Local & Munl. (1896) Department.

PRINTED.

G.O., No. 863 M

DATED 21st May 1896

[Despatch Abstract.]

Encroachments.

Passing orders on the subject of ---- in the Conjeeveram 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.

Read - also before papers

Reference on No. 97 of 1895.
Municipal

Chingleput district Collector's
Camp Karunguzhi dated 30th September

Local & Municipal Dept.
CURRENT No.

From

C. H. Mounsey Esquire
Ag. Collector of the
Chingleput district.

To

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

Sir,

I have the honour to report, as directed in G. O. of the 26th June 1895, No. 1024 M. Mis: upon the action taken upon that order which instructed me to depute the Sub Collector to proceed to Conjeeveram and take the necessary steps for removal of encroachments upon street poramboke and to propose a system of rates on such encroachments

2. The order was received by me on the 8th July in camp and orders were drafted that day though they did not leave the office till the 11th July. In addition to directing the Sub Collector in the terms of the G. O., I asked him to report the dates on which the Chairman first issued notices to remove 'Korad

as

and to report all cases he found in which licenses had been given but not acted on and to be careful that no 'Koradus' were run up under pretension of such licenses by people after hearing of the order. I asked for an ad interim report on the 1st September and a final report; this was received at 7 p.m. last night. I asked also at the same time the Chairman of the Municipality to let me know the number of licenses not acted upon by the 1st July and the number he had withdrawn in consequence and also for an ad interim and final report.

3 On the 20th July the Sub Collector began work in Conjeeveram. On the 27th July he asked for instructions as to whether he was to inspect 'Koradus' built since 20th February 1889 (the date when Municipalities lost the power of transferring landed property without sanction) or all 'Koradus'; he also wished to know if he had to inspect only 'Koradus' or all encroachments. His letter Reference on No. 1200/Collector of 1895 dated 27th July was forwarded to you and the Sub Collector was directed on the 1st August to confine his attention to all encroachments since 20th February 1889.

6 15th/11m
19.9.95

4 From the 16th to the 20th August, I camped in Conjeeveram for the sake of seeing myself the difficulties that had to be overcome and of hearing the Municipality upon the subject as I expected that they would wish to interview me. At their request on the 19th August, I received 16 of the Municipal Councillors. They asked me to transmit their views to Government. These I may briefly précis as follows:-

"This is a holy but poor town and every house-holder wishes to make his house partake of the nature of a chuttram and so he builds upon public land, street poramboke, land that is not his private property, a 'Koradu' in front of his house to which the public have free right of access especially during festivals, as they are built for the pilgrims chiefly. These festivals occur 7 or 8 months a year. At other times the house-owner enjoys the use of them but not exclusively. The paimash measurements took no account of these 'Koradus', many of which were then in existence; the measurements for the breadth of a street were taken from the main wall of one house to the mainwall of the opposite house. The Municipality, after it was started, with a view to get houses into one line and to avoid projections allowed new 'Koradus' and pials to be built to some houses. To attempt to remove some of the old 'Koradus' which have been in existence 70 or 80 years will cause endless – law suits and loss to the Municipality. The Municipality in Mr Barlow's time lost a test case. There is no necessity to so remove them as the streets are wide enough – but of course

every

every pial that is seriously an obstruction to traffic, though such cases will be rare, should be removed. To prevent further encroachments the town should be surveyed by the Survey department and demarcated by the Municipality.

In regard to the rent proposed to be levied at the rate of six pies a square foot many houses paying Rs 2 house rent will have to pay 3 to 3½ times as much and some houses will be taxed Rs 30 to Rs 35. The Councillors decided that 'Koradus' should be taxed 8 annas and 4 annas per 100 square feet according to the importance of the street but this resolution was not passed willingly, but only to obey Government. To levy such a rent as is proposed will create great misery and put upon the town a burden too heavy to be borne, though there is no objection to charging a fair rent upon encroachments which are not 'Koradus' but which are put up for the purposes of trade for instance."

5 The Municipality requested that their views might be laid before Government "for justice and favourable consideration" so, ~~that~~ I take this opportunity of recording them.

6 In regard to the difficulties that had to be overcome Mr Buckley had represented to me demi-officially that the task he had before him was one greater than he could do ~~high~~ single handed. Putting upon one side the actual work of measuring and inquiring, there was no doubt much covert opposition from the Municipality to any action being taken. One Councillor indeed suggested as much; there should be no action another suggested that each case should be separately considered on its own merits, but finally they

did

did decide that the Chairman was to take action. After seeing on my inspection the time that was to be taken up in inquiring and measuring each case of Koradus presumably built upon strict poramboke, I addressed him the Sub Collector on the 27th August in directing him to confine himself for the present to reporting upon each case of encroachment that was actually objectionable except in so far as he had to report upon the rates to be levied. I thought it possible that this restriction would save him much trouble in enabling him to leave unobjectionable encroachments alone

7 On the 3rd September the Probationary Deputy Collector Mr R Ry C. Hanumanta Row was directed to work under the Sub Collector at Conjeeveram. At that time the Sub Collector was unavoidably absent on Revenue duties but on the 9th the Probationary Deputy Collector joined him and has

been

working with him ever since.

8 In reply to my call upon the Chairman for information in regard to licenses issued since February 1889 I received a reply on the 16th instant stating that 2387 passes had been issued for all kinds of construction and repairs and of these some 400 cases called for thorough inspection; that no licenses had been granted for construction of koradus since 30th April 1894 and that therefore none were in force had lapsed and that further report would be made after inspection which would last some time.

9 Except the Sub collector's report of the 28th instant, this is all the information I have. I send, his original ~~this~~ ~~a copy of his~~ report and enclosures. ~~As I found~~ myself, I am glad to state, that he has not spared himself in carrying out a complicated and difficult inquiry requiring the exercise of tact and the greatest patience.

patience. His report shows that his labours have not been of the lightest and I only regret that his work up to date ~~has~~ not been rewarded by any tangible result. This is explained by paras 6 and 8 of his letter. But if nothing ~~nothing~~ has yet ~~has~~ actually been done the information necessary to act upon has been collected to a large extent — vide the end of para 3 of the Sub Collector's report

10. In regard to the Sub Collector's remark that if eviction is illegal so is the levy of rent. — I should say that eviction (removal of a 'koradu') cannot be illegal if worked out under the provisions of the Criminal Procedure Code, that is, if the koradu to be removed is technically a nuisance by being upon a public thoroughfare especially when the Municipality as a body say these koradus are not originally put up in opposition to the rights of the public. But it may be highly inexpedient to order removal, whereas it may

be expedient to levy rent with the alternative of removal if rent be not paid. The difficulty I see is that Municipality cannot do so in cases of any koradu in existence of over 12 years though Government might be able to do so. This distinction between the rights of Government and of the Municipality in dealing with this question, I request, may not be lost sight of. It would be a pity to order the Municipality to levy a rate, to have the order disputed as against the Municipality in a civil Court and for a Municipality to lose their case. The vast majority of encroachments are far older than 12 years and I really don't see how the Municipality as a corporate body can touch them.

11. Lastly in regard to the rent to be levied the sub Collector suggests 4 annas for every square yard or part of a yard which he admits is a trifle

below

below the minimum rate proposed by Govt.

12 Mr. Buckley classifies Koradus in 3 sorts:—

1. Plain open koradus.

In regard to these if the builder or his representative admits in writing that he has no claim to them to the exclusion of the public I would suggest they be untaxed and removed at public expense if found to be ~~un~~objectionable. If the builder or his representative claims that they are his (presuming they are on street poramboke) and will not give an admission in writing I suggest that a test case be taken on the magisterial side by an order to remove one as a nuisance. If

Government is successful their points will be gained, if unsuccessful nothing will be lost as it will be proved Government has lost its right and the builder or his representative has the right to know fully his legal position. Supposing he claims a jury I think that a lawyer far above the reproach of being swayed by the wishes of Government should be selected as one of the honorary members. The Chairman would select his own man and an independant official might be the other

ii Opens 'koradus' with sarmanai.

These are clearly claimed as private property. If on street poramboke I should charge them at the rate Mr. Buckley suggests. If they object the matter can only be settled by a

a Civil or Criminal Court - I mean that the Government not the Municipality should charge them, government afterwards transferring the funds so collected, if they like, to the Municipality.

iii All covered encroachments:- I should devide these into permanent and temporary - the temporary ones being dealt with under ordinary license fees - but every thing however fragile in its erection to be considered a permanent one, if in existence more than a year and the fee to be 5 annas a square yard not 4 annas.

13. Lastly I support the Sub Collector in his opinion that it will be advisable to survey the town of Conjeeveram as soon as possible.

I have the honour to be,
Sir,
your most obedient servant.

C H Mounsey
Ag Collector.

PRBC
1/10

1895

Local & Municipal Dept.
u.s. CURRENT 3065 M

Cov 2947 dt/95
1024 M 26-6-95
1811 L 19-9-95

M

From

The Collector of the
Chingleput district

To

The Chief Secretary to Govt.
Local and Munl. Depts.
Madras.

Dated 30th September 1895
Despatched 1st October 1895.
Received 3 OCT. 95
Enclosures 3.

Reporting what action has been taken on G.O. No 1024 M. Mis: dated 26th June 1895 regarding encroachments in the Conjeeveram Municipality

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Enclosure No 2.

15

Chingleput Sub Collector's
Office. Camp. Conjeeveram
26.9.95

From

L E Buckley Esqr.
Ag Sub Collector of
Chingleput

To

The Chairman
Conjeeveram Municipal
Council.

Sir,

Adverting to G.O. of 26.6.95 No 1024 M. Mis, I have the honor to draw your attention to the condition of Aiyangar palayam Street. The eastern end of the street is comparatively broad, but the western end has been much encroached upon, so much so, indeed that a 30 ft road is only 10 ft or so in parts. I have made a most careful measurement of the street and find that positively every house (with its backyard) occupies a larger area than it is entitled to. The main walls of the houses appear to me to be built on the very limit of the sites. It will be a hard ship, I think, to enforce the removal of Verandas not more than 5 feet breadth, & I recommend that those at present existing may be allowed to stand on payment of rent as proposed in the G.O. The Koradus however are very objectionable & should be remove

If this is done the street will be of sufficient breadth for traffic 16 I request you to take steps for the removal of koradus at once. A list of these koradus will be forwarded shortly. The lanes between houses 23 & 24 & 12 & 13 have been encroached upon by about 3 ft and 1/2 feet respectively.

I have the honor to be
Sir
Your most obedient servant
(Sd) L E Buckley
Sub Collector.

(True Copy)

Britten
Sub Collector.

17

Chingleput
Sub Collector's Office,
Camp, Conjeeveram
8 September 1895.

1184
Department.
No. A/95
Coll.

From
L. E. Buckley, Esqr
Sub Collector of Chingleput Dist.

To
The Collector of the
Chingleput Dist.

Sir,

I have the honour to report what action has been taken upon G.O No. 1024 M. Mis dated 26.6.95. The G.O. was received by me on 12.7.95 and after disposing of cases already fixed for hearing I arrived in Conjeeveram on 20th July to carry out the order. I have since then spent 30 days on this work.

2 I called for lists of alienations and permission to repair. The list was prepared in the Municipa office first for Aiyangarpalaiyam street in the 1st Division. This street was selected quite by accident, but shows excellently the way in which encroachments have been allowed to grow unchecked. The street is only about 250 yards long but it took me no less than 5 day to find out what the encroachments were. I had the greatest difficulty in making ~~the~~

a start. The only account of individual holdings is the paimash record; ~~for~~ & I could at first find nothing definite from which to make my measurements. I found that in the eastern end of the street the encroachments were usually small, and not of a very permanent nature, and not very objectionable, but towards the west matters grew worse, for the en:croachments became larger, and the Koradus &c were constructed of brick and stone in Chunam.

