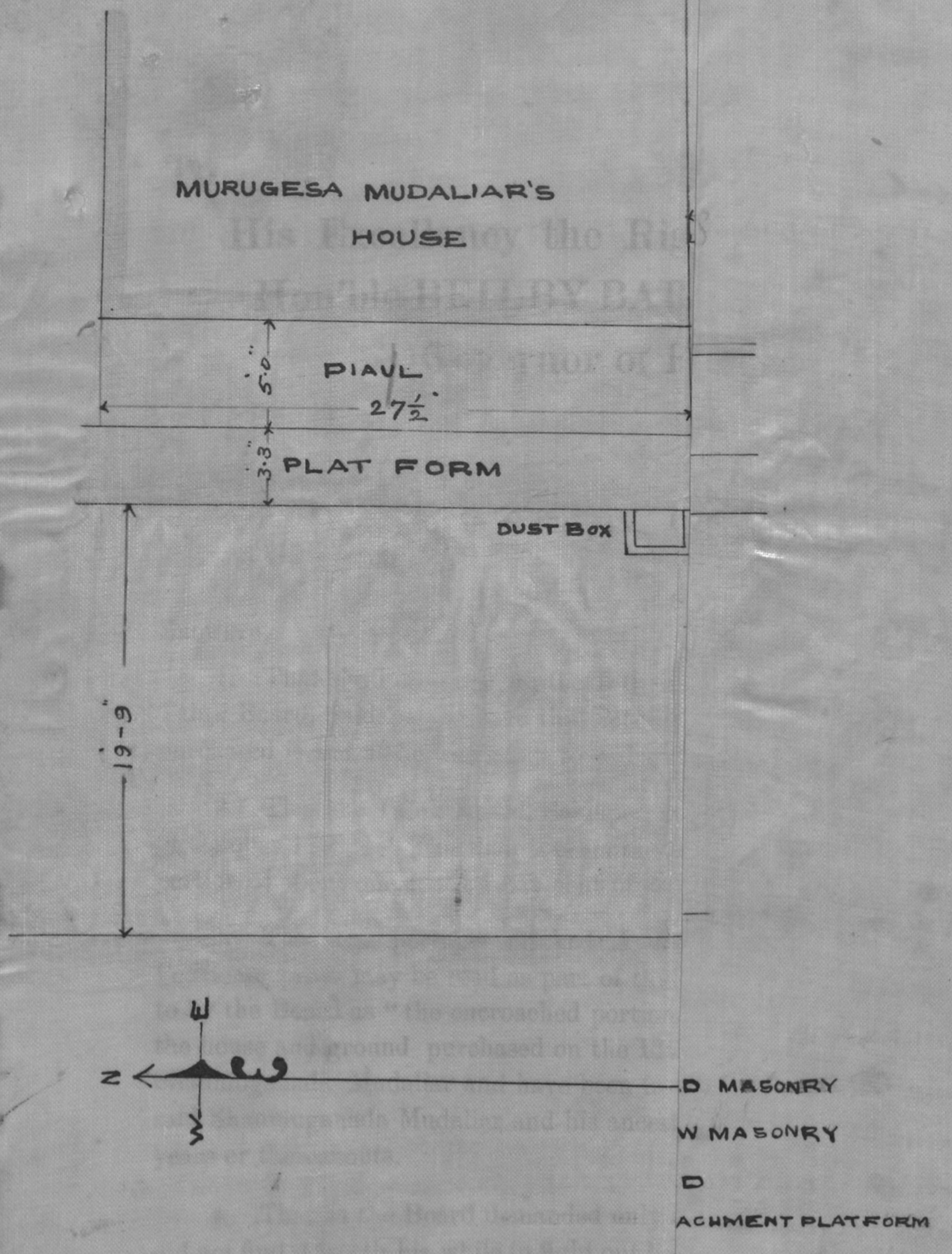
Local & Municipal Dept.
PR. CURRENT No. ....

