

L. & M.
P. 000-2-8-9

Local & Munl. (1896) Department.

MISCELLANEOUS.

G.O., No. 34 M.

DATED 1st January 1896

[Despatch Abstract.]

Encroachments

Recording, with remark, letter from the Government
Solicitor forwarding opinion of the Advocate-General on the ques-
tion whether the occupiers of --- of longstanding can be evicted
by the municipality.

BACK PAPERS.

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

FURTHER PAPERS.

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

Local (1895) Department
CURRENT No. 3475
Ernest Barclay
Government Solicitor
Madras

C.S.

Misc.

Order No. 34 mins 87-1-95

To
The Chief Secretary to
Government
Madras

Records pending
further report after
delivery of judgment in
the case referred to by
the Advocate-General

No 733

Date 14 December 1895
Recd.

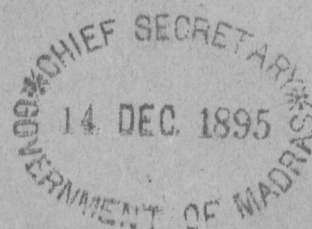
V.R.
29/12/95

W.S.

27. XII. 95

20

6/1/96.



Forwarded with reference
to the Order of Government
dated 25 November 1895 to
No 1682. Local and Municipal The Advocate-General.
Department.

Ernest Barclay
Government Solicitor

Copy 9/1/96

(With order)

20.12.95

1. The question referred to me is "Whether the occupiers of encroachments of long standing can be evicted by the Municipality"?
2. This was the question raised in Municipal Commissioners for City of Madras vs C. Sarangapany Moodelly O. S. 160 of 1894 in the Madras City Civil Court. On the 15th March 1895, that Court decided that "the land covered by the defendant's pial and pavement having been in exclusive and adverse possession of the defendant and his predecessors in title for more than 45 years, the same must be presumed to be his private property, and as such it does not form part of a public street, and is not vested in, and does not belong to, the plaintiffs. Secondly, that, even if the land had at one time belonged to the plaintiffs, their claim is lost by the operation of the law of limitation. And thirdly, even if the land had not originally belonged to the defendant, he has now acquired a right thereto under the law of prescription".
3. Against the decree in the above case, the Plaintiffs appealed to the High Court (City Civil Court Appeal No. 14 of 1895). That Appeal was heard on the 5th instant by the Chief Justice and Parker, J, who reserved judgment.
4. The plaintiffs contended inter alia that those who derive title from Government are entitled to the same period of limitation as the Government itself; but they do not appear to have argued, in support of their contention, that as Government can declare that any property vested in the Municipality by them, may by them be declared to have ceased to be so vested, the Municipality must be held to hold in trust for Government for the purposes of the Act, and that consequently the period of limitation must be 60 years.
5. The plaintiffs further contended that no prescriptive right can be acquired on a public highway & that even if such right can be acquired the period therefor is 60 years, but the City Civil Court, with regard to this contention, said. "It has been held that a private individual can acquire a prescriptive right against the Government property; and that Government is bound by the Rule of Prescription as

well as Limitation".

6. In Hanumayya -vs- Roupell, the High Court held that -
where Commissioners assume the right to interfere with pials which
are prima facie private property, they can only justify their action
by showing that the pials are not really private property. The burden
of proof is, in the first instance, upon them. Mere proof that the
public use the lane in which the alleged encroachment exists, is not
proof of the encroachment. See also Krishnayya -v- The Bellary
Municipal Council. I.L.R, 15 M 292 .

7. As the judgment of the High Court will be an authorita-
-tive ruling on the question, I have the honor to suggest that the
further consideration thereof be postponed until that judgment has
been delivered.

M a d r a s,
13th December 1895.

J. H. Spring Branson,
Advocate General.

(True Copy)

Ernest Barclay
Government Solicitor.

When given ^{copying} _____
When copied _____ } 189
When examined _____
When signed _____

READ AGAIN G.O., No. _____ DATED _____
189 ,

CURRENT No. _____

ENCLOSURES TO C. No. _____

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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IN ORIGINAL.

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No. 364

, dated

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