before

& Munl. (1897) Department.

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G.O., No. 2693 Mn.

DATED 4-12-97.

[Despatch Abstract.]

Sale of certain lands adjoining streets in the Madras Municipality

Informing the Govt. Munl. Commr. Madras, with remarks, that Govt. cannot modify its order declining to sanction the ——; directing that all lands not being private property over which the public have acquired no right of way be held to remain at the disposal of Govt. and requesting the Collector of Madras to report in consultation with the Govt. Munl. Commr. what lands might be advantageously transferred to the Municipality for purposes of conservancy & for checking encroachments on public streets.

BACK PAPERS.

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Government {1897} of Madras.

LOCAL AND MUNICIPAL.

Recd. } 1897. *Enclosures*

Regd. *Spare copies*

G.O., No. 2693 M., 4th December 1897.

DECEMBER.

Lands adjoining streets in the Madras Municipality.

Informing the President, Municipal Commission, Madras, with remarks, that Government cannot modify its orders declining to sanction the sale of certain —; directing that all lands not being private property over which the public have acquired no right of way must be held to remain at the disposal of Government; and requesting the Collector of Madras to report in consultation with the President, Municipal Commission, what lands might be advantageously transferred to the Municipality for purposes of conservancy and for checking encroachments on public streets.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

From Lieutenant-Colonel G. M. J. MOORE, C.I.E., President, Municipal Commission, to the Secretary to Government, Local and Municipal Department, dated Madras, 27th November 1896, P.W. No. 1249.

G.O., Mis. No. 1794 M., dated 29th Oct. 1895.
" " " 1870 M. " 8th Nov. "
" " " 811 M. " 11th May 1896.
" " " 1066 M. " 24th June "
" " " 1228 M. " 22nd July "
" " " 2018 M. " 23rd Nov. "

I have the honour to request that the question involved in the Government Orders noted in the margin, namely, the extent of land vested in the Municipality, may be re-considered for the following reasons :—

(*a*) The land by the roadside is shown in the old and new surveys as a part of Municipal streets.

(*b*) The Deputy Collector has demarcated such lands as municipal land prior to the sale being recommended by the Commissioners and the refusal by Government.

(*c*) Extensive encroachments on roadside land have been recently reported by the Engineer and are likely to continue unless they are vested in the Municipality beyond all doubt. Moreover, the staff employed by the revenue authorities are so likely to detect any encroachment as the Municipal officers and staff.

(*d*) The definition of a street and sections 223, 233 and 236 of the Madras Municipal Act appear to infer that the land by the side of streets not being private property is vested in the Commissioners.

(*e*) No attempt to conserve these lands and remove noxious vegetation is made by the Collector.

2. The attention of the Superintendent, Revenue Survey, to the necessity of carefully demarcating the limits of Government and Municipal land was called in G.O., Mis. No. 476 M., dated 20th March 1896, but the plans which have been prepared do not show that such strips of land by the roadside are Government or private property.

3. In my letter No. 2716, dated 31st March 1896, I requested the Collector to furnish me with a complete list of Government lands within Municipal limits and that in case any portion of the same should be sold that the first refusal be given to the Municipality, and in reply was told that no such list existed and that the land will be sold by public auction. To adopt such a course would be most unsatisfactory, as it would deprive the owner of the adjacent land of a valuable frontage on Municipal roads, unless he purchased it himself, in which case he might have to pay an excessive price.

4. Particulars of one case are submitted. An application was made by Mr. Greatorex to include in his certificate the piece of land in front of house No. 17, Kilpauk Garden road. This was objected to by the Municipality in letter No. 959, dated 1st August 1895, and the Deputy Collector disallowed the claim by Mr. Greatorex. Application was then made to the Municipality for the purchase of the land and the sale was recommended by the Commissioners. This was refused by G.O., Mis. No. 811 M., dated 11th May 1896.

5. The Deputy Collector was then asked if he would sell the land and, in reply, he stated that the land forms part of the roadway and is shown as such in both the old and new survey.

6. In conclusion, I may mention that there are many cases, in which the importance of the land being vested in the Municipality is far greater than the one case in which particulars are given.

Endt. No. 217.

Referred to the Revenue Department for favour of remarks.

23*rd February* 1897. (Signed) G. S. FORBES,
Secretary to Government.

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1395, dated 13th April 1897.

Read—the following papers :—

Government Order, Revenue Department, Mis. No. 1248, dated 5th March 1897.

And the following reference thereon, dated 10th March 1897.

Referred to the Collector of Madras for early remarks, which should reach the Board's office on or before the 20th instant.

From B. H. CHESTER, Esq., Deputy Collector of Madras, to the Collector of Madras, dated 16th March 1897, No. 252-D.

In returning Board's Proceedings (Land Revenue), reference on Government No. 501 of 1897, dated 10th instant, forwarded to me with your endorsement, reference No. 315—G & B. of the 12th idem, I have the honour to report as follows.

2. The above reference is, in connection with the representation of the President of the Municipal Commission of Madras urging that all land on the roadside not being private property may be treated as vested in the Municipality.

3. For some years past the Madras Municipality has been claiming the ownership of the sites of pials and pavements attached to private houses. These claims have come up for consideration in connection with applications for the issue of quit-rent certificates. In the great majority of cases the claims of the Municipality have been disallowed. The corporation carried a test case into court. The decision of the City Civil Court and of the High Court on appeal * show that the practice of this office has been correct.

* Municipal Commissioners for the City of Madras (plaintiffs), appellants.
versus
Sarangapani Mudaliar (defendant), respondent.
Indian Law Reports, XIX Madras, pages 154 to 157.

4. The question now under discussion is in respect of open lands on the roadside not included in landholders' certificates. The matter is not free from difficulty. I would suggest that, as between Government and the Municipality, the land vested in the corporation may be taken to be (1) the portion contained between the side drain and (2) the drains themselves including about nine inches on the outside of each to allow for the brickwork. In a few cases, the pavements are really public thoroughfares, *e.g.*, the one on the north beach from Messrs. Arbuthnot & Co's to Parry's corner, and the pavement skirting the Government House compound on the Mount Road, and such pavements should be treated as Municipal property.

5. As regards the third paragraph of the Municipal President's letter, I beg to refer you to my letter to you, reference No. 670-C of the 5th May 1896. I submit that the procedure of selling Government land, by public auction, is the best course to adopt, as it is sure to secure the highest price that the land is worth and which the person wishing to buy should be prepared to pay.

6. In respect to the specific case referred to in paragraph 4 of the Municipal President's letter, Mr. Greatorex, the owner of survey No. 77 of Kilpauk in Egmore, in applying for a certificate for his property, desired that a strip of land, measuring 1,127 square feet, lying in front of his property between the public thoroughfare and his own property should be included in the certificate. The strip according to the old survey plan forms part of Kilpaukam Garden Road. On the objection of the Municipality, Mr. Greatorex withdrew his claim and the land was excluded from the certificate granted to him.

Reference on No. 315-G and B.

Submitted to the Commissioners of Land Revenue in reply to the Board's reference quoted, the enclosure to which is returned.

2. The Deputy Collector's letter quoted at paragraph 5 of the above is enclosed for reference and return.

3. The Collector concurs in Mr. Chester's views generally, but considers, with reference to paragraph 4 of the foregoing letter, that nothing need be done at present regarding the open lands therein referred to, which may remain in *statu quo* till required for a road or street when they may be taken up by the Municipality in the prescribed manner.