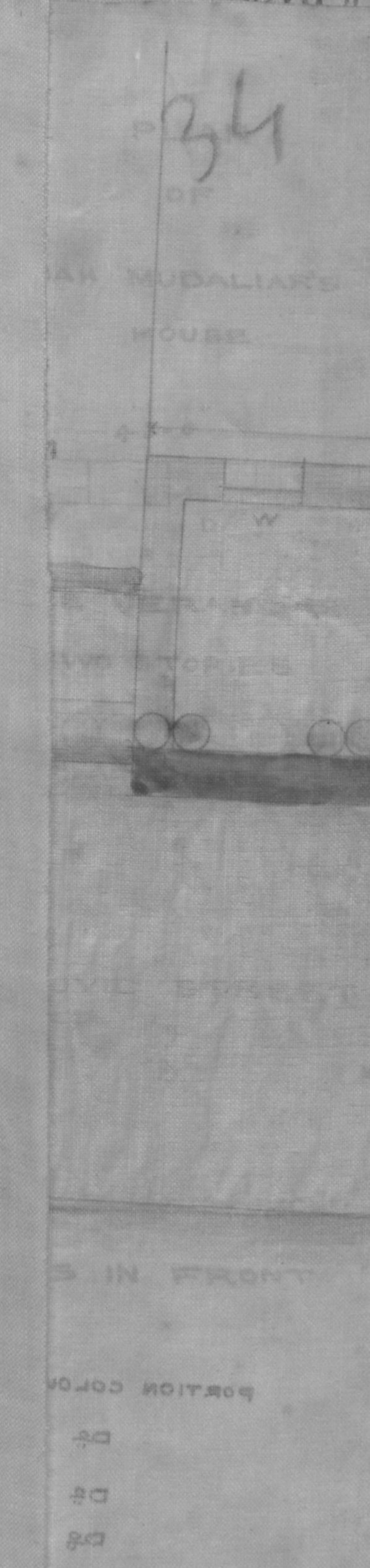
From
Chinniah Mudaliar
of Saidapet.

d/8-3-95.

Praying that Govt will confirm the resolution of the Saidapet Tq Bd in regard to a piece of land encroached upon by the petr.

20/3





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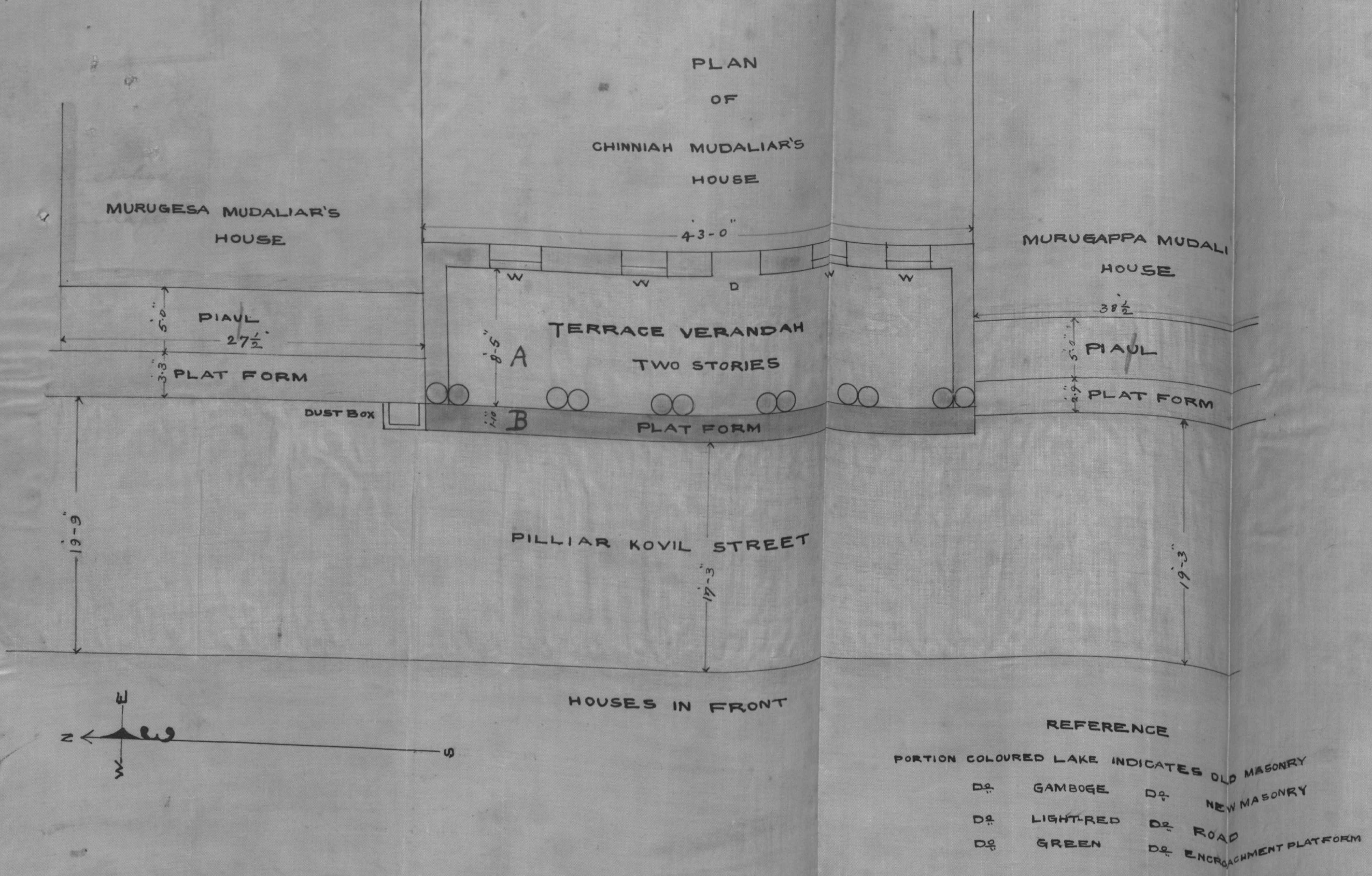

