PR

[L. & M. / 9,000-3-3-96.]

Local & Munl. (1896) Department.

MISCELLANEOUS.

G.O., No. 618M

DATED 2nd April 1896

[Despatch Abstract.]

Kiln burning on private land within Municipal limits.

Informing the Municipal Council Ootacamund that it is now too late to consider the point of ---- in connection with the Bill which is now before the Legislative Council to amend Act IV of 1884.

BACK PAPERS.

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

FURTHER PAPERS.

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

No. 4426
10·2·96.

To

The Chairman
Ootacamund Municipal Council

Sir,

I beg to report that in spite of my repeated warning to take out a license for the brick kiln Mrs. Price has this day set fire to a kiln in the BellaVista Compound. Please advise. also another kiln is getting ready

(Sd) C. J. Harvey
17·12·95.
Sanitary Inspector

Ootacamund
No. 3838.
19th December 1895.

From
The Chairman
Municipal Council
Ootacamund

To
The Honorable Mrs. A. Price
c/o The Honorable Mr. J. J. Price C.S.I
Adyar, Madras.

Madam,

The Sanitary Inspector having reported that you have without taking out a license as required by Section 188 (1) Madras Act IV of 1884 burnt a brick kiln and are preparing to

burn

burn other kilns at Trengwainton, I have the honor to request that you will be good enough to favor me with an explanation on the point.

I have &c.

(Sd) Geo. Hannett

Chairman

Southwick

20. January 1896.

From

Mrs J. F. Price

Sir,

In reply to your no. 3838 dated 19th ultimo I write to state that I am advised that it is unnecessary for persons burning bricks or tiles on their own land for their private use and not for sale to take out a license under the District Municipal Act and that they can be prevented from burning such bricks or tiles only if their so doing is a nuisance. The kiln to which you refer was a nuisance in no sense of the word. I therefore considered that I was entitled to burn it without taking permission or applying for a license.

Yours faithfully

(Sd) Alice Price

Extract

No. 4426
10.2.96.

Extract from the Proceedings of a meeting of the Ootacamund Municipal Council held on Saturday the 8th February 1896.

Members Present

E. C. Rawson Esqre Presiding member

Maj. Genl. J. A. Tillard C.B.
M.R.Ry. M. Sankara Menon Avl.
G. F. Walch Esqre C.E.
Surgn. Lt. Col. H. D. Cook M.B.
J. Browne Esqre
M.R.Ry. P. Maruthachella Mudr. Avl.
" C. Rajagopal Naidoogaru
S. B. Manjee Sait Sahib
H. K. H. Fakir Mahomed Sait Sahib
G. Hannett Esqre C.I.E.

Subject No. IV.

Read letter from Mrs. J. F. Price dated 20th January 1896 stating that she is advised that it is unnecessary for persons burning bricks or tiles on their lands for their private use to take out licenses.

Resolution. The Council decides to ask Mr. Winterton to take Counsel's opinion on the subject.

(True Extract)

Municipal Office
Ootacamund 10. February 1896

(Sd) Geo. Hannett

Chairman

(True Copies)

G. Hannett

Chairman

MISCELLANEOUS LICENSE.

Under Section 169, 170, 171, 173, 180, 188, 191 (2) 229, or 242 of Act IV of 1884.

No. 300

Granted to ______

for ______

From ______ 189 , *to* ______ 189 .

Fee paid Rupees .—

Date of Credit ______ 189 .

Conditions :—

Cash keeper ______

Manager. *Chairman.*

Lawrence Asylum Press—Ooty Branch.

NOT TRANSFERABLE.

MISCELLANEOUS LICENSE.

UNDER SECTION 169, 170, 171, 173, 180 188, 191 (2), 229, OR 242 OF ACT IV OF 1884.

No. 300

Granted to ______

For ______

From ______ 189 , to ______ 189 , both days inclusiv

Fee Paid Rupees :—

Date of Credit ______

Conditions :—

Ootacamund Municipal Office, }
______ 189 . }

Manager.

Chairman

Municipal Coun

No. 4426
10-2-96

Extract from the Proceedings of a meeting of the Ootacamund Municipal Council held on Saturday the 8th February 1896.

Subject No. IV

Read letter from Mrs. J. D. Price dated 20th January 1896 stating that she is advised that it is unnecessary for persons burning bricks or tiles on their lands for their private use to take out licenses.