The street is situated at the extreme edge of the town. The village nattam has been marked into 4 or 5 big fields; the field in which Ariyangarpaliam street lies is about 200 acres in extent and covered with buildings. I tried to begin work from the boundary stones of this village site which are to be found in places at the extremity of the backyards on the northern side. I worked r a very considerable time without success nd I was then politely informed by a bystander that I couldn't expect any measure:ment based upon the survey stones to be correct as Ramasami had removed them some years ago. Indeed throughout the town survey stones have been removed or transplanted with the most consummate impudence. I spent one whole morning with Mr. Benson, Dy Director of Land Records, and many other hours trying replace the stones at the back of Ariyangar-paliam street. I found that the only way to arrive at a definite conclusion

2 was by making an independent street survey of things as they exist. I enclose a rough sketch which will give an idea of what I did (Enclosure 1).

I enclose a copy of the letter I sent to the Chairman on the result of my labours (Enclosure 2). I enclosed a list of 41 Koradus which I considered should be removed. At the Council's meeting on 26.7.95 the Chairman was empowered to issue notices under sections 168, 263 of the act to the persons responsible for the encroachments. Subsequently on 31-7-95 I sent similar lists for 3 other streets. I trust I don't weary you through having gone with some detail into the work I did. I have done so, in order that you may realize the difficulties I had to face. To measure up one street it took me 5 days working 4 hours every morning.

3 My investigations showed me that the great majority of houses in the town had encroachments attached to them, and that this would mean inspecting and measuring up thousands of houses. I therefore asked for instructions in my Ref: num. $\frac{1200}{\text{C.Mr}}$ of 95 dated 27.7.95. Pending the orders of Government, and with your permission, I left Conjeevaram on August 2nd in order to attend to my legitimate revenue duties which had fallen

considerably into arrears. No answer has been received officially as yet from Government, but at the beginning of this month I returned to Conjeeveram, and under your instructions have been inspecting the various alienations sanctioned by the Council since February 1889. The town is divided into 4 wards. I have inspected 3 up to date. The following is the result of my inspections:—

Ward	No. of cases on list	No. of Cases in which Prosecutions recommended for building contrary to terms of, or without license	Removal of steps leading to Koradus is recommended	Removal of pials Koradus &c is recommended
1	83	6	20	4
2	90	1	3	5
3	66	1	2	6
4	139 107	not yet inspected		
Total	346	8	25	25

58

4 I have also made detailed inspections of Addisonpet street—one of the leading thoroughfares in the town—in two portions, where the bazaars had encroached so as to be a nuisance. The notes of my inspection have been communicated to the Council in one case, and in ~~the~~ other case they will be communicated in a few days, as they are not yet quite complete.

5 Mr. Hanumanta Row, probationary Dy Collector arrived here on September. He had previously had no experience of Survey. It was to explain him what had to be done that I selected one of the worst portions of Addisonpet street for detailed enquiries. He was with me on this work for 2 or 3 mornings, and since then I have employed him in inspecting the two thousand and odd cases in which permission to rebuild or to build "according to plan" has been granted by the Municipality since February 1889. The work is progressing fairly.

6 Although the Council empowered the Chairman to take steps under the act at its meeting on 27-7-95, I directed that the notices should not be issued pending the orders of Government on my Reference $\frac{1200}{Collr}$ dd 27-7-95. Nearly all the encroachments mentioned in the list, on which the Chairman was empowered to take action, were constructed before February 1889.

7 The G.O under reference dwells upon encroachments that are to be removed and those that are to be allowed on rent. The attitude to be taken up with

regard to both these questions depends upon what determination the Government comes to in the question of limitation. The common belief is that if uninterrupted possession as against the Municipality is proved for 12 years, an encroacher cannot be evicted: with all due respect I beg to combat this view. If it is adopted, it will mean that only a very small proportion of objectionable encroachments can be removed without compensation, and that in only about 400 cases (probably less) out of ~~[illegible]~~ 4000 odd LS. ~~5000~~ [illegible] LS. can rent be levied for encroachments for if there is no power to remove there can be no power to charge rent. Section 22 of Act IV of 1884 empowers the Governor in Council to direct that property shall vest in a Municipal council: the same section, however, also provides that the Governor in Council may cancel such an order. This, I think shows that the transfer is not an outright conveyance, but that the Municipality only holds the property in trust on behalf of Government for the purpose of carrying out the provisions of the Act. The Municipality has no absolute ownership in the land, and consequently no individual can obtain from the Municipality a title, which the Municipality itself does not possess.

Consequently all claims to land by prescription must be preferred against the Government, and in such cases the period of limitation is 60 years. Let us suppose a case: A having encroached upon and occupied land for more than 12 years, B, a Municipality tries to turn him out under the act. A flies to the Civil Court. The Civil Court says A has over 12 years' possession and gives the suit in his favour against B. Subsequently B is dissolved under Section 22 of Act IV of 1884. What is A's position as against Government if he has occupied the land for less than 60 years? There is now a case in which the Municipality has been unable to oust an encroacher in the Civil Courts, though the encroachment is highly objectionable. I have already expressed my opinion on the question of Limitation in para 3 of my 1884 of 95 dd 28.6.95. In this connection, I beg to invite your attention to Section 168 of Act IV of 1884 which runs as follows:—

Jud. D. 17167 / 19-7-95

(1) The Municipal Council may cause any projection, encroachment, or obstruction made against or in front of any building or land in any public street before the coming into operation of this Act, to be removed or altered as they think fit.

(2) × × ×

(3) If such projection, encroachment,

or obstruction shall have been lawfully made, the Municipal Council shall make reasonable compensation to every person who suffers damage by such removal or alteration.

I presume all encroachments made prior to the Act must be considered to have been unlawfully made, unless the occupiers can produce permission granted by a competent authority to occupy the land in the first instance. Usually the only title to be relied upon, if any documentary evidence is forthcoming, is a sale deed from some other person; but of course no vendor can transfer a better title than he possesses himself. I am not confident but I feel fairly certain that Civil Courts ignore this Section, in favour of the limitation act. Can this section override the limitation act? If so there is no limitation at all, not even 60 years.

8 Until a definite policy is prescribed with regard to this question of limitation, it is I consider, inadvisable to issue notices for removal to any persons other than those whose occupation has commenced since February 1889. It is practically impossible to discover to any great degree what other encroachments have been made within 12 years. I know that the G.O. has been discussed freely throughout the town and I have reason to believe that a plan

Vide G.Os. 1307L / 25-7-95 & 1716L / 19-9-95

of resistance has been organised, and that funds have been subscribed for the purpose. Every one of the notices issued where the occupier thinks he can prove 12 years' possession will be contested, in the hopes that the Municipality will be wearied out. I venture to propose that a definite policy be decided by Government as to the way in which claims are to be put forward and a test suit instituted. This should be done at once; for the paimash was 57 years ago; the 60 years limitation will be shortly be up, and the suit will probably go to the High Court if not to the Privy Council. I once more bring to your notice that if eviction is illegal, so also is the imposition of rent.

9 This leads to the consideration of what rent should be levied on encroachments, whose continuance is unobjectionable. The Government directs that the rent should not be less than 6 pies per square foot per annum. There has been a suggestion to charge different rates in different streets. It is extremely difficult to know how to differentiate. Encroachments on big streets cause less obstruction to the public than those in small streets, but the land encroached upon is probably more valuable. It is of course presumed that encroachments which are at all objectionable will be removed. I consider that the rate should be

or obstruction shall have

the Same throughout the town. The rate I propose is 4 annas for every square yard or portion thereof. This is, it is true, a trifle below the minimum rate suggested by Government, but it is probable that the actual incidence will run about 6 pies a square foot, as all fractions of a square yard will count as a square yard. I do not think it advisable to deal with smaller units than square yards.

10 It is a question whether different Classes of encroachments should be differently treated. I would classify encroachments as follows:—

(1) plain open Koradus
(2) Open Koradus with Sammanais (a sort of masonry sofa) across the ends.
(3) Covered encroachments

I believe the Municipal Councillors at the audience they had with you, represented that Koradus are not private property but are open to the public. I feel certain that if it was proposed to treat any specific Koradu as public property the individual to whose house the Koradu might be attached would not make this admission. The plain open Koradus (Class No 1) however, in many cases extend on the same level for a considerable distance in front of bazaars, and undoubtedly are used by the

I agree
C.H.M.
30-5-5

4

public frequenting the bazaars. This is the most unobjectionable form. Next comes Class 2. These are often raised high above the road; ~~and~~ at each end is raised a solid masonry couch or sofa; the raised Koradus are reached by flight of steps which also encroach on the streets. These are undoubtedly obstructions and are looked upon by the adjacent householders as private appurtenances to the house. Should Koradus with these masonry cross erections be charged additionally &c. The 3rd Class consists of all covered encroachments. The covering in of encroachments is, especially in narrow streets, an undoubted abuse, for the perflation of air is checked. For the erection of pandals the Council has recently decided to levy fees. These fees will have to be paid of course in addition to encroachment charges. I am not sure they are levied on the right principle. They are levied at 4 annas for each half year. The act seems to contemplate a fixed fee for each license, & not rates varying with the area covered. This of course presses hardest on the poorer classes who presumably have the smaller pandals. The man with ~~whom~~ a permanent superstructure however, will have no additional payment to make though his case ~~is~~ will be far more objectionable. Should such a man pay double or treble pandal fees in addition to encroachment rent or should ey pay encroachment rent at an increased rate?

Recently during my inspections I found hat many pandals had no licenses, and he remainder were continuing after the lapse of the licenses. I warned the offenders hat they were liable to prosecution if they kept pandals without licenses and told hem that if the pandals were removed no prosecution would ensue. Pandals came down that day throughout the own. Some of the leading men of the own spread abroad that no pandals were to be allowed in future, and a conspiracy was made to ~~shut~~ shut all bazaars next morning. This came to the ears of the authorities late at night. The conspiracy was broken up. Bazaars were opened next morning, and on learning that the order was "regulation ~~or~~ not prohibition" all went bout their business perfectly contented ith my action, but cursing bitterly those ho attempted to mislead them. I report his to show that there are difficulties ahead.

2 Before closing this report I desire bring to your notice 2 cases which stand out nspicuous among all.

(a) P. Sriranga Ammal possesses large garden to the South of Addisonpet Street

— one of the main thoroughfares of the town — In 1883 she applied for permission to build a line of shops in front of her garden and asked for a piece of street poramboke measuring 226 feet x 6 ft. This was granted by the Commissioners under the Chairmanship of Mr. Ratna Mudalier on 18th April 1883 for the sum of Rs 66. The land is all frontage & is probably worth Rs 150. I have not had an opportunity yet of completing my enquiries to my satisfaction but the following is the information I have acquired so far. It is liable to subsequent correction. The land taken up measures about 380 ft in length and varies in breadth from 7 ft on the east to 17 feet on the west. In addition to this there is a tuned koradu about 360 feet in length and 9 feet in breadth covered by pandals. The alienation and encroachment are by no means objectionable but they form I think a striking example of municipal apathy and neglect. If my figures are correct, the applicant, instead of 1356 sq feet has obtained 4560 sq feet covered by bazaars, plus 1440 sq ft covered by pandals. A further report on this will follow.

(b) Just behind the Car stand and to the east of it is a brick building projecting 20 ft x 15 ft erected by the Dharmakarthas of the temple to store temple property in. Its projection is scarcely objectionable as it lies just behind the Car stand. It appears at first sight not to be an encroachment as a Survey stone is placed just outside it and the building lies just on the edge of the Shrotriem village of Othapattadai. I have learnt by experience, however, not to trust a survey stone, until I have tested it. I tested this stone, and found it ought not to exist at all in its present position. One of the boundary stones of the Shrotriem is missing from its place about 60 or 70 yards away from the street, and I have no doubt that this stone has been transplanted to its present position to conceal the encroachment.