Madras,
17*th March* 1897.

(Signed) W. AUSTIN,
Collector.

Enclosure.

From B. M. D'CRUZ, Esq., Deputy Collector of Madras, to the Collector of Madras, dated 5th May 1896, Ref. No. 670-C.

With reference to letter, P.W. No. 2716, dated 31st March last, forwarded to me with your endorsement, Ref. No. 1090, of the 8th ultimo, I have the honour to inform you that there is no separate list showing the Government lands in this district.

2. If such a list is to be prepared it will entail much trouble and labour as the survey and insert registers of all the fifteen divisions will have to be gone through in order to find out which of the survey numbers that are noted as "Government property" in survey registers have subsequently become private property and which continue to belong to Government. This, it would be difficult to accomplish without a special establishment of an extra clerk.

3. In the new survey, that is progressing, all the lands belonging to Government at present will be surveyed and demarcated separately, and it would therefore be easier to prepare the said list from the new survey registers that would be furnished to this office after the completion of the present survey.

4. As regards the request of the Municipal President in the concluding portion of the above letter, wherein it is desired that the Municipality may be given the first refusal before any of the Government land is sold, I beg to point out that, as all sales of Government land in this district will be effected by public auction, the wishes of the Municipal President could not be acceded to. Such of the lands as the Municipality wish to buy will have to be competed for by it in the same way as other private persons; and to enable it to arrange for this being done, a copy of the sale notice may, in every case, be sent to the Municipal President in time before the date of sale.

Resolution—Mis. No. 1395, dated 13th April 1897.

The Madras Collector's endorsement, read above, will be submitted to Government with reference to its order Mis. No. 1248, Revenue, dated 5th March 1897.

2. In his letter forwarded for report with the Government Order quoted above, the President, Madras Municipality, suggests—

(1) that all land on the road side, not being private property, may be treated as vesting in the Municipal Commissioners and

(2) that, whenever Government land within Municipal limits is to be sold, the refusal should be given to the Commissioners.

3. As regards roads in Madras, Government has held that only the actual roadway vests in the Municipality. The Municipal President requests that this ruling may be re-considered. He points out that, while the Municipality will be better able to check encroachments on lands by the side of roads and to prevent the growth of noxious vegetation thereon, the definition of a "street" and sections 223, 233 and 236 of the Madras Municipal Act suggest the inference that land by the side of streets, not being private property, is vested in the Commissioners. The Madras Deputy Collector suggests that the land vested in the corporation under section 233 of the Municipal Act may be taken to be the portion contained between the side drains *plus* the drains themselves, inclusive of the brick works. He points out that the sites of pials and pavements have generally come to be regarded as private property. The Collector is of opinion that the lands in question should be allowed to "remain in *statu quo* till required for a road or street."

4. The Board considers that all land (not being private property), over which the public have no right of way, should remain at the disposal of Government. But it observes that the provisions of Madras Act I of 1884 as it stands seem to favour the Municipal President's claim. Section 233 vests all public streets in the Commissioners and the term "street" is defined to include land, not being private property, which lies between the roadway and the main wall of any house adjacent thereto. The same definition of "street" occurs in the present District Municipalities Act IV of 1884, but in the Bill for amending this Act it has been found necessary to restrict the meaning of the word "street" to the actual roadway and the drains alongside the roadway, excluding poramboke specially reserved by Government and also any private fields or waste lands bordering on the actual roadway. The Board considers that the definition of "street" in the City of Madras Municipal Act should be similarly amended.

5. As regards the sale of Government land, the Collector states that sale by public auction is the most advantageous course for Government to follow. While agreeing with the Collector, the Board considers that no sale should be ordered without previous consultation with the Municipality and that when the Municipality can in any case show that there are special reasons for the land coming into its possession, a transfer may be arranged for on special terms.

(True Copy and Extract.)

(Signed) L. D. SWAMIKANNU,
Assistant Secretary.

To the Secretary to Government, Revenue Department.

Order—Mis. No. 2331, Revenue, dated 8th May 1897.

Transferred to the Local and Municipal Department.

(True Extract.)

(Signed) A. R. KNAPP,
for *Ag. Secy. to Government.*

To the Local and Municipal Department.
Copy to the Board of Revenue (Land Revenue).

Order—No. 2693 M., dated 4th December 1897.

In his letter read above, the President of the Municipal Commission, Madras, requests re-consideration of the orders of Government, therein quoted, declining to sanction the sale by the Municipal Commissioners of certain plots of land adjoining the street, on the ground that they did not form part of the actual roadway and could not

therefore be held as vesting in the Commissioners under section 233 of the City of Madras Municipal Act. He states that from the definition of "street" given in that Act, and the terms of sections 223, 233 and 236, it may apparently be inferred that "land by the side of streets, not being private property, is vested in the Commissioners," and he further points out that it would be advantageous for purposes of conservancy and for preventing encroachments that such land should be so treated.

2. Under the interpretation which the President is inclined to give to the Act, it might be contended that all plots of public or Government land, however extensive and valuable, lying between the roadway and an adjacent house set some distance back, had been alienated to the Municipality. But any construction so wide as to have this effect would apparently be *ultra vires* of an enactment of the local legislature, inasmuch as the disposition of all real estate vested in the Government is regulated by the statute law contained in 21 and 22 Vic., C. 106 and 22 and 23 Vic., C. 41, which cannot be affected by an enactment so passed. In these circumstances, the Government regrets its inability to modify the orders already passed in the matter. An early opportunity will be taken of amending the Act so as to bring it into accord with statute law and what must be presumed to have been the intention of the local legislature,

3. All lands, not being private property, over which the public have acquired no right of way must, therefore, be held to remain at the disposal of Government. Applications by the Municipality for such land will therefore be dealt with in the same manner as applications for any other Government land.

4. His Excellency the Governor in Council, however, considers that it would be expedient for purposes of conservancy and for checking encroachments on public streets that, at any rate, certain plots of lands along the margins of roads should be handed over to the care of the Municipality. The Collector of Madras is accordingly requested to report in consultation with the President what lands might advantageously be so transferred.

(True Extract.)

H. TREMENHEERE,
Ag. Secretary to Government.

To the President, Municipal Commission, Madras.
" the Collector of Madras.
" the Revenue Department.
" all Presidents of District Boards,
" all Collectors.

Exd. P. Seetharam.

NOTES CONNECTED WITH G.O., No. 2693 M., DATED 4th DECEMBER 1897.

[Subject.—*Lands adjoining streets in the Madras Municipality.*]

From the President, Municipal Commission, Madras, dated 27th November 1896, *No.* 1249.

From the Revenue Department, dated 8th May 1897, *No.* 2331.

" " " " *7th July* 1897, *No.* 1266-*R.*

In its proceedings noted in the margin, the Government declined to sanction the sale by the Madras Municipality of certain plots of land adjoining the street, on the ground that they did not form part of the actual roadway and could not therefore be held as vesting in the Municipal Commissioners under section 233 of the City of Madras Municipal Act I of 1884. The President now asks for a reconsideration of these orders on the grounds chiefly—

No. 1794 M., dated 29th October 1895.
" 1870 M. " 8th November 1895.
" 811 M. " 11th May 1896.
" 1066 M. " 24th June "
" 1228 M. " 22nd July "
" 2018 M. " 23rd November 1896.