Local & [illegible]unicipal Dept.

No. ~~847L~~

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M. C. S.

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G.C.I.E.,

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G.O. 22L
10-1-95

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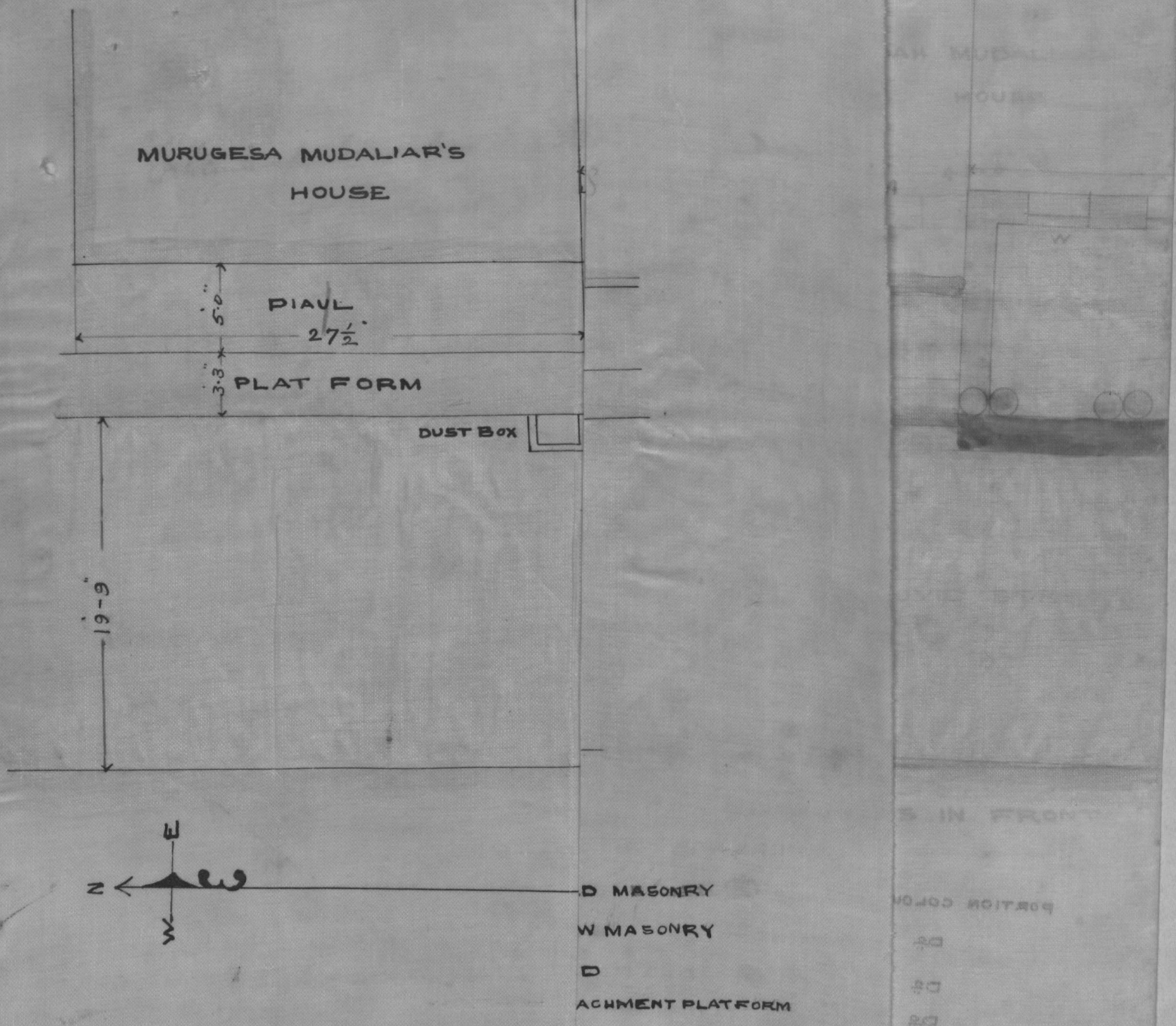


Local & Municipal Dept.
CURRENT No. 847

15 MAR 95

To

His Excellency the Right
Hon'ble **BEILBY BARON WENLOCK**, G.C.I.E.,
Governor of Fort St. George and
President in Council.