Resolution. The Council decides to ask Mr. Winterton to take Counsel's opinion on the subject.

(True Extract)

Municipal Office }
Ootacamund 10th February 1896 }

(Sd.) Geo. Manners
Chairman

Take notice of the provisions of the following Sections of Act IV of 1884.

Section 189. Whoever without such license, (License prescribed under Section 198) or after a license has been refused, cancelled or suspended, uses or permits to be used any place for any of the said purposes, or infringes any of the conditions under which such license is granted, shall be liable to a fine not exceeding Rs. 100, and to a further fine not exceeding Rs. 10 for every day after conviction during which the offence is continued.

Section 242. All grave-diggers and other attendants at a public burial or burning ground shall be licensed by the Municipal Council, and any person acting as such without such license shall be liable to a fine not exceeding Rs. 5. Such license may be withdrawn or cancelled at the discretion of the Municipal Council.

Section 263. If under this Act the license or written permission of the Chairman, or the Municipal Council is necessary for the doing of any act in respect of any property, moveable or immoveable, public or private, and if such act is done—

(i) without such license or permission, or

(ii) when such license or permission shall have been granted, in a manner inconsistent with or contrary to the terms of such license or permission,

And if no penalty has been specially provided in this Act for any act so done, the person doing such act shall, on conviction before a Magistrate, be liable to a fine not exceeding Rs. 50 for every such offence, and to a further fine not exceeding Rs. 10 for every day during which the said offence is continued after such conviction.

(2) And the Municipal Council may by notice, require any such person to alter, remove or as far as practicable, restore to its original state the whole or part of such property, within a time to be specified in such notice.

Fees at the rates specified in the following schedule shall be payable on all licenses, sanctions, permissions or registrations granted under the provisions of Act IV of 1884:—

Section 169. To put up verandahs, balconies, &c., not touching the ground.—Rs. 2-8-0 per 100 square feet per annum. No charge less than one rupee per annum.

To put up verandahs, balconies, &c., supported on the ground.—Rs. 5-0-0 per 100 square feet per annum. No charge less than one rupee per annum.

Section 170.	Temporary erections for every 20 feet square or part thereof *per diem*		Rs.	0	2	0
Section 171.	To put up scaffolding, &c.—Annas 0-8-0 for every 30 feet of frontage and 3 feet of breadth for 10 days. Re. 1-0-0 from 11 to 20 days, and Rs. 1-8-0 from 21 to 30 days and so on.					
Section 173.	Deposits in streets, &c.—Annas 0-8-0 per 100 square feet per day. No charge less than 2 annas a day.					
Section 180.	Every application to erect a building (building means any house, hut, shed, or roofed enclosure, whether used for the purpose of a human habitation or otherwise and also any wall)		Rs.	2	0	0
Section 188.	1. Places used permanently for burning bricks or tiles	(annually)	,,	25	0	0
	2. Places used for burning bricks or tiles for any period in excess of 24 hours		,,	5	0	0
	3. Pottery Kilns	(annually)	,,	5	0	
	4. Lime Kilns	(annually)	,,	5	0	0
	5. Distilleries and other manufactories such as Breweries, etc.	(annually)	,,	10	0	0
	6. Fire work factories	(annually)	,,	5	0	0
	7. Places for storing explosive or combustible materials	(annually)	,,	5	0	0
	8. Every place for depositing or washing soiled clothes, for boiling paddy, for melting tallow or sulphur, for boiling or storing offal, blood, bones, or rags, for washing or drying wool or hair, every soap house, dyeing house or yard, camphor or oil boiling house, oil-mill or press, tannery, sago factory and every place for storing hides, fish, horns, or skins	(annually)	,,	5	0	0
	9. Livery or hack-stables, Veterinary infirmary	(annually)	,,	10	0	0
	10. Public cartstands and halting grounds	(annually)	,,	5	0	0
	11. Cattle sheds or yards in which 20 sheep or goats or 10 head of cattle or 10 pigs are kept or allowed to be together	(annually)	,,	2	8	0
	12. Every separate place or portion of any place used for the sale or for the storage of wood, firewood, thatching material, hay, grass, straw or coal for every one hundred superficial feet	(annually)	,,	0	4	0
	13. Bake house	(annually)	,,	5	0	0
Section 191 (2)	14. Slaughter house	(annually)	,,	50	0	0
Section 229 (*a*)	For removing sand or earth from land or stream within Municipal limits—One cart load		,,	0	2	0
	One bullock load		,,	0	0	3
(*b*)	For removing granite stones or blue metal from land or streams within Municipal limits		,,	0	8	0
Section 242.	15. Every grave digger or other attendant at a public burial or burning ground	(annually)	,,	1	0	0

Opinion.