13 In conclusion I beg to bring to your notice that I have latterly been at work from 7 A.M. till 7 P.M. (sometimes later) with an interval of 1 hour or 1½ hour for a bath and breakfast, and that even though I have Mr. Hanumanta Row, to dispose of office routine, I cannot keep pace with my ordinary work, as long as I am expected to do the work the Municipality has neglected to do. The Survey party comes here I believe in April. I don't know if they will be ordered to measure things as they are or as they ought to be. I submit that they should measure up all encroachments. If orders are now issued on the question of limitation and of the rates at which encroachments are to be assessed are fixed, the Municipal Council can itself carry out the orders as soon as the Survey Department furnishes the necessary information, and the Divisional Officer will be free to devote his attention to his more legitimate duties.

I have the honour to be,

Sir,

Your most obedt. Servant

28

Sub Collector

Regr No 97 Municipal
30-9-95

DEPARTMENT.

FROM
THE Sub COLLECTOR OF
Chingleput Dt.

TO
THE Collector of
Chingleput Dt.

Dated 28
Despatched 28 September 1895.
Received

No. 1184/Collr/95

ENCLOSURES. 2

SUBJECT.

Reporting about the steps taken about the checking of encroachments in the Conjeeveram Municipality.

3/10/95

Office of the Municipal Coun
Conjeeveram 4th October 189

Local & [illegible] Dept.
CURRENT No. 33

Ref on No. 816/Eng of 1895.

From

M. R. Ry. A. Desika Chariar Avergal B.A.
Chairman Delegate, Municipal Coun
Conjeeveram.

To

C. H. Mounsey Esqre.
Collector of Chingleput Dist.
Saidapet.

Sir,

With reference to your reference on 97/Ml dated 10th July 1895, I have the honour to inform you that the number of licenses granted for the construction of Koradus, Koradus and Sarmanais (masonry sofas on Koradus) Top-over Koradus, mere Sarmanais on Koradus, Extension of Koradus and Sarmanais and steps beyond the Koradus and within the side-ditch from 20th February 1889 to 1st July 1895 is 176. Of this, 37 licenses were not acted upon, and these have been rendered inoperative under the following bye law in force from 3d November 1894.

"No license granted for the construction of any building under any section of the Act, shall have operation after six months from the date of granting it. This bye law shall also govern all licenses already granted."

2 As regards para 2, I beg to state that lists of licenses granted since 1889, are being prepared and furnished to the Sub Collector and to the Probationary Deputy Collector separately. The several observations made on the inspection notes of the Sub Collector are posted for the meeting to be held on the 5th Instant and the action taken thereupon will be communicated soon.

Local & Municipal Dept
CURRENT No. 3192 M

I have &c
(Signed) Desika Chariyar
Chairman Delegate

(True Copy)

Ref on No $\frac{97}{mpl}$ of 1895.

Submitted to the Chief Secretary to Government Local and Municipal Department, in continuation of this office letter Ref on No $\frac{97}{mpl}$ dated 30th September 1895. | Enc 3005 M/95

Chingleput District
Collector's office
Saidapet 9th October/95

C. H. Mounsey
Ag Collector

CR
10/10

Lo & Municipal Dept.
FROM CURRENT No. 3092 M

Cur 3005 [illegible]
650 [illegible] 24-5-96

36

THE COLLECTOR OF
Chingleput District

To,

THE Chief Secretary
to Government
Local & Municipal Depth
Madras.

Dated 9th October 1895.
12 OCT. 95
Recd 11

Report No. 97/mpl of 1895

ENCLOSURE

Subject.

Submitting copy of a letter from the Chairman Delegate Municipal Council Conjeeveram, reporting the number of licenses granted but not acted upon since Feby/89 up to 1st July/95.

37

LOCAL AND MUNICIPAL DEPARTMENT.

Again G.O., dated 26th June 1895, No. 1024 M.
Current No. 3005 M, of 1895, dated 30th September from the Collector of Chingleput
Current No. 3092 M. of 1895, dated 9th October from the do do

FOR ORDERS.

Please see the notes and orders in G.O. No. 1024 M, dated 26th June 1895.

2. In para. 8 of his letter the Collector states that 2,387 passes are reported to have been granted by the municipal council for all kinds of construction and repair, since February 1889, and that 400 of these called for thorough inspection. From the Sub-Collector's report it appears that 289 cases were examined by him in three of the four wards in the town. In eight of these he has recommended the prosecution of the houseowners for building contrary to the terms of the license or without permission, in 25 the removal of steps leading to Koradus & in 25 others, the removal of pials, Koradus &c.

The Sub-Collector states that

Let us hear what the Adv. Genl. says – Mr. Buckley's arguments should be stated in the refer.

M
14/11/95

Meanwhile please write Mr. Cardozo d.o. that this survey should be taken in hand as soon as possible – we will give offl. advice later

M.

that the question of limitation in regard to these encroachments should be first settled as it is not at all clear now.

He argues that the municipal council has no absolute title to the property in the public streets, that it holds the streets only in trust for the Government, that all claims by prescription must be preferred against Government, & that consequently, the period of limitation is 60 years & not twelve years as is generally supposed. The same question was raised by him in his letter dated 28th June 1895, in G.O. No. 1716L, dated 19th September 1895, in regard to encroachments on roads in Local Fund areas, but he was referred to G.O. No. 1307L, dated 25th July 1895, in which it has been held that adverse possession for over twelve years was enough to create a prescriptive right as against Local Boards.

Section 168 of the District Municipalities Act however says that municipal councils can

remove

remove the encroachments mad on public streets before its comin into operation, giving reasonable compensation to the persons affected, if the encroachment has been lawfully made. The question for consideration now is whethe this section overrides the Limitation Act in cases in which the encroachments have not been lawfully made, that is, witho the permission of the municipal councils or Government. *Vide* para. 7 of the Sub-Collector letter. The Collector suggests that action may be taken to remove the encroachments of more than twelve years standi by proceeding under the Criminal Procedure Code, but it i doubtful whether this can be done.

It is therefore submitted that

thee

40

these questions may be referred to the Advocate General for his opinion. A similar reference has just been made to him in regard to encroachments in the town of Madras — Vide G.O. No. 1821 M, d/ 1st November 1895.

3. The Sub Collector's recommendation to levy a rent of Annas 4 on every square yard of land encroached upon appears to be reasonable & may be accepted.

V.B.
/11/95

From the Sub-collector's letter it appears that many of the survey stones in the town have been shifted, & accordingly the work of discovering the encroachments is made much harder. His proposal to survey the town, which is supported by the Collector, may be considered.

W.W.P.

The Sub-Colr.'s 5/11/95 letter discloses a very

41

unsatisfactory state of things in Conjeeveram. The place seems full of encroachments which have been permitted right and left.

Mr. Buckley's argument seems to have considerable force in it; according to this view L. Bd. and Munl. Council hold only in trust for Govt. who and have no real title in sites and roads: this view is confirmed by the fact that Govt. can both give and take away control at any time.

I submit that the reference to the Advocate Genl. suggested in the Office Note may be made.

The rate of assessment suggested by Mr. Buckley appears to be very reasonable

J.D.
12/11/95.

FOR ORDERS.

3005 + 3092 M

[G./24.]
20[illegible]5-10-95.

43

DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No.
Current No. of 189 , dated , from
" " " 189 , " , "
" " " 189 , " , "

198

~~ORDER.~~

Refce 1682 / 25/11/95

Numerous instances of encroachment on the roads & streets in the municipality of Conjeevaram having lately been brought to the notice of the Govt., the question has been raised whether the occupiers of encroachments of long standing can be evicted by the municipality. This ~~question~~ point will be referred to the Advocate General for favour of his opinion with reference to the following remarks.

2. An occupation of 12 years is held to give a prescriptive right against the municipality, but sec. 22 of Act IV of 1884 empowers the Governor-in-Council to direct that certain property shall vest in a municipal Council, & also provides that he may cancel such

order. From this it would appear that the transfer is not an outright conveyance of property, but that the municipal council only holds the property in trust for Govt. for the purposes of the Act. The Council has ~~therefore~~ no absolute ownership, & no one can obtain from it by prescription a title, which the Council itself does not possess. Consequently claims to land by prescription must be preferred against Govt., & in such cases the period of limitation is 60 years.

3. Further Sec. 168 of Act IV of 1884 provides as follows

(1) The Municipal Council may cause any projection, encroachment . . . .

. . made before the coming into operation of this Act to be removed or altered as they think fit.

. . .

(3) If such encroachment... shall have been lawfully made the Municipal Council shall make reasonable compensation etc.

Can this section over-ride the Limitation Act with reference to encroachments ~~under~~ made before the passing of Act IV of 1884. If so, the question of limitation does not arise.

FROM ORDERS.

C. S.

[G./24.]
2(8)—10-95.

DEPARTMENT.

208

Papers to be read in proceedings :—

Again G.O , dated 189 , No.
Again G.O., dated 189 , No.
Current No. of 189 , dated , from
" " , 189 , " , "
" " , 189 , " , "

ORDER

4. A further point for consideration is whether these encroachments can be removed by proceeding under sec. 144 of the Crim. Proc. Code.

(from orders)

WWD
18/11/95

21/11/95

To
The Advocate General.

Desp. 25/11/95

Encroachments in Conjeeveram Muncy

46

N.E.

FROM ORDERS.

C. S.

1682
25-11-95

Reference to Adv. Genl

No. 1682 d 25th Nov. 1895

Copy [illegible] papers to L. [illegible] 22/11-

47

Local & Municipal Dept.
CURRENT No. 712 M

No. 89.

Madras 24th February 1896

21

From

Ernest Barclay
Government Solicitor
Madras

To

The Chief Secretary to Government
Madras

Sir

With reference to the order of Government dated 7th Ulto: No. 34 M. Mis: Local and Municipal Dept: I have the honor to forward herewith copy of further opinion of the Advocate General with reference to the last para of his opinion dated the 13th December 1895 in regard to the question referred to him by the order of Government dated 25th November 1895 No. 1682 Local and Municipal Department.

Items

I have the honor to be
Sir
Your obedient Servant
Ernest Barclay
Government Solicitor

Opinion

1. With reference to my opinion dated the 13th December 1895, I have the honor to state that in City Civil Court Appeal, No. 14 of 1895, the High Court confirmed the decree appealed against, and dismissed the appeal.

2. The High Court held that "a corporation is not entitled to claim the benefit of article 149 Schedule II of the Limitation Act. That article only applies to suits brought by or on behalf of the Secretary of State, and there is no authority for the proposition that when the Crown has once ceded property to an individual or corporation it does (or can) also cede at the same time any right or privilege inherent in the Sovereign power. The grantee of the property stands in respect of the property granted in the same position as any other proprietor."

3. With reference to the contention based on the English maxim "once a highway always a highway", their Lordships the Chief Justice & Parker J. held that the legal fiction on which that maxim is based, - did not arise," for there is no question of any easement whatsoever. The street itself and the soil thereof is vested in the Municipality in trust for the public, so that there is no question of a dominant or servient heritage. Both are united in the same person, i.e., in the proprietor, and we are referred to no authority for holding that the public, any more than a private proprietor, is to be exempted from the consequences of its own laches. - - The question is not really one of

a

a continuing wrong but of a completed trespass..... There is no evidence of any user by the public of a highway, of that portion of the property now covered by the pavement and pial.... Holding therefore that the defendant has by adverse possession for over twelve years acquired a legal title, we must confirm the decree of the learned Judge and dismiss the appeal with costs".

4. This decision disposes of the question of limitation which was submitted to me. Following that decision, I must reply to the questions put to me that the period of limitation and prescription applicable to the case of alleged encroachments on highways is 12 years from the date of the encroachment after the transfer of such highways by Government to Municipalities; and that after the lapse of that time the person who is alleged to have encroached cannot be evicted by the Municipality. Section 165 of Act IV of 1884 cannot override the Limitation Act.