The humble Petition of Saidapet Chinniah Mudaliar, *residing at No. 217, Pillayar Covil Street, Saidapet, in the District of Chingleput.*

Showeth,

1. That the Petitioner on the 18th of August 1893 applied to the President, Taluk Board, Saidapet, to have the Petitioner's house inspected as he had recently purchased it and as he was about to re-build the same.

2. That the Taluk Board, Saidapet, passed the following resolution on the 4th of October 1893:—"The Board permits the petitioner to occupy the encroached portion of about one cent on payment of an annual rent of 10 annas."

3. That the portions marked A and B in the annexed plan, which the Petitioner prays may be read as part of this humble petition, are what are referred to by the Board as "the encroached portion." That the said portions form part of the house and ground purchased on the 13th July 1892 by the Petitioner from one Shanmuganada Mudaliar and have been in the enjoyment of the Petitioner and the said Shanmuganada Mudaliar and his ancestors and vendors for a period of over 70 years or thereabouts.

4. That as the Board demanded only annual rent of 10 annas, the Petitioner did not find it worth his while to fight out his right to and enjoyment and possession, through his vendor, of, the said portions A and B, and to avoid litigation the Petitioner consented to pay the rent demanded.

5. That the Petitioner then built a large two-storied house on the land including the said portions at a cost of over Rs. 12,000 and has been paying the rent regularly since then.

6. That on the 11th of February 1895, the Petitioner was served with a notice from the President of the Taluk Board, calling upon the Petitioner to pull down the building on the portions A and B. The President therein states that the Government have decided that the Board had no power to grant such a lease as aforesaid and threatens to prosecute the Petitioner if he fails to pull down the building within 30 days of the date of the service of the notice, *i.e.*, within 30 days of 11th February 1895.

G.O. 22L
10-1-95

7. That the Petitioner humbly begs to submit that the said decision of the Government was arrived at *ex-parte* sixteen months after the sanction was given, without any opportunity being given to the Petitioner to show cause to the contrary.

8. That the Petitioner respectfully submits that he believes that all the facts of his case have not been brought to the notice of the Government before they arrived at the said decision.

9. That of the portions marked A and B in the annexed plan, A is a Verandah measuriug 8'-5" by 43' and B is a platform 1'-10"×43'; that the Verandah A is in a line with the adjacent houses in the street in which it is located as will be seen in the plan; but that B which is in a line with the dust bin of the adjacent house to the north is the only portion which is encroaching on the street and is perhaps open to objection.

10. That should the Government be pleased make proper enquiries, it will be evident that only B which is 1'-10" in breadth is the only encroachment the building on which the Petitioner is willing to pull down if so desired.

11. That if the Petitioner is compelled to pull down the construction on A and B which are 10'-3" in breadth, the Petitioner would have to pull down the whole of his two-storied house and the Taluk Board would have to pay him a compensation of not less than Rs. 12,000, the cost of the building.

12. That considering that the so-called encroachment has been in the enjoyment of the petitioner, his vendor and predecessors for over 70 years, and that it is in no way inconveniencing the public as it is in a line with the adjacent houses, the Petitioner humbly submits that upholding the license granted by the Taluk Board, if not entirely, at least to the portion marked A, will be reasonable and just under the circumstances.

THE PETITIONER THEREFORE PRAYS

1. That the Government should be pleased to make proper enquiries and to do justice in the matter by confirming the sanction granted by the Taluk Board of Saidapet.

2. That pending the disposal of this Petition the President of the Taluk Board, Saidapet, may be directed to stay further proceedings.

3. That if the sanction granted cannot be confirmed, the Taluk Board may be directed to pay the Petitioner a compensation of Rs. 12,000.

Ethiraja Sivagnanam

Petitioner's Vakils.

Petitioner.

MADRAS, 8*th March* 1895.

1/847L/95

3/1472L/95

Petition from Saidapet Chinnaiah Mudaliar, Saidapet, Chingleput Dt.

DATED 8th March 1895.

TRANSFERRED to the Chief Secretary to Government for disposal.

(By Order.)

Ag. *Private Secretary.*

GOVERNMENT HOUSE,
Guindy 15 April 1895.

Ltm

Local & Municipal Dept.
(189) DEPARTMENT.
PR. CURRENT No. 8472

From R C C Carr Esqr. I.C.S.
~~The~~ PRIVATE SECRETARY TO THE
RIGHT HONORABLE THE GOVERNOR,

To

THE CHIEF SECRETARY
TO GOVERNMENT,
Local & Municipal DEPARTMENT.