(1) that the lands by the roadside are shown in the old and new surveys as part of the municipal land;

(2) that such lands had, prior to the sales recommended by the Commissioners and refused by Government, been demarcated by the Deputy Collector as municipal land; and

(3) that the definition of "street" given in the Act, and sections 223, 233 and 236 thereof, lead to the inference that lands by the sides of streets, not being private property, are vested in the Commissioners.

2. In G.O., No. 476 M., dated 20th March 1896, the Government, while declining to reconsider the decisions arrived at in the two previous orders, drew the attention of the Superintendent, Revenue Survey, to the necessity of demarcating the limits of Government and municipal lands in the course of the new survey, and it was observed that all the small outlying pieces of Government land may be sold by the Collector of Madras. From paragraph 2 of the President's letter, however, it appears that the plans now prepared do not show that such strips of land by the roadside are Government or private property. The President also instances a case in which application was made to the Revenue authorities for the sale of one of these bits of land, the alienation of which by the municipality was disallowed in G.O., No. 811 M., dated 11th May 1896, but which was not sanctioned by the Deputy Collector on the ground that the land formed part of the roadway and was shown as such in the old and new survey registers.

3. The term "street" is defined in the Act as "any road, street, etc., over which the public *have a right of way* together with land *not being private property*, etc., which lies between the roadway and the main wall of any house *adjacent* thereto", and under section 233, "all public streets in the city (*not being private property or kept under the control of Government*), etc., shall vest in the Commissioners". The bits of land on the margins of roads, not being, according to the survey accounts, either private or Government property, will obviously fall within the definition of "street" *if* the public have a *right* of way over them, and must consequently vest in the Commissioners. Before, however, passing final orders on this subject, it is submitted that the papers may be referred to the Revenue department so that the question may be fully investigated and decided once for all.

Yes.
G. S. Forbes.

V. Raghava Charlu—5-1-97.

It does not at all necessarily follow that because a piece of land lies between the house and the *roadway* it is *street* vesting in the Commissioners. In some cases the intervening bit may be so trifling in extent that even though it may never have formed a part of the original house-site assigned, it would not be now worth disputing the Commissioners, title to it as *street*. In other cases the piece may be valuable.

The fact that owner of a site lying back from roadway has a right of way *ex necessitate* over the intervening plot or bit does not give a *public* right of way over it. However we better refer to the Revenue department.

G. S. Forbes—20-2-97.

In reply to the reference made to it, the Revenue department forwards without comment a copy of the resolution of the Board of Revenue (Land Revenue), Mis. No. 1395, dated 13th April 1897. In paragraph 4 of this resolution, the Board of Revenue observes as follows:—

"The Board considers that all land (not being private property) over which the public have no right of way, should remain at the disposal of Government. But it observes that the provisions of Madras Act I of 1884, as it stands, seem to favour the Municipal President's claim (which is that all land on the roadside not being private property may be treated as vesting in the Municipal Commissioners). Section 233 vests all public streets in the Commissioners and the term "street" is defined to *include land, not being private property*, which lies between the roadway and the main wall of any house adjacent thereto". The Board states that the definition of "street" in the Mufassal Municipal Act has been recently amended so as to restrict the meaning of the word "street" to the actual roadway and the drains alongside the roadway, excluding poramboke specially reserved by Government, and also any private fields or waste lands bordering on the actual roadway, and accordingly suggests that the definition of the term given in the City of Madras Municipal Act may also be similarly amended.

Note.—The portion within brackets has been put in by the office.

All public streets "not being the property or kept under the control of Government" is the wording: but apparently in a restricted sense, *e.g.*, streets in the fort, etc.

G. S. Forbes.

Under the definition of *street* in the Amending Act of 1897, the term includes the land "on either side of the roadway up to the boundaries of the adjacent property, whether that property be private property *or property reserved by Government for other purposes*", *i.e.*, it does not include a strip of Government land beyond the drains and between them and a house set back from the roadway.

G.S.F.

2. As regards the President's request that, in case any Government land within municipal limits is sold, the first refusal should be given to the municipality, the Board, while agreeing with the Collector that sale by public auction is the most advantageous course for Government to follow, considers that no sale should be ordered without previous consultation with the municipality and that, when the municipality can show any special reasons for the land coming into its possession, a transfer may be arranged for on special terms.

G.S.F.

3. Orders are now solicited as to whether the Government orders noted in the margin of page 1 should be reconsidered and as to the policy to be adopted in dealing with future applications for sales of land by the municipality. Some applications, since received, have been ordered to lie over pending orders on the general question raised in the papers under disposal.

V. Raghava Charlu—3-9-97.

The difficulty is this that the President under the shelter of section 233 and the definition of "*street*" [section 3 (*n*)] in the City Municipal Act virtually claims as municipal property all pieces of *Government* land lying between the roadway or thoroughfare and the houses adjacent thereto. In some cases these may be mere narrow strips, but in other cases the house may be set a considerable distance back, and the intervening piece may be valuable.

The definition of "street" in the City Act includes with the thoroughfare over which the public have a right of way, any "land, *not being private property*, which lies between the roadway and the main wall of any house adjacent thereto".

A literal interpretation of this definition would include as "street" plots of public (or Government) land however extensive and valuable which might lie between the roadway and a house adjacent thereto. To make the definition reasonable (in view of section 233 and other sections of the Act) it would seem necessary to attach some very restricted meaning to "*adjacent*", or to interpret the words "not being private property" as meaning merely *not being the property of the municipality*. This, however, would be a severe straining of the clause; and it may possibly have been that the legislature meant to relinquish all claim to *public* land lying between the line of houses and the roadway, overlooking inadvertently the fact that valuable land in the case of houses far set back might be sacrificed. But more likely it was purely an inadvertence.

The definition of "street" in the recent Mufassal Municipal Amending Act distinctly recognizes the difficulty by providing that Government land reserved for other purposes (*i.e.*, purposes other than "street") equally with private land is not to vest in the municipality as "street".

As legislation in amendment of the City Act is in contemplation in connection with increased taxation and other matters, the opportunity may be taken of amending the definition of "street" in the sense now embodied in the Mufassal Municipal Act.

Moreover an interpretation of "street" which would vest in the City Commissioners land which while belonging to Government was not needed for the public purpose of a street would be *ultra vires*, as the disposal of Government land is regulated by statute and Acts* of the Imperial legislature founded thereon. It is with reference to this consideration that the Government of India pointed out the invalidity of the sections of the Municipal and Local Boards Acts vesting immoveable property of Government in these Local bodies; and that we are cutting them out of those Acts by our amending Acts—*vide* recent District Municipalities Bill.

* This is a slip. It should have been resolutions of the Government of India under the statute. I had not the files of Judicial department by me when I wrote, and I was under the impression that the *mode* of execution required by *statute* had been prescribed by Acts as well as by resolutions of the Government of India—in either case however subordinate to the statute.

G. S. Forbes.

Meantime we may accept the recommendations of the Board of Revenue in their Proceedings of 13th April 1897 that "all land (not being private property) over which the public have no right of way should remain at the disposal of Government". Applications by the municipality for pieces of such land will therefore remain to be dealt with in the usual manner in which applications for any other Government land are disposed of.