5. These encroachments cannot be removed by proceeding under Section 144 of the Code of Criminal Procedure. That Section is the only one in Chapter XI a chapter which relates to "temporary orders in urgent cases of nuisance", and empowers certain classes of magistrates "to act under this section" where in his opinion "immediate prevention or speedy remedy is desirable". It does not enable a Municipality to obtain through the Criminal Courts a relief which it has lost in the Civil Courts. The existence of the alleged encroachment for over

twelve

twelve years unopposed, makes it impossible for any Magistrate to deal therewith under this section on the ground that it is an encroachment.

J. H. Spring Branson
Advocate General.

Madras.
24th February 1896}

(True Copy)

Ernest Barclay
Government Solicitor

CHIEF SECRETARY
24 FEB. 1896
GOVERNMENT OF MADRAS

1/712 Ms of 96

23½

[9]

LOCAL AND MUNICIPAL DEPARTMENT

Local & Municipal Dept.
CURRENT No. 712 M

57

34 M 7-1-96
Memo 1682/95
do - Supdt Revn Survey
2040 M 4-12-95
1821 M 1-11-95
1607 M 7-10-95
1024 M 26-6-95
1511 M 19-9-95

1716 L 19-9-95
1307 L 25-[illegible]-95
650 M

From
The Govt. Solicitor,
Madras.

No. 89

Dated 24-2-96
Received 25-2-96
Enclosures /

SUBJECT.

Forwarding copy of further opinion of the Advocate General with reference to G.O.No.1682 dated 25"November 1895.

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LOCAL AND MUNICIPAL DEPARTMENT.

Current No.

From

Again G.O.No.1024 M,dated 26" June 1895.
Current No.3005 Md/30" September 1895,from the Collector of Chingleput.
.. 3092 M of '95 d/9" October '95, ...
.. 712 M of 1896 d/ 24" Feb.,from the Government Solicitor,.

FOR ORDERS.

Please see the notes and orders on the first two of the letters read above and the reference to the Advocate General thereon. The last letter contains the opinion of the Advocate General on the three questions referred to him; from this it appears (1) that the period of limitation and prescription applicable to cases of alleged encroachments on highways is 12 years from the date of encroachment after the transfer of such highways to municipalities and that after the lapse of that time the person who is alleged to have encroached cannot be evicted.

(2) that section 165 of the District Municipalities Act cannot override the Limitation Act and

This is clear
E.T.

(3) that these encroachments cannot be removed by proceeding under section 144

of the Criminal Procedure Code.

2. The Sub Collector's recommendation to levy a rent of four annas on every square yard of land encroached upon may be approved and a formal order issued to the Superintendent Revenue Survey for undertaking the survey of the town. *

×Note

Please see para 9 of this letter

* The Supdt. has already informed Govt., demi-officially, that he will make early arrangements for this survey vide his D.O. of 27.11.95

V.R.
24/3/96

If encroachments of more than 12 years standing cannot be legally removed, it will be equally illegal to levy rent on them, as the occupiers have a prescriptive right. According therefore to the decision of the High Court, the only encroachments that can be dealt with are those constructed since 1884. As the Sub-collector says, it will be difficult to discover the encroachments made between 1884 & 1889, since which date transfers of immoveable property requires the sanction of Govt.; & therefore the encroachments since 1889 will be practically the only ones to be dealt with. ~~These~~ These have already been inspected by the Sub Collr., & recommendations as to their removal have been submitted (vide para 3) in the case of 3 wards. From para (4) of the Advocate Genl's opinion, recorded in G.O. 34 M of 7.1.96, it appears that all the arguments against the 12 years prescription were not brought before the High Court, notably the one that Govt. has not only the power to vest land in the Munpy. but also to remove the land again & resume it under its own control. This it is admitted has a most important bearing on the question. For instance – Suppose certain land was vested in a Municipality in 1884, & was then encroached upon. By 1896 the occupier wd have a prescriptive title against the Munty. If then in 1897 the Munty. were abolished & Govt. resumed the land formerly vested in the Munty., according to the recent decision of the Chief Justice & Parker J. the occupier wd. have acquired a prescriptive right against Govt. in 13 years, which he could not under ordinary circumstances acquire under 60 years. It might be advisable to try a test case to see whether this ruling would be ~~upheld~~ upheld by a full bench, as it is a question of very considerable importance.

WWD
27.3.96

But this is under the District Municipalities Act: See section 22 (2) of Act IV of 1884 Dist.

S.J.

Is any copy of the H. Ct. judgt. available?

28/6

No R 1/4

H.M. The decision of the H. Ct. on which the Adv. Gen. bases his opinion was under the City of Madras Municipal

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Act, not under the Dist. Mun^es Act.

It is somewhat strange that the Adv.-Gen. did not compare the Acts & observe that their vesting clauses are totally different. This might explain why the argument put to him in Reference no 1682 d 25.11.95 was, as he indicates in para 4 of his Opinion of ˣ13/12/95, not raised in the Madras case. Indeed the argument Ought to have been taken for the City Act I of 1884 gives no power to Govt., such as is given by sec^n 22 (probably also sec^n 23) of the District Act IV of 1884; to cancel or modify a vesting order & resume the property vested.

The vesting clause of the City Act (I of 84) is sec. 58 & it declares that "all property x x & all interest "therein, whether vested, contingent or "in remainder, which is, at the date "of the coming into operation of this "Act vested in or held in trust "for the late Comm^rs with all rights

Encroachments in the Conjeeveram municipality

FOR ORDERS.

ˣ G.O. 7.1.96 No. 34 M.

50

"which are at such date enjoyed by "the late Comm^rs shall, on the "coming into operation of this Act "be vested in the Comm^r x x"

To ascertain precisely the extent of the interests & rights so vested, I have followed up the series of Acts, successively repealed, relating to the Madras City. Each of these Acts contains similar provisions [Act V of 1878, s 58; Act IX of 1867, s. 5; Act IX of 1865, s 5], until finally we come to the first true Municipal Act, XIV of 1856, which, after in sec. 4 transferring to the new Mun. Comm^rs all property purchased or otherwise acquired by the former Conservancy Comm^rs ˣ, goes on by sec. 5 to declare:– "All public streets & "roads (not being the property of the E. "I. Coy. and kept under the control "of the Loc. Gov^t) existing at the "time of the passing of this Act "or which shall afterwards be made, "& the pavements x x x & also all "erections x x x & other things provided "for such streets & roads, shall be "vested in & belong to the Comm^rs"

The original vesting clause

ˣ These derived their authority from an unnumbered & undated Regulation recited in the Sched. to the Act of 1856 as "A Rule Ordinances & Regulation, entitled "A Regulation for the cleanliness of the Town of Madras""
The Statute 52 Geo III s. 158 only empowered the Justices to appoint scavengers for the City.

is thus absolute with reference to all ~~[illegible]~~ property which is or has been since transferred or which has since come into existence. Neither that Act nor any subsequent Act authorized Govt. to ~~[illegible]~~ resume property once vested, or to remove it from the operation of the Act. Secns 129 & 130 of that Act, just as s.44 of the existing Act, required the sanction or consent of Govt. to the sale, of lands or abandoned roads (by the Commrs.); but that is quite a different thing from empowering the Govt. to resume vested property, or to alter its character.

The vesting clauses of the Distt. Mtcies Act (IV of 84) are secns 22 & 23. Sec. 22 empowers the G. in C., from time to time, by notifn, to direct that any property vested in Her Majesty shall vest in any Mun. C., & "thereupon "such property shall vest in that Mun. "C. for the purposes of this Act, subject "to all rights (if any) existing over, & all "xx obligations (if any) affecting such property. " The G. in C. may in like manner at any time cancel such notifn & pass such orders as to the disposal of such property as he may deem fit."

Section 23 refers to public streets & runs "All public streets in any Mty "xx shall vest in & belong to the Mil. "But it shall be competent to the G. in C. "from time to time by notifion to "exclude any street from the operation "of the Act, & to modify or cancel such "notifn."

These two sections are not quite on all fours: section 22 seems to give Govt. an unfettered power to resume, inter alia, immovable property (other than public streets) vested in the Mty; while sec. 23, which relates to public streets only, authorizes Govt to exclude "from the operation of the Act" any street ~~[illegible]~~ which vests in the Mty.; it is doubtful whether this involves the reversion of the property in, or the solum of the street to Govt., but the point ~~[illegible]~~ is important.

Section 13 of the preceding Act III of 1871 (B.) (as well as sec 11 of the earlier Act X of 1865) uses the same language as sec. 23 of Act IV of 1884. But sec. 3 of that Act which corresponds to sec 22 of the Act of 1884, so far as other immovable property is concerned, contains no divesting power such as is cont: in the latest enactment.

The Dist. Mun. Acts contains no clause requiring the sanction of Govt. to an alienation; but this has been provided for by a byelaw under Sec. 250 (1) g — vide G.O. No 210 M D. 20.2.89.

There are thus material differences between the Act under which the High Court case referred to by the A.G. was tried and the Dist. Mnes. Act. These differences shd. I think be brought to the A.G.'s notice so that his opinion may be based on grounds having advertance to these differences. It is quite possible that the final conclusion may be identical with the opinion now furnished; but at any rate we shall be on surer ground. Even if with reference to public streets vesting under Sec. 23 ~~they~~ it may be difficult to make out that we are not bound by a 12 years limitation, if that period has elapsed before Govt has intervened to withdraw the street from the operation of the Act, it may yet be easier to differentiate the case of encroachments on other landed property vested under Sec. 22, and this wd. be something to gain, for such encroachments are not seldom as important as the others.

The question then is whether there shall be a further reference to the A.G.?

S.V.K. 24.6

Encroachments in Municipa

I think so — on the grounds set out —

4/4/96

60

[G./24]
500—26-6-94.

DEPARTMENT.

Papers to be read in Proceedings :—

Again G. O., dated 189 , No.
Again G. O., dated 7—1 1896, No. 34 M
~~Current No. 3775 of 1895, dated 16th Dec. from Govt. Solicitor~~

Current No. 712 of 1896, dated 24th Feby from do.

~~ORDER.~~ Appr. 442/10/iv/96

The Advocate General appears to have based his opinion on the ~~[illegible]~~ decision of the High Court in the case of Municipal Commissioners for City of Madras v. C. Sarangapani Mudali:- This suit was brought under the Madras Municipality Act (I of 1884), whereas the question submitted for consideration in this office No 1682/25.11.95 arose under the District Municipalities Act (IV of 1884)

2. Under both acts ~~certain proper~~ provision is made for the vesting of property in the Municipality (Sec. 58 of Act I of 1884 & Secs. 22 & 23 of Act IV of 1884), but in the former there is no provision to enable Govt. to resume such property or withdraw it from the operation of the Act ~~under its own control~~, such as there is in the latter. Sec. 22 of the Dt. Mun. Act says: "The Gov-in-council may ... "by notification direct that any property "which is vested in Her Majesty xx shall "vest in any Mun. Council xx (2) The Gov-"in council may in like manner at any time cancel such "notification & pass such orders as to the "disposal of such property as he may deem fit."

Nb. Under this section therefore Govt., when vesting

order
property in a Mun. Council, retains ~~the~~
right to resume it at any time ~~[illegible]~~
~~hardly be said to have lost all interest~~
~~in the land. This being so it appears only~~
~~reasonable that the 60 years rule of limitation~~
~~should apply to such property~~.

it does not make an absolute cession or grant: otherwise the power reserved by clause 2 wd. be liable to be defeated at any time

Encroachments in Conjeeveram

(from orders)

Sec. 23 ~~say~~ specially refers to streets & says:—
"All public streets in any Muny. XXXX
"shall vest in & belong to the Mun-Council. But
"it shall be competent to the Gov.-in-Council
"from time to time by notification to exclude
"any street from the operation of the act & to modify or cancel such notification"

C.S.