Apart from the headings "Offensive and dangerous trades" and from the marginal notes to Section 188, I should have been of opinion that a license ought to be taken out in respect of a kiln used to make bricks for the private use of the owner. The proviso refers specifically to the case where the storage of wood &c. mentioned in paragraph 3 of Section 188 is for private use: and from Section 3 clause XXIII it is apparent that a bathe-house need not be licensed under paragraph 4 of Section 188 unless profit is sought from the bathing. On the other hand in the case of a brick kiln, the obligation to take out a license is not limited by any like provisions whether expressed in the Section or in the interpretation clause. Thus but for the heading and marginal notes referred to above it would be, I think, difficult to find a satisfactory answer to the requisition of the Municipality that a license should be taken out.

2 Such an answer might be sought (1) in the argument that the act cannot be taken to give the Municipality authority to interfere with a man's right to use his property as he will, provided he does not interfere with the convenience of the public I.L.R. 15 Mad; 294 — but this argument could not prevail against express terms in the Sectio

(2) in the argument that the words "from which ither offensive or unwholesome smells arise" are tended to be connected with the words " rick-kiln &c." but even if they are so intended hich is not clear it does not follow that the smell must necessarily amount to a public nuisance or (3) in the argument that it would be absurd to require with reference to the first ords of the clause, that the owner of a house who has his own clothes washed or his paddy boiled in his house is bound to take out a license. but such absurdity if suggested could be got over I think by putting a reasonable construction on the expression "place used for any of the following purposes". Obviously the place occupied by a brick kiln is exclusively and continuously used for the purpose of the kiln.

3. But the interpretation which I have put on the Section is not so obviously right as to justify me in advising that the Court would adopt it supposing that the marginal notes can be taken into consideration that they point to a different but nevertheless possible interpretation.

4. The best opinion seems to be that such notes can be taken into consideration (I.L.R 13 Mad; 185 I.L.R. 20 Calc: 628), and they certainly point to the interpretation contended for by Mrs. Price — for the word "trade" indicates something more than the private use of the owner : occupier See Harris v Amery 35 L.J. P. 92 — namely that the Municipality cannot

require

require an occupier of land who makes bricks for his own use to take out a license. Moreover to my mind there is nothing in the text which is so clearly inconsistent with this interpretation, as to render it an impossible interpretation for the Court to adopt.

5. I must advise accordingly that the Municipality should take no steps with regard to Mrs. Price's kilns unless they become a nuisance in which case of course she can be indicted

High Court
Madras

Sd/ K. Brown
26th Feb: 1896

True Copy

No. 4707.

Ootacamund Municipal Office,

3rd March 1896.

Local & Municipal Dept.
CURRENT No. 792 M

FROM

THE CHAIRMAN,
MUNICIPAL COUNCIL,
OOTACAMUND.

Enclosures Three

To

The Honorable J. F. Price C. S. I.
Chief Secretary to the Government
Fort Saint George.

Sir,

I have the honor, by desire of the Ootacamund Municipal Council, to submit for the consideration of His Excellency the Governor in Council, in connection with the amended Municipal bill now before the Legislative Council, the papers[×] marginally noted, relating to the burning of bricks by private persons on their own lands within municipal limits without a license.

[×] From Sanitary Inspector Harvey dated 17th December 1895
To Mrs. J. F. Price No. 3838 dated 19th December 1895
From J. F. Price dated 2nd January 1896.
Extract from Proceedings of a meeting of the municipal Council dated 8th February 1696.
One blank form of License
Opinion of Mr. Kenwathy Brown dated 26th February 1896.

2. Under the District Municipalities act No. IV of 1884 Section 188, and with the approval and sanction of the Government, this Municipality in common with other Municipalities in the Presidency, has for a long time been levying a fee of Rs 25 – annually for places used permanently for

burning

burning bricks or tiles, and Rs5 for places used for burning bricks or tiles for any period in excess of 24 hours. For pottery kilns annually Rs5, and for Lime kilns Rs5.