Dated 15th } March 1895.
Received }

UNDER SECRETARY
16 MAR 95
PUBLIC W. DEPT.

ENCLOSURE. 7

Subject.

TRANSFERS a petition from Saidapet Chinniah Mudaliar praying that Government will be pleased to make proper enquiries in his case and to do justice by confirming the sanction granted by the Taluq Board of Saidapet in respect of a certain encroachment on the public street.

2/1472 L/95

1 to 36 papers (With Encls.)

lep

Apr. 3996
4-4-95

TO BE RETURNED
WITH REPLY.

CS

No. 498 dy 2-4-95

Referred to the President, District Board, Chingleput, for report.

(By order)
W Francis
Ag Assistant Secretary

30/3/95

V.R.
26/3/95

Fort St. George }
27th March 1895 }

To

The President. Dt. Bd. Chingleput

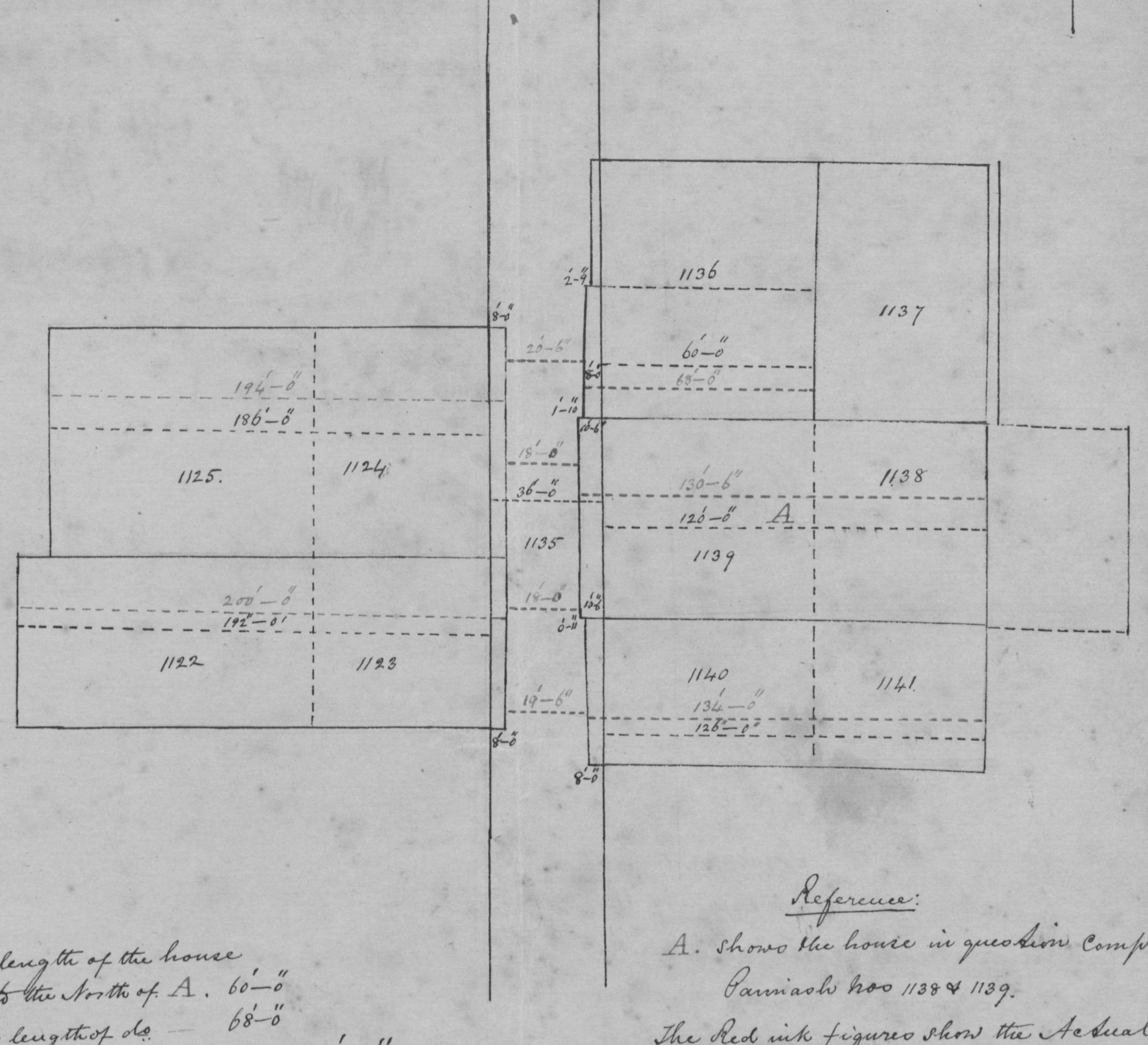
22/3

A 2613

---

demanded or

Rough sketch showing the Panniash and the present measurements of Chinnia Mudelias house & of the houses adjacent & opposite to it and also of the street in Periyapett, Mambalam Zemindari, Saidapet Taluk.