We may so inform the Commissioners and inform them that any other conclusion would be *ultra vires* of the local enactment.

G. S. Forbes—2-10-97.

I agree. But circulate.

H. W. B[liss]—11-10-97.

It seems evident that, as the City of Madras Municipal Act, 1884, stands at present, "valuable land in the case of houses far set back" is (perhaps through the "inadvertence" of the legislature) the property of the municipality. The secretary says that the Act, in this respect, was *ultra vires* as it disposes of Government land, and, so, is opposed to Imperial Acts. Section 5 of 55 and 56 Vic., chap. 14, however, provides that the local legislature may repeal or amend, with reference to its province any law or regulation made by any other authority in India. It seems to me, therefore, that there is no way of remedying the "inadvertence" except by passing an amending Act. Till that is done, I think no order on the current should be issued.

J. G[rose]—14-10-97.

Before sending this farther in circulation, I would explain the point taken in my note as to the questionable validity of the clause in the Madras Municipal Act. The statutes and files I required were not readily available in Ooty, and I kept the file back till we returned to Madras.

Under section 5 of Act 55 and 56 Vic., chap. 14, the local legislature has no doubt full authority, in the circumstances therein stated, to repeal or amend any law made by any other authority *in India*. But this confers no authority to affect the statute law of the British Parliament, and it is *statute* law which is the real bar in this case to disposing of Government land except in the particular way from time to time prescribed.

The law stands thus—

By 21 and 22 Vic., chap. 106, *section* 39 "all lands and hereditaments, monies and " . . . . other real and personal estate of the said [H.E.I.] Company . . . . " become vested in Her Majesty to be applied and disposed of, subject to the provisions " of this Act, for the purposes of the Government of India".

Section 40 further provides that "the Secretary of State in Council with the " concurrence of a majority of votes at a meeting, shall have full power to sell and " dispose of all real and personal estate . . . . vested in Her Majesty under this " Act . . . . and make the proper assurances . . . . and any conveyance or " assurance of or concerning any real estate to be made by the authority of the " Secretary of State in Council may be made under the hands and seals of three " members of the Council".

Section 41 declares that no grant or appropriation of any property coming into the possession of the Secretary of State in Council by virtue of this Act shall be made without the concurrence of a majority of the Council.

Then came 22 and 23 Vic., chap. 41, which by section 1 enacted:—

"The Governor General in Council, the Governor in Council of Fort St. " George, the Governor in Council of Bombay . . . . . , *subject to such provi-* " *sions or restrictions as the Secretary of State in Council, with the* concurrence of a " majority of votes at a meeting *shall from time to time prescribe*, are hereby respectively " empowered to sell and dispose of all real and personal estate in India for the time " being vested in Her Majesty by the said Act [*i.e.*, 21 and 22 Vic., chap. 106], " within the limits of their respective Governments . . . . and to make proper " assurances . . . . ".

Section 2 of the same Act made certain provisions as to the execution of such deeds made in India, declaring that—

"The Secretary of State in Council may be named as a party to any such " deed . . . . and it shall be sufficient to use the designation of Secretary of State " in Council in such deed . . . . and the same may be expressed to be executed on " behalf of the Secretary of State in Council by or by order of the Governor General in Council, Governor in Council . . . . ".

The importance of a rigid observance of the statutory provisions was illustrated in this Presidency in connection with the inam settlement. The inam title-deeds by which this Government purported to convey to the inamdars on certain considerations real rights previously vesting in the State were drawn so as not to express that they were executed by order of the Governor in Council or further so as to purport to have been executed *on behalf* of the *Governor in Council* instead of on behalf of the *Secretary of State* for India in Council. It was accordingly found necessary in 1869 * to go to Parliament and have a special statute (32 and 33 Vic., chap. 29) enacted confirming the deeds issued by the Inam Commissioner. This statute was passed, I may remark, notwithstanding that the Madras Legislature in 1862 passed an Act (IV of 1862), declaring that the title-deed issued by the Inam Commissioner "shall be deemed sufficient proof of the enfranchisement of land previously held on inam tenure".

* *i.e.*, ten years after the inam settlement.

The statute 32 and 33 Vic., chap. 39, was replaced by the more general statute 33 and 34 Vic., chap. 59, confirming all deeds similarly executed or which might be executed within a year after the passing of the statute.

This statute (section 2) also empowered the Governor General in Council *from time to time* to vary the form of execution prescribed by 22 and 23 Vic., chap. 41.

The effect of the statute law is thus shortly this, that a legal and valid conveyance of any public land, or land vested in Her Majesty can be carried out only by deed executed under or in accordance with powers expressly conferred by these statutes. Hence the resolutions which have been periodically issued by the Government of India declaring the officers by whom certain instruments should be executed.

Vide—G.O., No. 1026, 8th June 1874, G.O., No. 856, 25th April 1895.

The next point is that as the law stands the India Legislature has no authority to derogate from these statutory provisions; for by section 22 * of 24 and 25 Vic., chap. 67, it is enacted that—

* Page 9 of the blue pamphlet.

"the said Governor General in Council shall not have the power of making " any laws or regulations which shall repeal or in any way affect any of the provisions " of this Act: or . . . . any provisions of the Act 21 and 22 Vic., chap. 106, " . . . . or of the Act, 22 and 23 Vic., chap. 41, to amend the same".

Accordingly it was with reference to the state of the law, as above indicated, that the Secretary of State in 1883, when the schemes for local self-government were sent to him, objected to the clause which appeared in some of the Bills empowering the local Administration or Government to vest in a district council property belonging to the State. The clause was accordingly struck out of some of the Bills. The Madras Bills had been dealt with in the local legislature; and the Governor General instead of disallowing them on this ground (*inter alia*) expressed the hope that they would be amended in the direction indicated at an early opportunity. So far as the Madras District Municipalities Act is concerned the amendment was made in the recent amending enactment, while it is proposed to make a similar amendment of the Local Boards Act by the Bill now under consideration.

I was Under Secretary in the Home office, and the objection I remember was first taken with reference to the Central Provinces Bill.

G. S. FORBES.

I presume a similar objection may be taken to the vesting clause in the City Act, and it was of this objection I proposed to take advantage in the suggestions made in my original note in this file.

In 1883 the Government of India intended, as I remember, to address the Secretary of State specially about the inconvenience caused by the statutory restrictions on conveyances in cases such as of those to Local bodies. But apparently nothing came of it, as our omission of the vesting clause (section 25) from the recent District Municipalities Act was accepted without a word.

G. S. FORBES—6-11-97.

The case seems to be made out, and the proposed order may issue, but an Act should be introduced at once to amend the City Act.

J. G[ROSE]—10-11-97.

The file has now to go to His Excellency as originally marked.

G.S.F.—11-11-97.

I concur that the proposed order should issue. I think, however, that there is force in Sir George Moore's argument as to the expediency of handing over some of these margins to the municipality—see (*c*) and (*e*) of paragraph 1 of his letter. Perhaps it might be well that the Collector and Sir George Moore should report in consultation what particular margins should be handed over, and which ones should be retained.

A. E. H[AVELOCK]—12-11-97.

[G.O., No. 2693 M., dated 4th December 1897.]

Government (1897) of Madras.

LOCAL AND MUNICIPAL.

Proof for approval.

Recd.	1897.	*Enclosures*
Regd.		*Spare copies*

G.O., No. 2693 M., 4th December 1897.

