

9-11-07

Local & Munl. (1896) Department.

MISCELLANEOUS.

G.O., No.

1607 M

DATED

19-9-96

INDEXED.

[Despatch Abstract.]

Encroachment Communicating to the Collector of Berhampore  
the opinion of the Advocate General regarding the  
question of — on a public street.

# BACK PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|------|-----|-------------|-------|
|      |     |             |       |      |     |             |       |

# FURTHER PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|------|-----|-------------|-------|
|      |     |             |       |      |     |             |       |

[L. & M.]  
300-5-8-96.

Local & Munl. (1896) Department.

PR  
CURRENT No. 2358

Ch 02 19 29 x 2358m

Hu  
misc

Order

No. 1607 muni 7 19-9-96.

The Advocate-General's

opinion will be communicated to  
the Collector of Bellary.

From The Govt. Solicitor,  
Madras.

No. 383

Dated 11-8-96

Received 17-8-96

Registered 18-8-96

Enclosures 2/1929/96 m

Spare copies

SUBJECT.

Forwarding the opinion of the  
Advocate General regarding the ques-  
tion of encroachment on a street.

To  
The Collector of Bellary. Pof 11  
Lot 23 + 0.  
Supd 24/9/96

Note: The return of go. no. 344 of 7th January 1896, (H)  
was put up with the Congressam and  
Report for 95-96, had to be awaited.

# BACK PAPERS.

| G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|
|      |     |             |       |
|      |     |             |       |
|      |     |             |       |
|      |     |             |       |

# FURTHER PAPERS.

| G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|
|      |     |             |       |
|      |     |             |       |
|      |     |             |       |
|      |     |             |       |

No. 2383.

BELLARY COLLECTOR'S OFFICE.

Dated 20 July 1896.

FROM

*E. Scott Esq.*  
COLLECTOR OF  
BELLARY.

TO

THE Chief Secretary to Government  
Local and Municipal Department  
Madras

SIR,

With reference to Government Order no. 863 dated 21st May 1896, I have the honor to invite the attention of Government to a case (Ahmedabad Municipality versus Manilal Adenath) reported on page 212 Indian Law Report Bombay, where it was held that under section 42 of the Bombay District Municipal Act, a municipality could remove any obstruction or encroachment on a public street, no matter when made. Section 42 of the Bombay Act is similar to section 168 of the Madras District Municipalities Act, and it would therefore appear doubtful if the opinion of the Advocate General is correct. Recently in the case of an encroachment in the Ongole Municipality, the Municipal Council ordered the removal of the encroachment under section 168, though it was alleged to be of more than 12 years standing, on my pointing out the Bombay ruling above referred to.

I have the honor to be  
Yours most obedient servant  
*[Signature]*  
Collector

REVENUE DEPARTMENT.

CURRENT No. 1929-4

THE COLLECTOR OF  
BELLARY.

THE Chief Secretary to Govt.  
Local & Municipal Dept  
Madras

No. 2383

Dated 20

Despatched

DESPATCHED

2 JUL 96

Received

Enclosures.

Abstract.

Encroachments in Municipalities

Inviting attention of Government  
to the ruling of Bombay High  
Court in a case in  
Ahmedabad Municipality

TO BE RETURNED  
WITH REPLY.

No. 924

Referred to Advocate General

for remarks.

By order

W. S. Sullivan

Assistant Secretary

15/7/96  
15/8/96  
August

To the Government Solicitor

Re the Collector of Bellary's letter dated 2nd July 1896.

OPINION.

Local Municipal Dept.  
2358

1. In the Ahmedabad Municipality V. Manilal Udenath the question of limitation was not raised, and, according to the learned Chief Justice, that plea could not arise because an encroachment on a street "is a recurring nuisance". In City Civil Court Appeal No. 14 of 1895, the Madras High Court held that such an encroachment is not a continuing wrong, but a completed trespass. Upon this question, the opinions of the two High Courts are, therefore, diametrically opposed. The probabilities are that the Madras High Court will adhere to the opinion it has expressed.

2. In para 4 of my opinion dated the 13th December 1895, I pointed out that in the Madras case the plaintiffs did not contend that the Municipality hold in trust for Government for the purposes of the Act, and that consequently the period of limitation must be 60 years. Such a contention was also not urged in the Bombay case.

3. The question put to me was - can the occupiers of encroachments of long standing be evicted by a Municipality? I was of opinion that (a) a Municipality cannot sue on behalf of the Secretary of State for India, therefore that Article 149, Schedule II of the Limitation Act does not apply; (b) that an encroachment on a public Street is not a "continuing wrong" but a "trespass", according to the decision of the Madras High Court, and limitation begins to run from the date of the trespass; and that (c) the period of limitation is 12 years, not 60 years. In short, the question I had to consider was the question of limitation with reference to the decision of the Madras High Court.

4. As the Bombay High Court held that the question of limitation did not arise, all it had to do was to interpret Sections 42, Clause 1, and Section 48 of Bombay Act VI of 1873, and declare the power under that Act of a District Municipality to remove obstructions. My opinion is untouched by this decision, and I adhere to my opinion.

Madras  
11th August 1896.

J.H. Spring Branson  
Advocate General.

(True Copy)

Ernest Barker  
Government Solicitor

(1896) Department

From

Ernest Barclay  
Government Solicitor  
Madras

FROM

T

To

T

To  
The Chief Secretary to  
Government  
Cotacamund

CHIEF SECRETARY  
13 AUG. 1896  
GOVERNMENT OF MADRAS

Date

Desp

Rece

N<sup>o</sup> 383

Dated 11<sup>th</sup> August 1896  
Recd

Enc

In

to

Cor

At

No

for

Forwarded with enclosure  
with reference to the Order  
of Government N<sup>o</sup> 921 dated  
7<sup>th</sup> August 1896. Local &  
Municipal Department

Ernest Barclay  
Government Solicitor

Given for copying  
Copied 11/3/96  
Examined W. H. H.  
Signed W. H. H. 1896

IN G.O., No.  
189

DATED

T No.

CLOSURES TO C. No.

ORDER OF GOVERNMENT .. ..

A A A A A A A

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  
F = Copy abstract only.  
Q = Copy heading only.