Panniash length of the house which is to the North of A. 60'-0"
Actual length of do. 68'-0"
Excess in street Poramboke (Encroachment) 8'-0"
Actual Breadth of the street in front 20'-6"
Encroachment in the opposite house 8'-0"
36' 6"

Panniash length of the house which is to the South of A 126'-0"
Actual length of do - - - 134'-0"
Excess in street (Encroachment) - - 8'-0"
Actual Breadth of the street in front at present } 19'-6".
Panniash length of the opposite (Nos 1122 & 1123) house } 192'-0"
Actual length of do — 200'-0"
Excess in street (Encroachment) — 8'-0"
35' 6"

Reference:

A. shows the house in question comprised Panniash Nos 1138 & 1139.

The Red ink figures show the Actual measurements.
The Black ink figures show the Panniash measurements.

Panniash Breadth of the street (No 1135) is

Panniash length of the house in question (1138 & 1139) 120'-0"
Actual length of do 130'-6"
Excess viz Encroachment in the street } 10'-6"
Actual Breadth of the street in front at present } 18'-0"
Panniash length of the opposite house (Nos 1124 & 1125) 186'-0"
Actual length of do 194'-0"
Excess viz Encroachment in the street 8'-0"
36'-6"

South

Mullaiah Batter
Rev Inspector

~~Ltm~~

Refr. 3996
4-4-95

Enclosure A.

1/1472 L/95

No. 228/L. of 95

CHINGLEPUT DISTRICT BOARD'S OFFICE,

SAIDAPET, 24th May 1895.

Local & [illegible] De
CURRENT No. 1472 L

From

C. H. Mounsey Esquire,
President of the District Board,

Chingleput.

To

The Chief Secretary to Government,
Local and Municipal Department,
Madras.

SIR,

I have the honour to reply to your endorsement No. 498 of 2nd April 1895 on the petition (herewith returned) of one Chinniah Mudaliar of Saidapet objecting to the order of Government of the 10th January 1895 No. 22. L. Mis. ordering steps to be taken to remove an encroachment of the said Chinniah Mudaliar.

2. The facts of the case appear to be as follows.-

3. At the time of the paimash, 1840, the width of the street opposite petitioner's house was 36 feet vide enclosure A sketch plan

Rep: 3996
4-4-95

which I had drawn up yesterday. At some subsequent period an open masonry pial or Koradu was erected. I may say the only fact in dispute is the date on which the pial was built. Petitioner by vague oral evidence asserts it was in existence from before the Paimash. The Paimash measurements contradict this and in my opinion are reliable. It is evident that it is to petitioner's interest to assert that he has had uninterrupted possession of street poramboke for over 60 years* to give him a claim against Government.

* Twelve years will be sufficient against the Taluk Board — Vide G.O. 1110 L / 19-5-92 and the judgment of the City Civil Court published in the Madras Mail of the 16th Mar 1895

4. In August 1893 petitioner asked the then President, Taluk Board (Mr Ramachandra Iyer) to inspect the place referred to in the petition and pass orders as he had bought the house and intended to repair it by removing the foundations. This was referred to the Revenue Inspector, who in the same month reported that the house encroached 10½ feet upon road poramboke, and suggested that a rent of 10 annas be demanded or the land sold to petitioner.

5. On the 4th October 1893 the matter was put before the Taluk Board, who sanctioned petitioner's renting "the encroached portion" on a payment of an annual rent of 10 annas.

6. In February 1894 a rental agreement was taken from the petitioner and duly registered.

7. In April 1894, Mr Thomson, President of the District Board, noticed petitioner's house being built and ordered enquiries to find out if there was encroachment.

8. In July 1894 Mr Ramachandra Iyer then an Ex President of the Taluk Board gave a long explanation in writing. He pointed out that the Taluk Board had never allowed any encroachment but had dealt with an existing one, and denied that it caused any inconvenience to the public. He argued that neither on the magisterial side or on the Taluk Board side could any remedy be applied, and that therefore the Taluk Board had done correctly, ~~by~~ safe-guarding their interests by collecting rent.

9. In August 1894 Mr. Brodie, the then President of the District Board called upon the Taluk Board to reconsider its resolution granting the land on rent. The Taluk Board, however, on the 1st September 1894, saw "no sufficient reason for reconsidering its former order".