It is not clear whether the difference of language employed in this section imports
~~From this it appears~~ that the power of
Govt. in the case of streets in a Muny. is
~~[illegible]~~ more restricted than it is in the
case of other immoveable property vested under sec 22, and ~~the~~
~~argument put forward above is would not~~
~~apply with equal force to streets; and it is doubtful~~ whether the words "excluding from the operation of the act" involves the reversion of the property in ~~or the soleness of~~ the street to Govt. ~~There is a point [illegible]~~ But if this proviso were held to be restricted in its operation to the short term of limitation open to a private individual, such construction wd. scarcely seem consistent with the ample power which the proviso was manifestly intended to reserve to Govt.

On the other hand under the City of Madras ~~[illegible]~~ Act (I of 1884) ~~the [illegible]~~ no right
of resumption or any power of excluding from the operation of the Act is
reserved to Govt.; ~~is contained in~~ sec. 444
merely ~~which~~ requiring the sanction of Govt. to the
sale of ~~lands, buildings etc.~~ vested property.

3. It will thus be seen that there are
material differences in the vesting clauses
of ~~[illegible]~~ the two Acts, & therefore the Advocate
General will now be requested to ~~state~~ consider
whether ~~having due regard to the above facts~~
~~he is still of opinion~~ ~~[illegible]~~ the ~~recent~~ High Court's decision,
referred to ~~by him~~ in his opinion of the 24.7.96
~~decision~~ on the question of limitation
under Act I of 1884 would apply ~~with~~ equally
~~[illegible]~~ to cases falling under Act IV of 1884;
and ~~if not to advise~~ whether it is desirable to test the
(from orders) qn. of limitation ~~by~~ on
a favourable occasion by suit brought
in connection with a Mofussal Muty.

WBD
8.4.96

C. B. [illegible] for C.S.

To
The Advocate General.

Dispd 10/iv/96

62

Local & Municipal Dept.
CURRENT No. 581 M

Madras 16th April 1896

From

The Hon'ble Mr. J. H. Spring Branson
Advocate General

To

The Chief Secretary to Government
Local & Municipal Department
Fort Saint George

Sir,

With reference to Memorandum, No. 442, L & M dated the 10th instant, I have the honor to forward herewith my opinion as to whether the High Court's decision in Municipal Commissioners for City of Madras v C. Sarangapani Mudali on the question of limitation under Act I of 1884 would apply equally to cases falling under Act IV of 1884.

I have the honor to be
Sir
Your most obedient servant
J. H. Spring Branson
Advocate General

442 om 10-4-96
1682 om 25-4-95
2040 M 4-12-95
210 M 20-4-89
1978 M 31-8-88

1611 M 19-9-95
1716 M 19-9-95
1307 Z 25-7-95
1024 M 26-6-95
650 M 24-5-94

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L... 1896 ...
PR. CURRENT No. 1181 M

From

The Advocate General
Madras

To,

The Chief Secretary to Govt:
Local & Municipal Dept:
Fort St George.

Dated 16th April
Despatched 17th.
Received 17 APR. 96

Encl. 1

Subject.

Forwarding opinion on the question as to whether the High Court's decision in Municipal Commissioners for City of Madras v. C. Sarangpani Mudali, in regard to limitation under Act I of 1884 would apply equally to cases falling under Act IV of 1884.

64
268

Opinion.

1. In the Memorandum "Local and Municipal Department" dated the 25th. November 1895, No 1682, the question raised was "whether the occupiers of encroachments of long standing can be evicted by the Municipality"

2. It was then, and is still contended that as Government can cancel the order vesting property in a Municipal Council, such property is held by the Council in trust for Government for the purposes of the Act but remains the property of Government, and that, therefore, the 60 years period of limitation applies. In my previous opinion I dissented from this view, and I still dissent.

3. A suit to evict trespassers from land which has vested in a Municipal Council by an order of Government under Act IV of 1884, cannot be brought on behalf of the Secretary of State for India. It is only to suits so brought that Article 149 Schedule II of the Limitation Act applies.

4. Such a suit must be brought by the Municipality on its own title as grantee. As grantee of the property the Municipality is "in the same position as any other proprietor," and is not entitled to claim the benefit of Article 149 Schedule II of the Limitation Act. The fact that the grant may be revoked at any time by the grantor, does not affect the question of the title upon which alone the grantee can sue.

5. I am of opinion that the High Court's decision in Municipal Commissioners for City of Madras v C. Sarangapani Mudali on the question of limitation under Act I of 1884 would apply equally to cases falling under Act IV of 1884.

6. Government is entitled to cancel the notification vesting property in a Municipal Council. If the power be exercised, no action relating to the property resumed by Government can be taken by the Municipal Council. Any suit to eject trespassers from such land would then have to be brought by Government, and the period of limitation would be 60 years.

J. H. Spring Branson.

Advocate General.

Madras
6th April
1896.

1/1181 M/96

LOCAL AND MUNICIPAL DEPARTMENT.

Again G.O., ~~dated~~ No. 1024. M. of 26th June 1895 ~~No.~~

Current No. 3005. M. of 1895, dated 30th September from the Collector of Chingleput.

Current No. 3092. M. of 1895, dated 9th October from the Do. ~~[illegible]~~

" 712 M. of 1896 " 24th February " Govt. Solicitor

" 1181. M. " 16th April " Advocate-General.

FOR ORDERS.

Please see the notes and orders on the third of the letters read above, and the reference to the Advocate-General thereon. The last of the letters contains his opinion on the question referred to him which he answers in the affirmative. He points out that as grantee of the property (in the roads) the municipality is in the same position as "any other proprietor" and is not entitled to the benefit of Art 149. Schedule II of the Limitation Act, and that the fact of the grantor having power to revoke the grant does not affect the question of the title upon which alone the grantee can sue.

2. As the Advocate Genl. has given an adverse opinion on this point, only encroachments of less than 12 years standing can be dealt with.

As it was only in 1889 that orders were passed that Municipalities could not alienate immoveable property without the sanction of Govt., only encroachments since that date will have to be dealt with, as it will be very difficult to prove that others were built between '84 & '89 & not before '84.

3. The Sub Collectors proposals in his letter No. 1184 dd 28.9.95 (in C. No. 3005 M) are submitted for orders. The result of his inspection, which was not quite complete, is given in para. 3 of his letter. In para. 10 he classifies the encroachments into three classes.

(1) Plain open Koradus

(2) Koradus with Sarmanais

(3) Covered encroachments

& suggests that the action taken in each of these should be different.

4 It is submitted that the chairman (or perhaps the Sub-Collector should continue the work) may now be ordered to investigate all encroachments made since 1889 (20th Feby), & be authorized to levy a rent on those that are unobjectionable, & remove those that are objectionable, prosecuting the owners if it is found that the Koradus have been built~~ing~~ without a license, or contrary to the terms of the license.

As to the rate of rent to be levied, Govt. ordered in G.O. 1024 M dd 26.6.95 a minimum rate of 6 pies per sq. ft. per annum. The Sub Collector now proposes 4 as. a square yd., which he says would amount to very nearly the same rate, if fractions of a yd. are charged as a whole. The Collr. suggests 5 as. a sq. yd. for all permanent covered encroachments i.e. those in existence for over a year.

5 The Collr.'s proposal that plain open Koradus should ~~be~~ not be charged provided that the builder agrees in writing that they are open to the public, & that he has no claim to them to the exclusion of the public, is not likely to be workable, as it is very unlikely that any owner wd. agree to this. His proposal to try a test criminal case is disposed of by para 5 of the Adv. Genl's opinion dd 24.2.96 (C No 712 M), unless Govt. wishes in opposition to the Adv. Genl's opinion to try a test case either civil or criminal.

6. With regard to the survey of the town the Supdt. of Survey has been asked D.O. to arrange for the work, & has promised to do so in D.O. No 708 dd 27.11.95. Should any specific instructions be given

to the Survey of Dept. with ref. to encroachments, for apparently old survey stones have been shifted from one place to another in a most casual way, in order to hide encroachments.

7. From para. 6 of the Adv.-Genl's opinion in the last current, it appears that there is one way of dealing with encroachments of over 12 or under 60 years standing, & that is to cancel the notification vesting the property in the Mun. Council; the property would then vest in Govt. & trespassers of less than 60 years standing could be evicted, & the property subsequently revested in the Council. This would however be a very extreme step, & would probably lead to difficulties, which wd. more than counterbalance the advantages gained by eviction –

WWD
30.4.96

I am afraid that the Advocate General is right. I had not looked before on the case from the point of view put by him.

It would I submit be a very undesirable step for Govt. to take action which would allow of its dealing with all encroachments directly.

The only feasible course seems to be to deal with all encroachments of not more than 12 years standing in the manner suggested by the Sub Colr.: changing the rate which he puts forward and to issue the strictest orders that are possible to prevent future encroachments. The Survey which is now going on will do much to further this.

The Sub Colr. does not say what rate he would suggest for encroachments

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Encroachments in the Conjeeveram municipality.

FOR ORDERS.

1181 M.

W.D.

WD

[G. / 25 A.]
1,000—21-3-96.

70

DEPARTMENT

C. No.

FOR ORDERS.

Yes –
As to the person who should carry out the proposed procedure — Have they yet got their paid Chairman?. First, the Sub Collr. must go on with the business – but they should have got their paid Chairman long ago –

WD
9/5/96

Office?
Has the new chairman joined yet? Please let me know as soon as possible.
11.5.96.

From the papers received in the office it appears that the paid Chairman has joined his appt.
R.P.
14/5/96

other than those falling under his Class 1 for which as I understand him he proposes an uniform rate of 4 annas per sq. yd. which seems reasonable enough. Mr. Buckley is again Sub Colr. of the district should he be asked to make definite suggestions?

7/5/96

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Encroachments in the Conjeeveram Municipality

1181 M

FOR ORDERS.

H. M.

1.

9/4 C8/5-

72

Local and Municipal DEPARTMENT.

Papers to be read in proceedings :—

No. 1024 M.

Again G.O , dated 26th June 1895, No.

Again G.O., dated 189 , No.

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Current No. 3005 M of 1895, dated 30th Sept., from the Collector of Chingleput.

" " 3092 - " 1895, " 9 Octr., " Do.

" " 712 M " 1896, " 24 Feb., " the Govt. Solicitor.

" 1181 M. 1896 " 16th April " the Advocate General.

ORDER. No. 863 M of 21.5-96

The Advocate General's opinion read above will be communicated to the Municipal Council, Conjeeveram. From this it will be seen that the Municipality has no power to summarily remove encroachments of long standing, as after the lapse of twelve years the owners have acquired a prescriptive title to them.

B.

Note
From letter received in the office, it appears that the paid chairman has assumed charge of his office.

2 The Chairman will accordingly be requested to take immediate steps to deal with all the encroachments in the town of not more than 12 years standing in the manner suggested by the Sub-Collector in paras. 3 & 9 of his letter, and to report by the 31st August next what action has been taken upon this order.

3 The Sub-Collector's recommendation to levy a rent of four annas per square yard on encroachments falling under class (1) referred to in para. 10 of his letter is approved. He will be requested to state what rates he would suggest ~~on~~ to be charged for the encroachments comprised in classes (2) and

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Encroachments- Conjeeveram Municipality

E

and (3).

4. The Municipal Council should distinctly understand that it is one of its most important duties to preserve the public roads and streets under its charge from being encroached upon, and the Government must insist upon ~~the~~ such measures being taken in the future as will prevent the recurrence of such a deplorable state of affairs as has been disclosed by the present enquiry.

