

Local & Munl. (1895) Department.

MISCELLANEOUS.

G.O., No. 1716 L.

DATED 19 Sept 1895

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[Despatch Abstract.]

Encroachment.

Passing orders on the question of --- on public streets  
at Saidapet in the Chingleput district.

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Chinglaput Sub-Collector's Office,

Camp, Chingleput 28<sup>th</sup> June 1895

From

L. E. Buckley Esqr

Sub Collector of Chingleput Dist.

20

The Collector of Chingleput District

Edw.

Advertising As your Ref  $\frac{2/50}{\text{Cent}}$  <sup>dated</sup> 2/14 6. 95 /<sup>re</sup> encr.  
-achments, I have the honor to submit the following  
Remarks:—

2. The questions raised are — (1) what is the period of limitation?  
(2) What should be the limits of the jurisdiction of Revenue Department and Local Boards?  
(3) What procedure should be adopted?
3. Limitation. I disagree with the Advocate General in toto. In the matter of objectionable encroachments there is no limitation. No length of time can be held to justify a nuisance (1 Russ 421, 422; 12 Ind. 342; Municipal Commissioners of Calcutta v. Mahomed <sup>ali</sup> 7 B.L.R 499; S.C. 16<sup>th</sup> 1900). Do criticise the generally accepted opinion that Local Boards are time-barred if they do not take proceedings within 12 years of cause of action. Prior to the Local funds and Local Boards act, roads and streets vested in Government. Government was responsible

responsible to the public for preserving these proper-  
ties, and in case of any infraction of public rights,  
no one (even in the case of unobjectionable occupa-  
tion) could acquire an easement under 60 years.  
By the passing of the Local Fund and Board Acts,  
Government created a new body on whom it threw  
the whole burden of responsibility for the mainte-  
-nance of roads and streets, but even by such  
an act it could not divert itself of its respon-  
-sibility to the public to guard the public from  
the attacks of individuals, and it could not place  
individuals in a better position to infringe on  
public rights than they enjoyed before the passing of  
the acts, that is to say it could not reduce the  
period of limitation in respect of unlawful acts  
against public property from 60 to 12 years. This  
is an act of state and could only be done,  
& if at all, by a Secretary of State on behalf of  
Her Majesty.

4. Jurisdiction. I am of opinion that the cum-  
-brous procedure of Sec. 98 of Act V of 1884, and the  
various sections of the Penal Code should apply  
only to such ~~cases~~ roads and streets as the Local  
Board has specifically undertaken to supervise  
and maintain. To look after these roads and  
streets, a special establishment is maintained  
and it is for these and these alone that the  
Local Boards have undertaken any res-  
-ponsibility.

responsibility. All other roads and streets not maintained  
by Local Boards should be considered as in the hands  
of Revenue Department which can enforce vacation by  
the summary method of penal assessment.  
I find that the Board in its proceedings 449 dated 30  
July 1891 has proposed to limit the jurisdiction and respon-  
-sibility of Local Boards in this very way. Government  
however, appears to have neglected to pass orders on the  
recommendation. There is a class of cases to which  
I wish to refer, I mean encroachments prior to the  
passing of the Local Board Acts. These were not  
handed over by Government under the act and  
therefore do not rest in Local Boards. Their occupation  
has to be checked by Revenue Department. I know it  
is generally accepted that persons who have been in  
occupation since before the act, have acquired an in-  
-defeasible title. But in as much as these encroachments  
are, as I have shown, on lands still under Revenue Dept.  
even according to the limitation theory, no title could be  
acquired under 60 years.

5. Procedure. There is no doubt that the existing pro-  
-cedure is inadequate to safeguard the public interests.  
If the suggestion that Local Boards should only  
be responsible for such roads and public places  
as they profess to maintain, the difficulties will be  
enormously decreased. The procedure to be adopted  
by Local Boards is:—

- (A) by prosecution for public nuisance under I.P.C.
- (B) by taking action under Chapter II of C.P.C.
- (C) by taking action under Sections 98 & 99 of the Local  
Board Act.
- (D) by Civil Suit.

All are cumbrous if (A) is successful, the encroach-  
-ment cannot be removed without further proceedings.  
if (B) is adopted the trespasser will probably apply  
for

for a jury, see that <sup>fact</sup> is packed with his friends and  
escape; (N) usually results in Civil suits (S) which are  
protracted, expensive, troublesome and often of doubtful  
issue though the fact of encroachment may be beyond  
doubt. As I have said the roads &c not actually in  
charge of Local Board should remain under Revenue  
Department which has large establishments and is easily  
able to restrict encroachments by penal assessment.

Personally I shall be only too glad to see the day  
when local boards are given similar power to  
impose penal assessment for only then will it be  
possible to impose an adequate check on encroachments.

I have &c

(Signed) L. E. Buckley.

Sub Collector of Chingleput

(True Copy)

For

Secy Board

for President

CS

2197-1/95

# Statement showing portion of Taluk Board on payments

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I have &c

(Signed) L. E. Buckley.