DECEMBER.

Sale of certain lands adjoining streets in the Madras Municipality.

Informing the President, Municipal Commission, Madras, with remarks, that Government cannot modify its orders declining to sanction the —; directing that all lands not being private property over which the public have acquired no right of way must be held to remain at the disposal of Government; and requesting the Collector of Madras to report in consultation with the President, Municipal Commission, what lands might be advantageously transferred to the Municipality for purposes of conservancy and for checking encroachments on public streets.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—~~the following papers:—~~

~~G.O., Mis. No. 2331, Revenue, dated 8th May 1897.~~

Read—the following papers:—

From Lieutenant-Colonel G. M. J. MOORE, C.I.E., President, Municipal Commission, to the Secretary to Government, Local and Municipal Department, dated Madras, 27th November 1896, P.W. No. 1249.

G.O., Mis. No. 1794 M., dated 29th Oct. 1895.
" " " 1870 M. " 8th Nov. "
" " " 811 M. " 11th May 1896.
" " " 1066 M. " 24th June "
" " " 1228 M. " 22nd July "
" " " 2018 M. " 23rd Nov. "

I have the honour to request that the question involved in the Government Orders noted in the margin, namely, the extent of land vested in the Municipality, may be re-considered for the following reasons:—

(*a*) The land by the roadside is shown in the old and new surveys as a part of Municipal streets.

(*b*) The Deputy Collector has demarcated such lands as municipal land prior to the sale being recommended by the Commissioners and the refusal by Government.

(*c*) Extensive encroachments on roadside land have been recently reported by the Engineer and are likely to continue unless they are vested in the Municipality beyond all doubt. Moreover, the staff employed by the revenue authorities are not so likely to detect any encroachment as the Municipal officers and staff.

(*d*) The definition of a street and sections 223, 233 and 236 of the Madras Municipal Act appear to infer that the land by the side of streets not being private property is vested in the Commissioners.

(*e*) No attempt to conserve these lands and remove noxious vegetation is made by the Collector.

2. The attention of the Superintendent, Revenue Survey, to the necessity of carefully demarcating the limits of Government and Municipal land was called in G.O., Mis. No. 476 M., dated 20th March 1896, but the plans which have been prepared do not show that such strips of land by the roadside are Government or private property.

3. In my letter No. 2716, dated 31st March 1896, I requested the Collector to furnish me with a complete list of Government lands within Municipal limits and that in case any portion of the same should be sold that the first refusal be given to the Municipality, and in reply was told that no such list existed and that the land will be sold by public auction. To adopt such a course would be most unsatisfactory, as it would deprive the owner of the adjacent land of a valuable frontage on Municipal roads, unless he purchased it himself, in which case he might have to pay an excessive price.

4. Particulars of one case are submitted. An application was made by Mr. Greatorex to include in his certificate the piece of land in front of house No. 17 Kilpauk Garden road. This was objected to by the Municipality in letter No. 959, dated 1st August 1895, and the Deputy Collector disallowed the claim by Mr. Greatorex. Application was then made to the Municipality for the purchase of the land and the sale was recommended by the Commissioners. This was refused by G.O., Mis. No. 811 M., dated 11th May 1896.

5. The Deputy Collector was then asked if he would sell the land and, in reply, he stated that the land forms part of the roadway and is shown as such in both the old and new survey.

6. In conclusion, I may mention that there are many cases, in which the importance of the land being vested in the Municipality is far greater than the one case in which particulars are given.

Endt. No. 217.

Referred to the Revenue Department for favour of remarks.

23*rd February* 1897. (Signed) G. S. FORBES,
Secretary to Government.

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 1395, dated 13th April 1897.

Read—the following papers:—

Government Order, Revenue Department, Mis. No. 1248, dated 5th March 1897.

And the following reference thereon, dated 10th March 1897.

Referred to the Collector of Madras for early remarks, which should reach the Board's office on or before the 20th instant.

From B. H. CHESTER, Esq., Deputy Collector of Madras, to the Collector of Madras, dated 16th March 1897, No. 252-D.

In returning Board's Proceedings (Land Revenue), reference on Government No. 501 of 1897, dated 10th instant, forwarded to me with your endorsement, reference No. 315—G & B. of the 12th idem, I have the honour to report as follows.

2. The above reference is, in connection with the representation of the President of the Municipal Commission of Madras urging that all land on the roadside not being private property may be treated as vested in the Municipality.

3. For some years past the Madras Municipality has been claiming the ownership of the sites of pials and pavements attached to private houses. These claims have come up for consideration in connection with applications for the issue of quit-rent certificates. In the great majority of cases the claims of the Municipality have been disallowed. The corporation carried a test case into court. The decision of the City Civil Court and of the High Court on appeal * show that the practice of this office has been correct.

* Municipal Commissioners for the City of Madras (plaintiffs), appellants.
versus
Sarangapani Mudaliar (defendant), respondent.
Indian Law Reports, XIX Madras, pages 154 to 157.

4. The question now under discussion is in respect of open lands on the roadside not included in landholders' certificates. The matter is not free from difficulty. I would suggest that, as between Government and the Municipality, the land vested in the corporation may be taken to be (1) the portion contained between the side drain and (2) the drains themselves including about nine inches on the outside of each to allow for the brickwork. In a few cases, the pavements are really public thoroughfares, *e.g.*, the one on the north beach from Messrs. Arbuthnot & Co's to Parry's corner, and the pavement skirting the Government House compound on the Mount Road, and such pavements should be treated as Municipal property.

5. As regards the third paragraph of the Municipal President's letter, I beg to refer you to my letter to you reference No. 670-C of the 8th May 1896. I submit that the procedure of selling Government land, by public auction, is the best course to adopt, as it is sure to secure the highest price that the land is worth and which the person wishing to buy should be prepared to pay.

6. In respect to the specific case referred to in paragraph 4 of the Municipal President's letter, Mr. Greatorex, the owner of survey No. 77 of Kilpauk in Egmore, in applying for a certificate for his property, desired that a strip of land, measuring 1,127 square feet, lying in front of his property between the public thoroughfare and his own property should be included in the certificate. The strip according to the old survey plan forms part of Kilpaukam Garden Road. On the objection of the Municipality, Mr. Greatorex withdrew his claim and the land was excluded from the certificate granted to him.

Reference on No. 315-G and B.

Submitted to the Commissioners of Land Revenue in reply to the Board's reference quoted, the enclosure to which is returned.

2. The Deputy Collector's letter quoted at paragraph 5 of the above is enclosed for reference and return.

3. The Collector concurs in Mr Chester's views generally, but considers, with reference to paragraph 4 of the foregoing letter, that nothing need be done at present regarding the open lands therein referred to, which may remain in *statu quo* till required for a road or street when they may be taken up by the Municipality in the prescribed manner.

Madras,
17*th March* 1897.

(Signed) W. AUSTIN,
Collector.

Enclosure.

From B. M. D'CRUZ, Esq., Deputy Collector of Madras, to the Collector of Madras, dated 5th May 1896, Ref. No. 670-C.

With reference to letter P.W. No. 2716, dated 31st March last, forwarded to me with your endorsement, Ref. No. 1090, of the 8th ultimo, I have the honour to inform you that there is no separate list showing the Government lands in this district.