10. On the 10th November 1894 the District Board decided by resolution that it could not take cognizance of the matter.

11. Then Mr Forbes as Collector passed his proceedings of the 15th November No. A. under Section 37 of Act V of 1884 cancelling as ultra viris and illegal the Taluk Board's resolution of the 4th October 1893 above referred to. This was forwarded for the approval of Government, who in Government order of the 10th January 1895 No. 22 L. Mis. confirmed it and ordered steps to be taken to remove the encroachment. This order was sent to the Taluk Board President to take early steps to remove the encroachment. He issued orders accordingly. Petitioner first sought time to appeal to Government and then on the 13 March 1895, through his vakils

Messrs

Messrs. Ethiraja and Sivangnanam, called on the Taluk Board President to revoke the order, failing which the letter was a notice under Section 156 of Act V of 1884, that if the order was carried out a suit to recover Rs 12,000 the value of the house and Rs. 3000 damages would be begun. Petitioner's petition to Government under reply was despatched about the same date. On its receipt for report, I ordered proceedings to be stayed and a special enquiry to be made in regard to the length of time the encroachment had existed.

12. The evidence on this point is as follows:— On the Government side the Paimash measurement of 1840 and the admission of petitioner in the rental agreement go to show the land is Government. Petitioner produced oral and documentary evidence. The latest of the documents are sale deeds of 1892 and 1887. They show a length of 179 feet from east to west of house site and backyard as sold. Petitioner now claims 181 feet. The third and the oldest sale-

x not necessarily as he might have agreed to pay the small rent so that he may be saved the bother of establishing his right by a suit &c

deed

deed of 1880 has no measurements. The five witnesses who were examined were all very old men; they all said that for 60 years or more there was a covered pial and masonry platform and that the present construction does not extend beyond them. Such evidence is of little value for if a thing is 40 years old it may evidently be thought to be 60 years old and memory is treacherous. On the other hand we have the paimash measurements. Taking these measurements of the two houses opposite, the street, and the petitioner's house, they give the following details, respectively:-

* But here can be no doubt about twelve years and adverse possession for this period is enough as against the Distt Board

	Feet	Street	Petitioner's house	Total
North house opposite	186	36	120	342 in North
South house opposite	192			348 in South.

The present measurements are

	Feet			
North house opposite	194	18	130½	342½ in North
South house opposite	200			348½ in South.

From this it is self evident that what has gone from the street has gone to the houses, and indeed in the enquiry it was admitted that the house opposite encroached some 8 feet about 40 years ago. I should presume that the other encroachment was probably made about the same time, as one successful encroachment if not checked would be likely to be followed by another.

t was certainly
han twelve yrs ago

13. The petitioner agrees to remove the Koradu in front of the pillars of the house. The Koradu projects 1 foot 10 inches beyond the neighbouring pials and the pillars of the house. This projection is probably the 2 feet found in excess of the 179 feet length that he bought. The Taluk Board President recommends that action be dropped on his carrying out this removal.

de plan submitted by
e Petitioner

14. The facts in this case are very typical of several others which I have noticed. The difficulty is to deal with these encroachments. *In primis* I may at once say that I do not think the Taluk or District Board have any means of acting. A test case tried in 1889 on much stronger grounds led to their discomfiture.

In

In that case adverse possession to the Taluk Board for only 20 years was set up and though the District Munsiff apparently found the land was street poramboke he also found that the plaintiff had by prescription acquired a right as against the Taluk Board and issued the injunction prayed for to prevent the Taluk Board interfering with a wall that the plaintiff wished to build. The Taluk Board therefore can do nothing.

Of course not, if they sleep on their rights

15. Next we have to see if the magistrate can do anything. If a magistrate considers the building upon the street poramboke a nuisance or an unlawful obstruction he might proceed under Chapter X of the Criminal Procedure Code; but I fancy in this particular case no jury would uphold the order, but further than that it cannot be said that petitioner is not asserting a bonafide claim of title and if so the magistrate cannot interfere. (Indian Law Report. 17. Calcutta 562).

16. Again the petitioner might be charged with an obstruction on the public street under Section 290 Indian Penal Code, but under a recent ruling of the High Court even this would fail.

17. I should like to call the attention of Government to this ruling (Criminal Revision case No. 468 of 1894). A man was acquitted by a Stationary Sub magistrate on a charge of obstructing a public way when he on his own showing had only put up the obstruction, which was a great nuisance, 15 years before. The High Court held that "whether such possession is sufficient to give him a prescriptive right under the Limitation Act is a question that may properly be left for decision in a suit that may be brought against him".