Dist. Collector of Chingleput

(True Copy)

For

Secy. Board

for President

CS

2197/1/4

2199/1/95

Serial No.

No. 455 of 95

CHINGLEPUT DISTRICT BOARD'S OFFICE,

SAIDAPET, 2<sup>nd</sup> August 1895.

From

C. S. Gounder, Esq.

President of the District Board,

Chingleput.

To

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

Sir,

- With reference to para 2 of G. O. dated 17<sup>th</sup> April 1895, No. 692 L. Brs. and in continuation of this office Ref. No. 47 G. L. dated 5<sup>th</sup> June 1895, I have the honor to sub- mit herewith a detailed statement showing portions of Streets in the Saidapet town granted on permanent leases by the Saidapet taluk board on annual pay- ment of rents for occupying them for the purposes in- dicated therein.
1. All the 10 cases in the list were leased out by that board without the knowledge of the District Board probably under the mistaken impression that Street paramboke was legally vested in that body.
  2. Stamped agreements were executed and duly registered in the first six cases in the list and rents are being col- lected on the first five and the sixth was finally <sup>disposed</sup> of by Government in G. O. dated 1<sup>st</sup> July 1895 No. 1142 L. Brs.
  3. Occupiers of the remaining 4 items refuse executing agreements, thereby implying prescriptive right of over 12 years. No. 8 in the list is however paying rent.

5. The delay in replying to the above order is due to late receipt of information from the Sales Board and the information furnished being incomplete. In view of the number of encroachments in some of the towns of this District it occurs to me that one way of enabling them to be properly dealt with, would be to withdraw, under Sec. 48 (2) of Act V of 1884, the streets or mainstreets where encroachments are most rife from being vested in such Board. The results of vesting the streets in the Local Boards, has been that owing to the law of prescription, private parties have acquired a right as against the Board in many cases. I take this opportunity of forwarding a copy of a letter from my Sub Collector on this subject.

\* This section applies to property other than Public Streets. The Local Board may make under the proviso to Sec. 48.

I have the honor to be

Sir,

Your Most Obedient Servant

*Wm. J. ...*

Tre. President.

for President

*cc*

Local & Municipal Dept.  
CURRENT No. 2199 L

1895.

FROM  
THE PRESIDENT OF THE  
DISTRICT BOARD,  
CHINGLEPUT.

To  
THE Chief Secretary to Govt.  
Land & En. Dept.  
Madras

Dated 6 AUG. 95 1895.  
ENCLOSURE 2  
No. 455 of 95  
SUBJECT.

Submitting a detailed statement showing portions of streets in the Saidapet town granted on permanent leases by the Saidapet taluk board on annual payment of rents for occupying them for the purposes indicated therein.

[ 5 ]  
500-27-5-95.

LOCAL AND MUNICIPAL DEPARTMENT.

Papers to be read in Proceedings:—

Again G.O., dated 17<sup>th</sup> April 1895, No. 692 L

Current No. 2199 L of 1895, dated 2<sup>nd</sup> August from the St. D. N. Chingleput  
Current No. of 189, dated from the

Order. 19-9-95 No 17/16; L. 1895

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This & the papers in the linked file are both most important - Let the Hon. Mr. Govt. see before issue

BS

relinquish

Saidapet was competent to lease <sup>possession of</sup> <sup>leases</sup> <sup>and</sup> any portions of them. <sup>such</sup> <sup>moreover</sup> The grant of lands on permanent leases is <sup>virtually</sup> a transfer which requires the sanction of Government under the rule issued in G.O. dated 16<sup>th</sup> April 1889 No 858 L. The resolutions of the Taluk Board and the Union Panchayat, referred to in column 2 of the statement submitted with the President's letter were therefore in excess of the powers conferred upon them by law, and the Collector should cancel them under section 37 (1) of the Act, except in the case (No 6) of Chinnayya Mudaliya which

has already been disposed <sup>of</sup> by Government. The President should deal with these <sup>other than this</sup> cases, according to their merits, after personal inspection.

2. The suggestion made in para 5 of the President's letter that the streets in which encroachments are a nuisance should be withdrawn from the District Board under the proviso to section 49 of the Local Boards Act - not 48(2) as <sup>proposed</sup> stated by him is already under the consideration of Government.

3. With reference to the remarks of the Sub Collector in his letter forwarded by the President, he will be referred to go. of 25th July 1895 No 13072 as regards prescription against Local Boards, and he will be informed that provision has been made in the Bill to amend the Local Boards Act empowering the Local Boards to deal adequately with encroachments on public roads and streets by the imposition of penal assessment.

V.B. 23/9/95  
W. 29/95  
3/9/95

To The President, District Board, Calcutta  
" Collector of Calcutta.

To

The President, District Board, Calcutta

\* vide copy 28252 linked with this

\* vide 5879 + 112 of the draft Bill in the linked file

*Chinglap...*

2199 Z.

*14 m*

Hon. Mr. Grose.

17/6/7

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*Office Memorandum*  
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189.

READ AGAIN G.O., No.  
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DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

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LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS 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.