2. If such a list is to be prepared it will entail much trouble and labour as the survey and insert registers of all the fifteen divisions will have to be gone through in order to find out which of the survey numbers that are noted as "Government property" in survey registers have subsequently become private property and which continue to belong to Government. This, it would be difficult to accomplish without a special establishment of an extra clerk.

3. In the new survey, that is progressing, all the lands belonging to Government at present will be surveyed and demarcated separately, and it would therefore be easier to prepare the said list from the new survey registers that would be furnished to this office after the completion of the present survey.

4. As regards the request of the Municipal President in the concluding portion of the above letter, wherein it is desired that the Municipality may be given the first refusal before any of the Government land is sold, I beg to point out that, as all sales of Government land in this district will be effected by public auction, the wishes of the Municipal President could not be acceded to. Such of the lands as the Municipality wish to buy will have to be competed for by it in the same way as other private persons; and to enable it to arrange for this being done, a copy of the sale notice may, in every case, be sent to the Municipal President in time before the date of sale.

Resolution—Mis. No. 1395, dated 13th April 1897.

The Madras Collector's endorsement, read above, will be submitted to Government with reference to its order Mis. No. 1248, Revenue, dated 5th March 1897.

2. In his letter forwarded for report with the Government Order quoted above, the President, Madras Municipality, suggests—

(1) that all land on the road side, not being private property, may be treated as vesting in the Municipal Commissioner's and

(2) that, whenever Government land within Municipal limits is to be sold, the refusal should be given to the Commissioners.

3. As regards roads in Madras, Government has held that only the actual roadway vests in the Municipality. The Municipal President requests that this ruling may be re-considered. He points out that, while the Municipality will be better able to check encroachments on lands by the side of roads and to prevent the growth of noxious vegetation thereon, the definition of a "street" and sections 223, 233 and 236 of the Madras Municipal Act suggest the inference that land by the side of streets, not being private property, is vested in the Commissioners. The Madras Deputy Collector suggests that the land vested in the corporation under section 233 of the Municipal Act may be taken to be the portion contained between the side drains *plus* the drains themselves, inclusive of the brick works. He points out that the sites of pials and pavements have generally come to be regarded as private property. The Collector is of opinion that the lands in question should be allowed to "remain in *statu quo* till required for a road or street."

4. The Board considers that all land (not being private property), over which the public have no right of way, should remain at the disposal of Government. But it observes that the provisions of Madras Act I of 1884 as it stands seem to favour the Municipal President's claim. Section 233 vests all public streets in the Commissioners and the term "street" is defined to include land, not being private property, which lies between the roadway and the main wall of any house adjacent thereto. The same definition of "street" occurs in the present District Municipalities Act IV of 1884, but in the Bill for amending this Act it has been found necessary to restrict the meaning of the word "street" to the actual roadway and the drains alongside the roadway, excluding poramboke specially reserved by Government and also any private fields or waste lands bordering on the actual roadway. The Board considers that the definition of "street" in the City of Madras Municipal Act should be similarly amended.

5. As regards the sale of Government land, the Collector states that sale by public auction is the most advantageous course for Government to follow. While agreeing with the Collector, the Board considers that no sale should be ordered without previous consultation with the Municipality and that when the Municipality can in any case show that there are special reasons for the land coming into its possession, a transfer may be arranged for on special terms.

(True Copy and Extract.)

(Signed) L. D. SWAMIKANNU,
Assistant Secretary.

To the Secretary to Government, Revenue Department.

Order—Mis. No. 2331, Revenue, dated 8th May 1897.

Transferred to the Local and Municipal Department.

(True Extract.)

(Signed) A. R. KNAPP,
for *Ag. Secy. to Government.*

To the Local and Municipal Department.
Copy to the Board of Revenue (Land Revenue).

G.O., R. No. 1266, Revenue, dated 7th July 1897.

Read—memorandum from the Local and Municipal Department, No. 709, dated 30th June 1897.

The Revenue Department is requested to return the letter from the President, Municipal Commission, Madras, No. 1249, dated 27th November 1896, which was forwarded, in original, with endorsement No. 217, dated 23rd February 1897.

Order—R. No. 1266, Revenue, dated 7th July 1897.

Ordered accordingly.

(Signed) C. H. B. BURLTON,
for *Ag. Secretary to Government.*

To the Local and Municipal Department.

ORDER—No. 2693 M., dated 4th December 1897.

In his letter read above, the President of the Municipal Commission, Madras, requests re-consideration of the orders of Government, therein quoted, declining to sanction the sale by the Municipal Commissioners of certain plots of land adjoining the street, on the ground that they did not form part of the actual roadway and could not therefore be held as vesting in the Commissioners under section 233 of the City of Madras Municipal Act. He states that from the definition of "street" given in that Act, and the terms of sections 223, 233 and 236, it may apparently be inferred that "land by the side of streets, not being private property, is vested in the Commissioners," and he further points out that it would be advantageous for purposes of conservancy and for preventing encroachments that such land should be so treated.

2. Under the interpretation which the President is inclined to give to the Act it might be contended that all plots of public or Government land, however extensive and valuable, lying between the roadway and an adjacent house set some distance back had been alienated to the Municipality. But any construction so wide as to have this effect would apparently be *ultra vires* of an enactment of the local legislature, inasmuch as the disposition of all real estate vested in the Government is regulated by the statute law contained in 21 and 22 Vic., C. 106 and 22 and 23 Vic., C. 41, which cannot be affected by an enactment so passed. In these circumstances, the Government regrets its inability to modify the orders already passed in the matter. An early opportunity will be taken of amending the Act so as to bring it into accord with statute law and what must be presumed to have been the intention of the local legislature.

3. All lands, not being private property, over which the public have acquired no right of way must, therefore, be held to remain at the disposal of Government. Applications by the Municipality for such land will therefore be dealt with in the same manner as applications for any other Government land.

4. His Excellency the Governor in Council, however, considers that it would be expedient for purposes of conservancy and for checking encroachments on public streets that, at any rate, certain plots of lands along the margins of roads should be handed over to the care of the Municipality. The Collector of Madras is accordingly requested to report in consultation with the President what lands might advantageously be so transferred.

(True Extract.)

Ag. Secretary to Government.

To

To the President, Municipal Commission, Madras.
" Collector of Madras.
" Revenue Department.
All Presidents of Distt Boards
" Collectors.

Exd. P. Seetharam.

LOCAL AND MUNICIPAL DEPARTMENT.

NOTES CONNECTED WITH G.O., No. 2693 M., DATED 4TH DECEMBER 1897.

[SUBJECT.—*Lands adjoining streets in the Madras Municipality.*]

From the President, Municipal Commission, Madras, dated 27th Novr. 1896, No. 1249.

From the Revenue Department, dated 8th May 1897, No. 2331.
do do do Letter 7th July, 1897, No. 1266 R.

For orders—

In its proceedings noted in the margin, the Government declined to sanction the sale by the Madras Municipality of certain plots of land adjoining the street, on the ground that they did not form part of the actual roadway and could not therefore be held as vesting in the Municipal Commissioners under section 233 of the City of Madras Municipal Act I of 1884. The President now asks for a reconsideration of these orders on the grounds chiefly—

No. 1794 M., dated 29th October 1895.
" 1870 M. " 8th November 1895.
" 811 M. " 11th May 1896.
" 1066 M. " 24th June "
" 1228 M. " 22nd July "
" 2018 M. " 23rd November 1896.