5. The Superintendent, Revenue Survey, will be requested to expedite the survey of the town, which is now in progress.

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16.5.96

18/5/96

To

The Chairman, Municipal Council, Conjeeveram. 2

" Collector of Chingleput. 1

All other chairmen of Municipal Councils

All other Collectors.

All Presidents of District Boards. 6

The President, Municipal Council, Madras.

" Superintendent, Revenue Survey, through Revenue ~~Board~~ Dept.

16/6/96

15/6/96

No. 863 M., 21st May 1896.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—again the following paper :—

G.O., Mis. No. 1024 M., dated 26th June 1895.

Abstract.—Stating that the manner in which the Conjeeveram Municipal Council has been dealing with the question of street encroachments is highly discreditable, and requesting the Collector of Chingleput to direct the Sub-Collector to inspect the *koradus* in the town, make out a list of those which should be removed and see that they are removed, and to submit proposals for charging rents on lands assigned for the construction of *koradus*.

Read—also the following papers :—

From C. H. MOUNSEY, Esq., Acting Collector of Chingleput, to the Chief Secretary to Government, dated Karunguzhi, 30th September 1895, Ref. on No. 97-Municipal.

I have the honour to report, as directed in G.O., Mis. No. 1024 M., of the 26th June 1895, upon the action taken upon that order which instructed me to depute the Sub-Collector to proceed to Conjeeveram and take the necessary steps for removal of encroachments upon street poramboke, and to propose a system of rates on such encroachments.

2. The order was received by me on the 5th July in camp and orders were drafted that day, though they did not leave the office till the 11th July. In addition to directing the Sub-Collector in the terms of the Government Order, I asked him to report the dates on which the Chairman first issued notices to remove "koradus" and to report all cases he found in which licenses had been given but not acted on and to be careful that no "koradus" were run up under pretence of such licenses by people after hearing of the order. I asked for an *ad interim* report on the 1st September and a final report; this was received at 7 P.M. last night. I asked also at the same time the Chairman of the Municipality to let me know the number of licenses not acted upon by the 1st July and the number he had withdrawn in consequence and also for an *ad interim* and final report.

3. On the 20th July the Sub-Collector began work in Conjeeveram. On the 27th July he asked for instructions as to whether he was to inspect "koradus" built since 20th February 1889 (the date when municipalities lost the power of transferring landed property without sanction) or all "koradus;" he also wished to know if he had to inspect only "koradus" or all encroachments. His letter, Ref. on No. 1200-Collr. of 1895, dated 27th July, was forwarded to you and the Sub-Collector was directed on the 1st August to confine his attention to *all* encroachments since 20th February 1889.

4. From the 16th to the 20th August, I camped in Conjeeveram for the sake of seeing myself the difficulties that had to be overcome and of hearing the municipality upon the subject, as I expected that they would wish to interview me. At their request, on the 19th August, I received sixteen of the Municipal Councillors. They asked me to transmit their views to Government. These I may briefly précis as follows :—

"This is a holy but poor town and every house-holder wishes to make his house partake of the nature of a chattram, and so he builds upon public land, street poramboke, land that is not his private property, a "koradu" in front of his house to which the public have free right of access especially during festivals, as they are built for the pilgrims chiefly. These festivals occur

> seven or eight months a year. At other times the house-owner enjoys the use of them, but not exclusively. The paimash measurements took no account of these "koradus," many of which were then in existence; the measurements for the breadth of a street were taken from the main wall of one house to the main wall of the opposite house. The municipality, after it was started, with a view to get houses into one line and to avoid projections allowed new "koradus" and pials to be built to some houses. To attempt to remove some of the old "koradus" which have been in existence seventy or eighty years will cause endless law suits and loss to the municipality. The municipality in Mr. Barlow's time lost a test case. There is no necessity to so remove them as the streets are wide enough; but of course every pial that is seriously an obstruction to traffic, though such cases will be rare, should be removed. To prevent further encroachments the town should be surveyed by the Survey Department and demarcated by the municipality.
>
> In regard to the rent proposed to be levied at the rate of six pies a square foot, many houses paying Rs. 2 house rent will have to pay three to three and-a-half times as much, and some houses will be taxed Rs. 30 to Rs. 35. The councillors decided that "koradus" should be taxed As. 8 and As. 4 per 100 square feet according to the importance of the street; but this resolution was not passed willingly, but only to obey Government. To levy such a rent as is proposed will create great misery and put upon the town a burden too heavy to be borne, though there is no objection to charging a fair rent upon encroachments which are not "koradus," but which are put up for the purposes of trade for instance."

5. The municipality requested that their views might be laid before Government "for justice and favourable consideration;" so, now I take this opportunity of recording them.

6. In regard to the difficulties that had to be overcome, Mr. Buckley had represented to me demi-officially that the task he had before him was one greater than he could do single-handed. Putting upon one side the actual work of measuring and inquiring, there was no doubt much covert opposition from the municipality to any action being taken. One councillor indeed suggested there should be no action; another suggested that each case should be separately considered on its own merits, but finally they did decide that the Chairman was to take action. After seeing on my inspection the time that was taken up in inquiring and measuring each case of "koradus" presumably built upon street poramboke, I addressed the Sub-Collector on the 27th August directing him to confine himself for the present to reporting upon each case of encroachment that was actually objectionable, except in so far as he had to report upon the rates to be levied. I thought it possible that this restriction would save him much trouble in enabling him to leave unobjectionable encroachments alone.

7. On the 3rd September the Probationary Deputy Collector M.R.Ry. C. Hanumanta Row was directed to work under the Sub-Collector at Conjeeveram. At that time the Sub-Collector was unavoidably absent on revenue duties, but on the 9th the Probationary Deputy Collector joined him and has been working with him ever since.

8. In reply to my call upon the Chairman for information in regard to licenses issued since February 1889, I received a reply on the 16th instant stating that 2,387 passes had been issued for all kinds of construction and repairs, and of those some 400 cases called for thorough inspection; that no licenses had been granted for construction of "koradus" since 30th April 1894, and that therefore none were in force and that further report would be made after inspection which would last some time.

9. Except the Sub-Collector's report of the 28th instant, this is all the information I have. I send his original report and enclosures. I am glad to state that he has not spared himself in carrying out a complicated and difficult inquiry requiring the exercise of tact and the greatest patience. His report shows that his labours have not been of the lightest and I only regret that his work up to date has not been rewarded by any tangible result. This is explained by paragraphs 6 and 8 of his letter. But if nothing has yet actually been done the information necessary to act upon has been collected to a large extent—*vide* the end of paragraph 3 of the Sub-Collector's report.

10. In regard to the Sub-Collector's remark that if eviction is illegal so is the levy of rent, I should say that eviction (removal of a "koradu") cannot be illegal if worked out under the provisions of the Criminal Procedure Code, that is, if the "koradu" to be removed is technically a nuisance by being upon a public thoroughfare especially when the municipality as a body say these "koradus" are not originally put up in opposition to the rights of the public. But it may be highly inexpedient to order removal, whereas it may be expedient to levy rent with the alternative of removal if rent be not paid. The difficulty I see is that the municipality cannot do so in cases of any "koradu" in existence over twelve years, though Government might be able to do so. This distinction between the rights of Government and of the municipality in dealing with this question, I request, may not be lost sight of. It would be a pity to order the municipality to levy a rate, to have the order disputed as against the municipality in a Civil Court and for the municipality to lose their case. The vast majority of encroachments are far older than twelve years, and I really don't see how the municipality as a corporate body can touch them.

11. Lastly, in regard to the rent to be levied, the Sub-Collector suggests As. 4 for every square yard or part of a yard, which he admits is a trifle below the minimum rate proposed by Government.

12. Mr. Buckley classifies "koradus" into three sorts:—

(i) *Plain open "koradus"*.—In regard to these if the builder or his representative admits in writing that he has no claim to them to the exclusion of the public, I would suggest they be untaxed and removed at public expense if found to be objectionable. If the builder or his representative claims that they are his (presuming they are on street poramboke) and will not give an admission in writing, I suggest that a test case be taken on the Magisterial side by an order to remove one as a nuisance. If Government is successful their point will be gained, if unsuccessful nothing will be lost as it will be proved Government has lost its right and the builder or his representative has the right to know fully his legal position. Supposing he claims a jury, I think that a lawyer far above the reproach of being swayed by the wishes of Government should be selected as one of the members. The house-owner would select his own man and an independent official might be the other.

(ii) *Open "koradus" with sarmanai.*—These are clearly claimed as private property. If on street poramboke I should charge them at the rate Mr. Buckley suggests. If they object the matter can only be settled by a Civil or Criminal Court—I mean that the Government not the municipality should charge them, Government afterwards transferring the funds so collected, if they like, to the municipality.

(iii) *All covered encroachments.*—I should divide these into permanent and temporary—the temporary ones being dealt with under ordinary license fees—but every thing, however, fragile in its erection to be considered a permanent one, if in existence more than a year and the fee to be As. 5 a square yard not As. 4.

13. Lastly, I support the Sub-Collector in his opinion that it will be advisable to survey the town of Conjeeveram as soon as possible.

ENCLOSURES.

From L. E. BUCKLEY, Esq., Acting Sub-Collector of Chingleput, to the Chairman, Conjeeveram Municipal Council, dated Conjeeveram, 26th September 1895.

Adverting to G.O., Mis. No. 1024 M., dated 26th June 1895, I have the honour to draw your attention to the condition of Aiyangarpalaiyam street. The eastern end of the street is comparatively broad, but the western end has been much encroached upon, so much so, indeed, that a 30-feet road is only 10 feet or so in parts. I have made a most careful measurement of the street and find that positively every house (with its backyard) occupies a larger area than it is entitled to. The main walls of the houses appear to me to be built on the very limit of the sites. It will be a hardship, I think, to enforce the removal of verandahs not more than 5 feet breadth, and I recommend that those at present existing may be allowed to stand on payment of rent as proposed in the Government Order. The "koradus," however, are very objectionable and should be removed. If this is done the street will be of sufficient breadth for traffic. I request you to take steps for the removal of "koradus" at once. A list of these "koradus" will be forwarded shortly. The lanes between houses 23 and 24 and 12 and 13 have been encroached upon by about 3 feet and half a foot, respectively.

From L. E. BUCKLEY, Esq., Sub-Collector of Chingleput, to the Collector of Chingleput, dated Conjeeveram, 28th September 1895, No. 1184-Collr.

I have the honour to report what action has been taken upon G.O., Mis. No. 1024 M., dated 26th June 1895. The Government Order was received by me on 12th July 1894, and, after disposing of cases already fixed for hearing, I arrived in Conjeeveram on 20th July to carry out the order. I have since then spent thirty days on this work.

2. I called for lists of alienations and permissions to repair. The list was prepared in the municipal office first for Aiyangarpalaiyam street in the 1st Division. This street was selected quite by accident, but shows excellently the way in which encroachments have been allowed to grow unchecked. The street is only about 250 yards long, but it took me no less than five days to find out what the encroachments were. I had the greatest difficulty in making a start. The only account of individual holdings is the paimash record; and I could at first find nothing definite from which to make my measurements. I found that in the eastern end of the street the encroachments were usually small, and not of a very permanent nature, and not very objectionable; but towards the west matters grew worse, for the encroachments became larger, and the "koradus," &c., were constructed of brick and stone in chunam.