Not to be found in the I. L. R. Series for 1894.

[illegible]

18. The High Court have held otherwise that no prescriptive right can ever be acquired to continue a public nuisance and

and that any obstruction that prevents a person walking when he has the right to if he chose to do so is a nuisance. I can only Conceive in reference to C.R.C. 468 of 1894 that the High Court Consider it an unsettled question as to whether by the transfer of Streets to the Local Boards a prescriptive right as against Government can be acquired by adverse possession for less than 60 years. ~~If this is a moot point I think it advisable that it should be tested~~ or That the High Court ~~having~~ Consider~~ed~~ that when a private owner acquires by prescription a right as against a Taluk Board the land so acquired absolutely ceases to be "street" and therefore no building on it can be an obstruction to the Street.

19. Again if in this particular case prosecution were successful as the actual encroachment is of ~~much~~ such ancient date and the present petitioner in no way personally responsible for it, the punishment would be merely nominal.

20. I certainly do not advocate bringing a civil suit on behalf of Government for a possession of the land and to Compel petitioner to remove the obstruction, for possibly Considering the circumstances, the rules of equity would prevail and no injunction be granted, and to obtain a decree that Government was entitled to the land but could not remove the building would be a barren victory.

21. One other way of dealing with such obstructions when the local board have lost their right to the land as "street" is to levy× penal assessment. If the Taluk Board cannot interfere, it does not follow in this and numerous other cases, in my opinion, that Government have lost their right to the land as poramboke and if they have ~~not~~ I do not see why they should not levy penal

× But this is inadmissible under the present orders —Vide G.O. of 15-2-93 No 160 R.D.

× But the Govt has vested the land in the Distt Board under Sec 49 of the Local Bd act.

penal assessment thereon. The land in this case is zemindari: but I should fancy that if the petitioner has acquired private property in the land as against the Taluk Board the same considerations that may make magisterial action ineffectual would also make revenue action ineffectual.

22. In this particular case when witnesses swear to the encroachment being of 70 years standing I would suggest that the compromise that petitioner proposes in para 10 of his petition be accepted and the extension 1 foot 10 inches into the street be removed. Other action would end in a civil suit and for a test case I should prefer one where ~~the~~ no question of prescriptive right being governed by 60 years' occupation is raised.

23. [illegible] do not accept for one moment petitioner's statement that if the building on the street poramboke be removed it would cost him Rs 12000.

24. Considering the many encroachments in Saidapet of a similar nature though not of such long standing I am prepared personally to deal with each one in the main streets and I believe in many cases they may be removed by amicable arrangement, for the people can, I think, [illegible] to see that such removals would [illegible] the good of all. Before attempting [illegible] take up the matter in detail I [illegible] await orders on this report.

I have the honour to be,
Sir,
Your most obedient servant
C. H. Mounsey
President, District Board

SKWP

penal assessment thereon. The land in

Local & Municipal Dept.
CURRENT No. 1472 L
1895.

FROM
THE PRESIDENT OF THE
DISTRICT BOARD,
CHINGLEPUT.

To
THE Chief Secretary to Government
Local and Municipal Department
Madras

Dated 24th May 1895.
27 MAY 95

ENCLOSURE. 4

No. 228 L of 1895

SUBJECT.

Submitting reply to the Endorsement No 498 of 2nd April 1895 of Government on the petition of one Chinniah Mudaliar of Saidapet objecting to the order of Government of 10th January 1895 No 22 L. Mis: ordering steps to be taken to remove an encroachment of the said Chinniah Mudaliar.

(with order)

H.M.
misc

C. Nos. 847 L & 1472 L

Order. 28/6/95

It is clear that the greater part of the land encroached upon in this case has been in the occupation of the petitioner and of his predecessors in title for more than twelve years, and adverse possession for this period has, in the opinion of Government, deprived the District Board of its right to the land, which ~~has~~ would otherwise have been vested in it under section 49 of the Local Boards Act. Vide G.O. d/ 19th May 1893 No 1110 L. The suggestion made by the President in para. 22 of his letter is, therefore, [illegible] roved.

2. Steps to remove encroachments regarding which no prescriptive right has arisen should be ~~taken~~ adopted and care taken that all future encroachments on public streets are promptly dealt with.

J.S.
27/6/95

Note. The petn has in this case sold very decently the letter of the Govt-

The obvious lesson is that Munl. Cls & Dist. & Tal: Bds must act promptly in cases of encroachment & not sleep on their rights so long that prescription is established against them — I think we might issue a general circular pointing out, with refce to this case, these considerations.

To
The President, District Board,
Chingleput

R (847 L + 1472 L) & c.

Desp'd 6/7/95

C 26/6

14/6.

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NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.

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