(1) that the lands by the roadside are shown in the old and new surveys as part of the municipal land;

(2) that such lands had, prior to the sales recommended by the Commissioners and refused by Government, been demarcated by the Deputy Collector as municipal land; and

(3) that the definition of "street" given in the Act, and sections 223, 233 and 236 thereof, lead to the inference that lands by the sides of streets, not being private property, are vested in the Commissioners.

2. In G.O., No. 476 M., dated 20th March 1896, the Government, while declining to reconsider the decisions arrived at in the two previous orders, drew the attention of the Superintendent, Revenue Survey, to the necessity of demarcating the limits of Government and municipal lands in the course of the new survey, and it was observed that all the small outlying pieces of Government land may be sold by the Collector of Madras. From paragraph 2 of the President's letter, however, it appears that the plans now prepared do not show that such strips of land by the roadside are Government or private property. The President also instances a case in which application was made to the Revenue authorities for the sale of one of these bits of land, the alienation of which by the municipality was disallowed in G.O., No. 811 M., dated 11th May 1896, but which was not sanctioned by the Deputy Collector on the ground that the land formed part of the roadway and was shown as such in the old and new survey registers.

3. The term "street" is defined in the Act as "any road, street, etc., over which the public *have a right of way* together with land *not being private property*, etc., which lies between the roadway and the main wall of any house *adjacent* thereto", and under section 233, "all public streets in the city (*not being private property or kept under the control of Government*), etc., shall vest in the Commissioners". The bits of land margins of roads, not being, according to the survey accounts, either private or Government property, will obviously fall within the definition of "street" *if* the public have a *right* of way over them, and must consequently vest in the Commissioners. Before, however, passing final orders on this subject, it is submitted that the papers may be referred to the Revenue department so that the question may be fully investigated and decided once for all.

Yes.
G. S. FORBES.

V. RAGHAVA CHARLU—5-1-97.

It does not at all necessarily follow that because a piece of land lies between the house and the *roadway* it is *street* vesting in the Commissioners. In some cases the intervening bit may be so trifling in extent that even though it may never have formed a part of the original house-site assigned, it would not be now worth disputing the Commissioners' title to it as *street*. In other cases the piece may be valuable.

The fact that owner of a site lying back from roadway has a right of way *ex necessitate* over the intervening plot or bit does not give a *public* right of way over it. However we better refer to the Revenue department.

G. S. Forbes—20-2-97.

[~~Current Nos. 3210 M. of 1896 and 1942 and 2504 M. of 1897.~~]

In reply to the reference made to it, the Revenue department forwards without comment a copy of the resolution of the Board of Revenue (Land Revenue), Mis. No. 1395, dated 13th April 1897. In paragraph 4 of this resolution, the Board of Revenue observes as follows:—

"The Board considers that all land (not being private property) over which the public have no right of way, should remain at the disposal of Government. But it observes that the provisions of Madras Act I of 1884, as it stands, seem to favour the Municipal President's claim (which is that all land on the roadside not being private property may be treated as vesting in the Municipal Commissioners). Section 233 vests all public streets in the Commissioners and the term "street" is defined to *include land, not being private property*, which lies between the roadway and the main wall of any house adjacent thereto". The Board states that the definition of "street" in the Mufassal Municipal Act has been recently amended so as to restrict the meaning of the word "street" to the actual roadway and the drains alongside the roadway, excluding poramboke specially reserved by Government, and also any private fields or waste lands bordering on the actual roadway, and accordingly suggests that the definition of the term given in the City of Madras Municipal Act may also be similarly amended.

Note.—The portion within brackets has been put in by the office.

All public streets "not being the property or kept under the control of Government" is the wording: but apparently in a restricted sense, *e.g.*, streets in the fort, etc.

G. S. Forbes.

Under the definition of *street* in the Amending Act of 1897, the term includes the land "on either side of the roadway up to the boundaries of the adjacent property, whether that property be private property *or property reserved by Government for other purposes*", *i.e.*, it does not include a strip of Government land beyond the drains and between them and a house set back from the roadway.

G.S.F.

2. As regards the President's request that, in case any Government land within municipal limits is sold, the first refusal should be given to the municipality, the Board, while agreeing with the Collector that sale by public auction is the most advantageous course for Government to follow, considers that no sale should be ordered without previous consultation with the municipality and that, when the municipality can show any special reasons for the land coming into its possession, a transfer may be arranged for on special terms.

G.S.F.

3. Orders are now solicited as to whether the Government orders noted in the margin of ~~page 1 of the note for orders above~~ should be reconsidered and as to the policy to be adopted in dealing with future applications for sales of land by the municipality. Some applications, since received, have been ordered to lie over pending orders on the general question raised in the papers under disposal.

V. Raghava Charlu—3-9-97.

~~Put up I.L.R., XIX Mad., quoted in Mr. Chester's letter.~~

~~*Honourable Member*~~

~~G. S. Forbes—10-9-97.~~

The difficulty is this that the President under the shelter of section 233 and the definition of "*street*" [section 3 (*n*)] in the City Municipal Act virtually claims as municipal property all pieces of *Government* land lying between the roadway or thoroughfare and the houses adjacent thereto. In some cases these may be mere narrow strips, but in other cases the house may be set a considerable distance back, and the intervening piece may be valuable.

The definition of "street" in the City Act includes with the thoroughfare over which the public have a right of way, any "land, *not being private property*, which lies between the roadway and the main wall of any house adjacent thereto".

A literal interpretation of this definition would include as "street" plots of public (or Government) land however extensive and valuable which might lie between the roadway and a house adjacent thereto. To make the definition reasonable (in view of section 233 and other sections of the Act) it would seem necessary to attach some very restricted meaning to "*adjacent*", or to interpret the words "not being private property" as meaning merely *not being the property of the municipality*. This, however, would be a severe straining of the clause; and it may possibly have been that the legislature meant to relinquish all claim to *public* land lying between the line of houses and the roadway, overlooking inadvertently the fact that valuable land in the case of houses far set back might be sacrificed. But more likely it was purely an inadvertence.

The definition of "street" in the recent Mufassal Municipal Amending Act distinctly recognizes the difficulty by providing that Government land reserved for other purposes (*i.e.*, purposes other than "street") equally with private land is not to rest in the municipality as "street".

As legislation in amendment of the City Act is in contemplation in connection with increased taxation and other matters, the opportunity may be taken of amending the definition of "street" in the sense now embodied in the Mufassal Municipal Act.

Moreover an interpretation of "street" which would rest in the City Commissioners land which while belonging to Government was not needed for the public purpose of a street would be *ultra vires*, as the disposal of Government land is regulated by statute and Acts * of the Imperial legislature founded thereon. It is with reference to this consideration that the Government of India pointed out the invalidity of the sections of the Municipal and Local Boards Acts vesting immoveable property of Government in these local bodies; and that we are cutting them out of those Acts by our amending Acts—*vide* recent District Municipalities Bill.

* This is a slip. It should have been resolutions of the Government of India under the statute. I had not the files of Judicial department by me when I wrote, and I was under the impression that the *mode* of execution required by *statute* had been prescribed by Acts as well as by resolutions of the Government of India—in either case however subordinate to the statute.