3. On the 17th December 1895, Sanitary Inspector C. F. Harvey reported that Mrs. J. F. Price — without taking out a license burnt a kiln of bricks at Bella Vista (now Trengwainton) within the town, and was arranging to burn another kiln.

4. Mrs. Price was informed of the report, and was asked to favor the Chairman with an explanation on the point.

Letter dated 19th December 1895.

5. Mrs. Price replied stating that she was advised that it was "unnecessary for persons burning bricks on their own lands for their private use and not for sale to take out a license under the District Municipalities act, and that they can be prevented from burning such bricks or tiles only if their so doing is a nuisance".

Letter dated 20: January 1896.

6. The Municipal Council at its meeting on the 8th February 1896 decided to ask its solicitor, Mr. Winterton, to take Counsel's opinion on the subject.

7. Mr. Kenworthy Brown, the Counsel, in his "opinion" dated the 26th February 1896, states "that the Municipality cannot require an occupier of land who makes bricks for his own use to take out a license;" and he advises "that the Municipality should take no steps with regard to Mrs. Price's kilns unless they become a nuisance in which case of course she can be indicted".

I have the honor to be
Sir,
Your most obedient Servant

E. Hammett
Chairman.

Local & Municipal Dep't
CURRENT No. 792 M
1896.

From,

The Chairman
Municipal Council
Ootacamund

To
The Chief Secretary to Government
Local & Municipal Department
Fort St. George

CHIEF SECRETARY
5. MAR. 1896
GOVERNMENT OF MADRAS

Dated 3rd
Desp'd 3rd } March 1896.
Received

Enclosures. Three

Subject
Burning bricks without license

Submitting for orders of H. E. the Governor in Council, papers relating to the ______ ______ within the municipal limits, in their own lands.

(For orders)

Cur 1147 M/96
1379 Mis. 28-8-91

For orders

H. M.

Submitted that the Council may be informed that Govt. is not prepared to give advice on such questions.

VR 24/3

WWS
25.3-96

H. M.

The Mty. does not ask advice on this particular case, but wishes the point to be considered in connection with the amending Act now on the legislative anvil.

Assuming the law to be properly interpreted by Mr. Kenworthy Brown, it seems desirable that it shd be amended so as to cover the case of Kilnburning on private land within Mun. limits.

S. R. 27. 3. 6

It is too late, I consider, for this point to be taken up now. After all the occasional burning of a brick kiln on private land is not a very serious matter. If it is a nuisance to any one, the Cts are open — let them appeal unto Caesar.

13/3. 8/4/3

To
The Chairman M.C., Ootacamund.
Desp'd 7/4/96

CS-

No. 618 Mis. 2-4-96

Order.

The Council will be informed that it is now too late to consider this point in connection with the Bill which is now before the Leg. Council to amend ~~Act~~ Act IV of 1884 (C).

~~The occasional burning of a brick-kiln on private land is not a very serious matter; if it becomes a nuisance recourse can always be had to the Courts of Law to aid it.~~

(from orders)

WWS
1. 4. 96

S. R. 1. 4. 96

2-4-96
618 [illegible]

Kiln burning on private land within munl. limits

Informing the municipal council [illegible] that it is now too late to consider the point of —— in connection with the Bill which is now before the Legislative Council to amend Act IV of 1884.

Burning of brick kilns on private land.

8

(Form orders)

C.S.

6182

Nil

Read again Order of Government, dated
189 , No. , Miscellaneous.

Enclosures.

Current No.

Statement with ditto.

Order of Government

Statement with ditto.

Papers not filed up, being meant for despatch in original (not paged).

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

Back Paper, No. of 189 .

Further Paper, No. of 189 .

Copied by [illegible]

Examined by

[7]

INDEXED.

Miscellaneous.

LOCAL AND MUNICIPAL DEPT.

G.O., DATED 2-4-96.
No. 618 Mu.

When given for copying.

[Despatch Abstract.]

Kiln burning on private land within munl. limits

Informing the Municipal council Ootacamund that it is now too late to consider the point of ——— in connection with the Bill which is now before the Legislative Council to amend act IV of 1884.

Signed 6/4

Land.

When given for copying ______
When copied ______
When examined ______
When signed ______
} 189 .

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.

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.