The street is situated at the extreme edge of the town. The village nattam has been marked into four or five big fields; the field in which Aiyangarpalaiyam street lies is about 200 acres in extent and covered with buildings. I tried to begin work from the boundary stones of this village-site which are to be found in places at the extremity of the backyards on the northern side. I worked for a very considerable time without success, and I was then politely informed by a bystander that I could not expect any measurement based upon the survey stones to be correct as Ramasami had moved them some years ago. Indeed, throughout the town survey stones have been removed or transplanted with the most consummate impudence. I spent one whole morning with Mr. Benson, Deputy Director of Land Records, and many other hours trying to replace the stones at the back of Aiyangarpalaiyam street. I found that the only way to arrive at a definite conclusion was by making an independent street survey of things as they exist. I enclose a rough sketch which will give an idea of what I did—enclosure (i) I enclose a copy of the letter I sent to the chairman on the result of my labours—enclosure (2) I enclosed a list of 41 "koradus" which I considered should be removed. At the council's meeting on 26th July 1895, the chairman was empowered to issue notices under sections 168, 263 of the Act to the persons responsible for the encroachments. Subsequently on 31st July 1895, I sent similar lists for three other streets. I trust I do not weary you through having gone with some detail into the work I did. I have done so, in order that you may realize the difficulties I had to face. To measure up one street it took me five days working four hours every morning.

3. My investigations showed me that the great majority of houses in the town had encroachments attached to them, and that this would mean inspecting and measuring up thousands of houses. I therefore asked for instructions in my Ref. Memo., No. 1200-Collr., dated 27th July 1895. Pending the orders of Government, and with your permission, I left Conjeeveram on 2nd August in order to attend to my legitimate revenue duties which had fallen considerably into arrears. No answer has been received officially as yet from Government, but at the beginning

of this month I returned to Conjeeveram, and under your instructions have been inspecting the various alienations sanctioned by the council since February 1889. The town is divided into four wards. I have inspected three up to date. The following is the result of my inspections :—

Ward.	Number of cases on list.	Number of cases in which		
		Prosecutions are recommended for building contrary to term of, or without license.	Removal of steps leading to koradus is recommended.	Removal of pials, koradus, &c., is recommended.
1	83	6	20	14
2	90	1	3	5
3	66	1	2	6
4	107	Not yet inspected.		..
Total ..	346	8	25	25

4. I have also made detailed inspections of Addisonpet street—one of the leading thoroughfare in the town—in two portions where the bazaars had encroached so as to be a nuisance. The notes of my inspection have been communicated to the council in one case, and in the other case they will be communicated in a few days, as they are not yet quite complete.

5. Mr. Hanumanta Row, Probationary Deputy Collector, arrived here on 10th September; he had previously had no experience of survey. It was to explain him what had to be done that I selected one of the worst portions of Addisonpet street for detailed enquires. He was with me on this work for two or three mornings, and, since then, I have employed him in inspecting the two thousand and odd cases in which permission to rebuild or to build "according to plan" has been granted by the municipality since February 1889. The work is progressing fairly.

6. Although the council empowered the Chairman to take steps under the Act at its meeting on 27th July 1895, I directed that the notices should not be issued pending the orders of Government on my Ref. on No. 1200 (Collector), dated 27th July 1895. Nearly all the encroachments mentioned in the list, on which the Chairman was empowered to take action, were constructed before February 1889.

7. The Government order under reference dwells upon encroachments that are to be removed and those that are to be allowed on rent. The attitude to be taken up with regard to both these questions depends upon what determination the Government comes to in the question of limitation. The common belief is that if uninterrupted possession as against the municipality is proved for twelve years, an encroacher cannot be evicted. With all due respect I beg to combat this view. If it is adopted, it will mean that only a very small proportion of objectionable encroachments can be removed without compensation, and that in only about 400 cases (probably less) can rent be levied for encroachments, for, if there is no power to remove, there can be no power to charge rent. Section 22 of Act IV of 1884 empowers the Governor in Council to direct that property shall vest in a municipal council; the same section, however, also provides that the Governor in Council may cancel such an order. This, I think, shows that the transfer is not an outright conveyance, but that the municipality only holds the property in trust on behalf of Government for the purpose of carrying out the provisions of the Act. The municipality has no absolute ownership in the land, and consequently no individual can obtain from the municipality a title, which the municipality itself does not possess. Consequently all claims to land by prescription must be preferred against the Government, and in such cases the period of limitation is 60 years. Let us suppose a case; A having encroached upon and occupied land for more than 12 years, B, a municipality, tries to turn him out under the Act. A flies to the civil court. The civil court says A has over 12 years' possession and gives the suit in his favour against B. Subsequently B is dissolved under section 22 of Act IV of 1884. What is A's position as against Government if he has occupied the land for less than 60 years? There is now a case in which

the municipality has been unable to oust an encroacher in the civil courts, though the encroachment is highly objectionable. I have already expressed my opinion on the question of limitation in paragraph 3 of my No. 1884 of 1895, dated 26th June 1895. In this connection I beg to invite your attention to section 168 of Act IV of 1884 which runs as follows :—

> (1) The municipal council may cause any projection, encroachment, or obstruction made against or in front of any building or land in any public street before the coming into operation of this Act, to be removed or altered as they think fit.
>
> (2) * * * * *
>
> (3) If such projection, encroachment, *or obstruction shall have been lawfully made*, the municipal council shall make reasonable compensation to every person who suffers damage by such removal or alteration.

I presume all encroachments made prior to the Act must be considered to have been unlawfully made, unless the occupiers can produce permission granted by a competent authority to occupy the land in the first instance. Usually the only title to be relied upon, if any documentary evidence is forthcoming, is a sale-deed from some other person; but of course no vendor can transfer a better title than he possesses himself. I am not confident but I feel fairly certain that civil courts ignore this section in favour of the Limitation Act. Can this section override the Limitation Act? If so, there is no limitation at all, not even 60 years.

8. Until a definite policy is prescribed with regard to this question of limitation it is I consider inadvisable to issue notices for removal to any persons other than those whose occupation has commenced since February 1889. It is practically impossible to discover to any great degree what other encroachments have been made within twelve years. I know that the Government order has been discussed freely throughout the town and I have reason to believe that a plan of resistence has been organised, and that funds have been subscribed for the purpose. Every one of the notices issued where the occupier thinks he can prove twelve years' possession will be contested, in the hopes that the municipality will be wearied out. I venture to propose that a definite policy be decided by Government as to the way in which claims are to be put forward and a test suit instituted. This should be done at once; for the paimash was 57 years ago; the 60 years' limitation will be shortly up, and the suit will probably go to the High Court if not to the Privy Council. I once more bring to your notice that if eviction is illegal, so also is the imposition of rent.

9. This leads to the consideration of what rent should be levied on encroachments, whose continuance is unobjectionable. The Government directs that the rent should not be less than six pies per square foot per annum. There has been a suggestion to charge different rates in different streets. It is extremely difficult to know how to differentiate. Encroachments on big streets cause less obstruction to the public than those in small streets, but the land encroached upon is probably more valuable. It is of course presumed that encroachments which are at all objectionable will be removed. I consider that the rate should be the same throughout the town. The rate I propose is 4 annas for every square yard or portion thereof. This is, it is true, a trifle below the minimum rate suggested by Government, but it is probable that the actual incidence will run about 6 pies a square foot, as all fractions of a square yard will count as a square yard. I do not think it advisable to deal with smaller units than square yards.

10. It is a question whether different classes of encroachment should be differently treated. I would classify encroachments as follows :—

(1) Plain open koradus.
(2) Open koradus with sarmanais (a sort of masonry sofa) across the ends.
(3) Covered encroachments.

I believe the municipal councillors, at the audience they had with you, represented that koradus are not private property but are open to the public. I feel certain that if it was proposed to treat any specific koradu as public property, the individual to whose house the koradu might be attached would not make this admission. The plain open koradus (class No. 1), however, in many cases, extend on the same level for a considerable distance in front of bazaars, and undoubtedly are used by the public frequenting the bazaars. This is the most unobjectionable form. Next comes class 2. These are often raised high above the road; at each end is raised a solid masonry couch or sofa; the raised koradus are reached by flight of steps which also encroach on the streets! These are undoubtedly obstructions and are looked upon by the adjacent house-holders as private appurtenances to the house. Should koradus with these masonry cross erections be charged additionally? The third class consists of all covered encroachments. The covering in of encroachments is, especially in narrow streets, an undoubted abuse, for the perflation of air is checked. For the erection of pandals the council has recently decided to levy fees. These fees will have to be paid of course in addition to encroachment charges. I am not sure they are levied on the right principle. They are levied at 4 annas for each half year. The Act seems to contemplate a fixed fee for each license and not rates varying with the area covered. This of course presses hardest on the poorer classes who presumably have the smaller pandals. The man with a permanent superstructure, however, will have no additional payment to make though his case will be far more objectionable. Should such a man pay double or trible pandal fees inaddition to encroachment rent or should he pay encroachment rent at an increased rate?

11. Recently, during my inspections, I found that many pandals had no licenses, and the remainder were continuing after the lapse of the licenses. I warned the offenders that they were liable to prosecution if they kept pandals without licenses and told them that, if the pandals were removed, no prosecution would ensue. Pandals came down that day throughout the town. Some of the leading men of the town spread abroad that no pandals were to be allowed in future, and a conspiracy was made to shut all bazaars next morning. This came to the ears of the authorities late at night. The conspiracy was broken up. Bazaars were opened next morning, and on learning that the order was "regulation not prohibition" all went about their business perfectly contented with my action, but cursing bitterly those who attempted to mislead them. I report this to show that there are difficulties ahead.

12. Before closing this report I desire to bring to your notice two cases which stand out conspicuous among all—

(*a*) P. Sriranga Ammal possesses a large garden to the south of Addisonpet street—one of the main thoroughfares of the town. In 1883 she applied for permission to build a line of shops in front of her garden and asked for a piece of street poramboke measuring 226 feet × 6 feet. This was granted by the Commissioners under the Chairmanship of Mr. Ratna Mudaliar on 18th April 1883 for the sum of Rs. 66. The land is all frontage and is probably worth Rs. 150. I have not had an opportunity yet of completing my enquiries to my satisfaction, but the following is the information I have acquired so far. It is liable to subsequent correction. The land taken up measures about 380 feet in length and varies in breadth from 7 feet on the east to 17 feet on the west. In addition to this there is a mud koradu, about 360 feet in length and 9 feet in breadth, covered by pandals. The alienation and encroachment are by no means objectionable, but they form I think a striking example of municipal apathy and neglect. If my figures are correct, the applicant, instead of 1,356 square feet, has obtained 4,560 square feet covered by bazaars, *plus* 1,440 square feet covered by pandals. A further report on this will follow.

(*b*) Just behind the car-stand and to the east of it is a brick building projecting 20 feet × 15 feet, erected by the Dharmakarthas of the temple to store temple property in. Its projection is scarcely objectionable, as it lies just behind the car-stand. It appears at first sight not to be an encroachment as a survey stone is placed just outside it and the building lies just on the edge of the shrotriem village of Ottapattadai. I have learnt by experience, however, not to trust a survey stone until I have tested it. I tested this one, and found it ought not to exist at all in its present position. One of the boundary stones of the shrotriem is missing from its place about 60 or 70 yards away from the street, and I have no doubt that this stone has been transplanted to its present position to conceal the encroachment.

13. In conclusion I beg to bring to your notice that I have latterly been at work from 7 A.M. till 7 P.M. (sometimes later) with an interval of 1 hour or 1½ hours for a bath and breakfast, and that even though I have Mr. Hanumanta Row, to dispose of office routine, I cannot keep pace with my ordinary work, as long as I am expected to do the work the municipality has neglected to do. The survey party comes here I believe in April. I do not know if they will be ordered to measure things as they are or as they ought to be. I submit that they should measure up all encroachments. If orders are now issued on the question of limitation and if the rates at which encroachments are to be assessed are fixed, the municipal council can itself carry out the orders as soon as the Survey Department furnishes the necessary information, and the Divisional officer will be free to devote his attention to his more legitimate duties.

From M.R.Ry. A. DESIKACHARIYAR Avargal, B.A., Chairman-delegate, Municipal Council, Conjeeveram, to the Collector of Chingleput District, dated Conjeeveram, 4th October 1895, Ref. on No. 816-Eng. of 1895.

With reference to your Reference on No. 97, Municipal, dated 10th July 1895, I have the honour to inform you that the number of licenses granted for the construction of koradus, koradus and sarmanais (masonry sofas on koradus) top over koradus, mere sarmanais on koradus, extension of koradus and sarmanais and steps beyond the koradus and within the side ditch, from 20th February 1889 to 1st July 1895 is 176. Of this, 37 licenses were not acted upon and these have been rendered inoperative under the following bye-law in force from 3rd November 1894 :—

"No license granted for the construction of any building under any section of the Act shall have operation after six months from the date of granting it. The bye-law shall also govern all licenses already granted."

2. As regards paragraph 2, I beg to state that lists of licenses granted since 1889 are being prepared and furnished to the Sub-Collector and to the Probationary Deputy Collector separately. The several observations made on the inspection notes of the Sub-Collector are posted for the meeting to be held on the 5th instant and the action taken thereupon will be communicated soon.

Reference No. 97-Ml.

Submitted to the Chief Secretary to Government, Local and Municipal Department, in continuation of this office letter, Ref. on No. 97, Municipal, dated 30th September 1895.

SAIDAPET,
9th October 1895.

(Signed) C. H. MOUNSEY,
Acting Collector.

Reference No. 1682.

Numerous instances of encroachments on the roads and streets in the Municipality of Conjeeveram having lately been brought to the notice of the Government, the question has been raised whether the occupiers of encroachments of long standing can be evicted by the municipality. This point will be referred to the Advocate-General for favour of his opinion with reference to the following remarks.

2. An occupation of twelve years is held to give a prescriptive right against the municipality, but section 22 of Act IV of 1884 empowers the Governor in Council to direct that certain property shall vest in a municipal council, and also provides that he may cancel such order. From this it would appear that the transfer is not an outright conveyance of property, but that the Municipal Council only holds the property in trust for Government for the purposes of the Act. The Council has therefore no absolute ownership, and no one can obtain from it by prescription a title which the Council itself does not possess. Consequently claims to land by prescription must be preferred against Government, and in such cases the period of limitation is sixty years.

3. Further, section 168 of Act IV of 1884 provides as follows :—

(1) The Municipal Council may cause any projection, encroachment * * * made before the coming into operation of this Act to be removed or altered as they think fit.

* * * * *

(3) If such encroachment * * * shall have been lawfully made the Municipal Council shall make reasonable compensation, &c.

Can this section override the Limitation Act with reference to encroachments made before the passing of Act IV of 1884? If so, the question of limitation does not arise.

4. A further point for consideration is whether these encroachments can be removed by proceeding under section 144 of the Criminal Procedure Code.

(Signed) J. F. PRICE,
Chief Secretary.

To the Advocate-General.

From ERNEST BARCLAY, Esq., Government Solicitor, Madras, to the Chief Secretary to Government, dated 24th February 1896, No. 89.

With reference to the order of Government, dated 7th ultimo, Mis. No. 34 M., Local and Municipal Department, I have the honour to forward herewith copy of further opinion of the Advocate-General with reference to the last paragraph of his opinion, dated the 13th December 1895, in regard to the question referred to him by the order of Government, dated 25th November 1895, No. 1682, Local and Municipal Department.

OPINION.

1. With reference to my opinion, dated the 13th December 1895, I have the honour to state that in City Civil Court Appeal No. 14 of 1895, the High Court confirmed the decree appealed against and dismissed the appeal.

2. The High Court held that "a corporation is not entitled to claim the benefit of article 149, schedule II of the Limitation Act. That article only applies to suits brought by or on behalf of the Secretary of State, and there is no authority for the proposition that when the Crown has once ceded property to an individual or corporation it does (or can) also cede at the same time any right or privilege inherent in the sovereign power. The grantee of the property stands in respect of the property granted in the same position as any other proprietor."

3. With reference to the contention based on the English maxim "Once a highway always a highway," their Lordships the Chief Justice and Parker, J., held that the legal fiction on which that maxim is based did not arise, "for there is no question of any easement whatsoever. The street itself and the soil thereof is vested in the Municipality in trust for the public, so that there is no question of a dominant or servient heritage. Both are united in the same person, *i.e.*, in the proprietor, and we are referred to no authority for holding that the public, any more than a private proprietor, is to be exempted from the consequences of its own laches. * * * The question is not really one of a continuing wrong, but of a completed trespass. There is no evidence of any user by the public of a highway, of that portion of the property now covered by the pavement and pial. * * * Holding therefore that the defendant has, by adverse possession for over twelve years, acquired a legal title, we must confirm the decree of the learned Judge and dismiss the appeal with costs."

4. This decision disposes of the question of limitation which was submitted to me. Following that decision, I must reply to the questions put to me that the period of limitation and prescription applicable to the case of alleged encroachments on highways is twelve years from the date of the encroachment after the transfer of such highways by Government to Municipalities; and that after the lapse of that time the person who is alleged to have encroached cannot be evicted by the Municipality. Section 165 of Act IV of 1884 cannot override the Limitation Act.

5. These encroachments cannot be removed by proceeding under section 144 of the Code of Criminal Procedure. That section is the only one in Chapter XI, a chapter which relates to "temporary orders in urgent cases of nuisance," and empowers certain classes of Magistrates "to act under this section," where in his opinion "immediate prevention or speedy remedy is desirable." It does not enable a Municipality to obtain, through the Criminal Courts, a relief which it has lost in the Civil Courts. The existence of the alleged encroachment for over twelve years unopposed makes it impossible for any Magistrate to deal therewith under this section on the ground that it is an encroachment.

24th February 1896. (Signed) J. H. SPRING BRANSON,
Advocate-General.

Reference No. 442.

The Advocate-General appears to have based his opinion on the decision of the High Court in the case of *Municipal Commissioners for City of Madras* versus *C. Sarangapani Mudali.* This suit was brought under the Madras Municipality Act (I of 1884), whereas the question submitted for consideration in this office No. 1682, dated 25th November 1895, arose under the District Municipalities Act (IV of 1884).

2. Under both Acts provision is made for the vesting of property in the Municipality (section 58 of Act I of 1884 and sections 22 and 23 of Act IV of 1884), but in the former there is no provision to enable Government to resume such property or withdraw it from the operation of the Act, such as there is in the latter.

Section 22 of the District Municipalities Act says: "The Governor in Council may by notification direct that any property which is vested in Her Majesty * * * shall vest in any Municipal Council * * * (2) The Governor in Council may in like manner at any time cancel such notification and pass such orders as to the disposal of such property as he may deem fit." Under this section therefore Government, when vesting property in a Municipal Council, retains the right to resume it at any time; it does not make an absolute cession or grant: otherwise the power reserved by clause (2) would be liable to be defeated at any time. Section 23 refers specially to streets and says: "All public streets in any Municipality * * * shall vest in and belong to the Municipal Council. But it shall be competent to the Governor in Council, from time to time by notification, to exclude any streets from the operation of the Act and to modify or cancel such notification." It is not clear whether the difference of language employed in this section imports that the power of Government in the case of streets in a Municipality is more restricted than it is in the case of other immoveable property vested under section 22, and whether the words "excluding from the operation of the Act" involve the reversion of the property in the street to Government. But if this proviso were held to be restricted in its operation to the short term of limitation open to a private individual, such construction would scarcely seem consistent with the ample power which the proviso was manifestly intended to reserve to Government. On the other hand, under the City of Madras Act (I of 1884), no right of resumption or any power of excluding from the operation of the Act is reserved to Government, section 444 merely requiring the sanction of Government to the sale of vested property.

3. It will thus be seen that there are material differences in the vesting clauses of the two Acts, and therefore the Advocate-General will now be requested to consider whether the High Court's decision, referred to in his opinion of the 24th February 1896, on the question of limitation under Act I of 1884, would apply equally to cases falling under Act IV of 1884; and if not, to advise whether it is desirable to test the question of limitation on a favourable occasion by suit brought in connection with a Mofussal Municipality.

10th April 1896. (Signed) G. S. FORBES,
for *Chief Secretary.*

To the Advocate-General.

From the Hon'ble Mr. J. H. SPRING BRANSON, Advocate-General, Madras, to the Chief Secretary to Government, dated 16th April 1896.

With reference to memorandum, No. 442, Local and Municipal, dated the 10th instant, I have the honour to forward herewith my opinion as to whether the High Court's decision in *Municipal Commissioners for City of Madras* versus *C. Sarangapani Mudali* on the question of limitation under Act I of 1884 would apply equally to cases falling under Act IV of 1884.

OPINION.

1. In the memorandum "Local and Municipal Department," dated the 25th November 1895, No. 1682, the question raised was "whether the occupiers of encroachments of long-standing can be evicted *by the Municipality.*"

2. It was then, and is still, contended that, as Government can cancel the order vesting property in a Municipal Council, such property is held by the Council in trust for Government for the purposes of the Act, but remains the property of Government *and that, therefore, the sixty years' period of limitation applies.* In my previous opinion I dissented from this view, and I still dissent.

3. A suit to evict trespassers from land which has vested in a Municipal Council by an order of Government under Act IV of 1884 cannot be brought on behalf of the Secretary of State for India. It is only to suits so brought that article 149, schedule II of the Limitation Act applies.

4. Such a suit must be brought by the Municipality on its own title as grantee. As grantee of the property the Municipality is "in the same position as any other proprietor," and is not entitled to claim the benefit of article 149, schedule II of the Limitation Act. The fact that the grant may be revoked at any time by the grantor does not affect the question of the title upon which alone the grantee can sue.

5. I am of opinion that the High Court's decision in *Municipal Commissioners for City of Madras* versus *C. Sarangapani Mudali* on the question of limitation under Act I of 1884 would apply equally to cases falling under Act IV of 1884.

6. Government is entitled to cancel the notification vesting property in a Municipal Council. If the power be exercised, no action relating to the property resumed by Government can be taken by the Municipal Council. Any suit to eject trespassers from such land would then have to be brought by Government, and the period of limitation would be sixty years.

16th April 1896. (Signed) J. H. SPRING BRANSON,
Advocate-General.

ORDER—No. 863 M., dated 21st May 1896.

The Advocate-General's opinion read above, will be communicated to the Municipal Council, Conjeeveram. From this it will be seen that the Municipality has no power to summarily remove encroachments of long-standing, as after the lapse of twelve years the owners have acquired a prescriptive title to them.

2. The Chairman will accordingly be requested to take immediate steps to deal with all the encroachments in the town of not more than twelve years' standing in the manner suggested by the Sub-Collector in paragraphs 3 and 9 of his letter, and to report, by the 31st August next, what action has been taken upon this order.

3. The Sub-Collector's recommendation to levy a rent of four annas per square yard on encroachments falling under class (1) referred to in paragraph 10 of his letter, is approved. He will be requested to state what rates he would suggest to be charged for the encroachments comprised in classes (2) and (3).

4. The Municipal Council should distinctly understand that it is one of its most important duties to preserve the public roads and streets under its charge from being encroached upon, and the Government must insist upon such measures being taken in the future as will prevent the recurrence of such a deplorable state of affairs as has been disclosed by the present enquiry.

5. The Superintendent, Revenue Survey, will be requested to expedite the survey of the town which is now in progress.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To the Chairman, Municipal Council, Conjeeveram.
,, all other Chairmen of Municipal Councils.
,, the Collector of Chingleput.
,, all other Collectors.
,, all Presidents of District Boards.
,, the President, Municipal Council, Madras.
,, the Superintendent, Revenue Survey, through Revenue Department.

Exd. C. M. Brisson

Govt. of {1896} Madras.

LOCAL AND MUNICIPAL.

Issued

Recd. *Encl.*

G.O., No. 863 M, 21st May 1896.

MAY.

Encroachments.

Passing orders on the subject of — in the Conjeeveram Municipality.