G. S. FORBES.

Meantime we may accept the recommendations of the Board of Revenue in their Proceedings of 13th April 1897 that "all land (not being private property) over which the public have no right of way should remain at the disposal of Government". Applications by the municipality for pieces of such land will therefore remain to be dealt with in the usual manner in which applications for any other Government land are disposed of.

We may so inform the Commissioners and inform them that any other conclusion would be *ultra vires* of the local enactment.

G. S. FORBES—2*-10-97.

~~* Was not sent me until the 9th.~~

~~H. W. B[LISS].~~

~~It was in one of the boxes which Honourable Member returned.~~

~~G.S.F.~~

I agree. But circulate.

H. W. B[LISS]—11-10-97.

It seems evident that, as the City of Madras Municipal Act, 1884, stands at present, "valuable land in the case of houses far set back" is (perhaps through the "inadvertence" of the legislature) the property of the municipality. The ~~section~~ says that the Act, in this respect, was *ultra vires* as it disposes of Government land, and, so, is opposed to Imperial Acts. Section 5 of 55 and 56 Vic., chap. 14, however, provides that the local legislature may repeal or amend, with reference to its province any law or regulation made by any other authority in India. It seems to me, therefore, that there is no way of remedying the "inadvertence" except by passing an amending Act. Till that is done, I think no order on the current should be issued.

J. G[ROSE]—14-10-97.

To Hon'ble Mr. Grose—

Before sending this farther in circulation, I would explain the point taken in my note as to the questionable validity of the clause in the Madras Municipal Act. The statutes and files I required were not readily available in Ooty, and I kept the file back till we returned to Madras.

Under section 5 of Act 55 and 56 Vic., chap. 14, the local legislature has no doubtful authority, in the circumstances therein stated, to repeal or amend any law made by any other authority *in India*. But this confers no authority to affect the statute law of the British Parliament, and it is *statute* law which is the real bar in this case to disposing of Government land except in the particular way from time to time prescribed.

The law stands thus—

By 21 and 22 Vic., chap. 106, *section* 39 "all lands and hereditaments, monies and " . . . . other real and personal estate of the said [H.E.I.] Company . . . . " become vested in Her Majesty to be applied and disposed of, subject to the provisions " of this Act, for the purposes of the Government of India".

Section 40 further provides that "the Secretary of State in Council with the " concurrence of a majority of votes at a meeting, shall have full power to sell and " dispose of all real and personal estate . . . . vested in Her Majesty under this " Act . . . . and make the proper assurances . . . . and any conveyance or " assurance of or concerning any real estate to be made by the authority of the " Secretary of State in Council may be made under the hands and seals of three " members of the Council".

Section 41 declares that no grant or appropriation of any property coming into the possession of the Secretary of State in Council by virtue of this Act shall be made without the concurrence of a majority of the Council.

Then came 22 and 23 Vic., chap. 41, which by section 1 enacted:—

"The Governor General in Council, the Governor in Council of Fort St. " George, the Governor in Council of Bombay . . . . , *subject to such provi-* " *sions or restrictions as the Secretary of State in Council, with the* concurrence of a " majority of votes at a meeting *shall from time to time prescribe*, are hereby respectively " empowered to sell and dispose of all real and personal estate in India for the time " being vested in Her Majesty by the said Act [*i.e.*, 21 and 22 Vic., chap. 106], " within the limits of their respective Governments . . . . and to make proper " assurances . . . . ".

Section 2 of the same Act made certain provisions as to the execution of such deeds made in India, declaring that—

"The Secretary of State in Council may be named as a party to any such " deed . . . . and it shall be sufficient to use the designation of Secretary of State " in Council in such deed . . . . and the same may be expressed to be executed on " behalf of the Secretary of State in Council by or by order of the Governor General in Council, Governor in Council . . . . ".

The importance of a rigid observance of the statutory provisions was illustrated in this Presidency in connection with the inam settlement. The inam title-deeds by which this Government purported to convey to the inamdars on certain considerations real rights previously vesting in the State were drawn so as not to express that they were executed by order of the Governor in Council or further so as to purport to have been executed *on behalf* of the *Governor in Council* instead of on behalf of the *Secretary of State* for India in Council. It was accordingly found necessary in 1869 * to go to Parliament and have a special statute (32 and 33 Vic., chap. 29) enacted confirming the deeds issued by the Inam Commissioner. This statute was passed, I may remark, notwithstanding that the Madras Legislature in 1862 passed an Act (IV of 1862), declaring that the title-deed issued by the Inam Commissioner "shall be deemed sufficient proof of the enfranchisement of land previously held on inam tenure".

* *i.e.*, ten years after the inam settlement.

The statute 32 and 33 Vic., chap. 39, was replaced by the more general statute 33 and 34 Vic., chap. 59, confirming all deeds similarly executed or which might be executed within a year after the passing of the statute.

This statute (section 2) also empowered the Governor General in Council *from time to time* to vary the form of execution prescribed by 22 and 27 Vic. chap. 41.

The effect of the statute law is thus shortly this, that a legal and valid conveyance of any public land, or land vested in Her Majesty can be carried out only by deed executed under or in accordance with powers expressly conferred by these statutes. Hence the resolutions which have been periodically issued by the Government of India declaring the officers by whom certain instruments should be executed.

Vide—G.O., No. 1026, 8th June 1874, G.O., No. 856, 25th April 1895.

The next point is that as the law stands the India Legislature has no authority to derogate from these statutory provisions; for by section 22 * of 24 and 25 Vic., chap. 67, it is enacted that—

* Page 9 of the blue pamphlet.

"the said Governor General in Council shall not have the power of making "any laws or regulations which shall repeal or in any way affect any of the provisions "of this Act: or . . . . any provisions of the Act 21 and 22 Vic., chap. 106, " . . . . or of the Act, 22 and 23 Vic., chap. 41, to amend the same".

Accordingly it was with reference to the state of the law, as above indicated, that the Secretary of State in 1883, when the schemes for local self-government were sent to him, objected to the clause which appeared in some of the Bills empowering the local Administration or Government to vest in a district council property belonging to the State. The clause was accordingly struck out of some of the Bills. The Madras Bills had been dealt within the local legislature; and the Governor General instead of disallowing them on this ground (*inter alia*) expressed the hope that they would be amended in the direction indicated at an early opportunity. So far as the Madras District Municipalities Act is concerned the amendment was made in the recent amending enactment, while it is proposed to make a similar amendment of the Local Boards Act by the Bill now under consideration.

I was Under Secretary in the Home office, and the objection I remember was first taken with reference to the Central Provinces Bill.

G. S. FORBES.

I presume a similar objection may be taken to the vesting clause in the City Act, and it was of this objection I proposed to take advantage in the suggestions made in my original note in this file.

The case seems to be made out, and the proposed order may issue, but an Act should be introduced at once to amend the City Act.

J. G[ROSE]—10-11-97.

In 1883 the Government of India intended, as I remember, to address the Secretary of State specially about the inconvenience caused by the statutory restrictions on conveyances in cases such as of those to local bodies. But apparently nothing came of it; as our omission of the vesting clause (section 25) from the recent District Municipalities Act was accepted without a word.

G. S. FORBES—6-11-97.

The file has now to go to His Excellency as originally marked.

G.S.F.—11-11-97.

I concur that the proposed order should issue. I think, however, that there is force in Sir George Moore's argument as to the expediency of handing over some of these margins to the municipality.—

[See (*c*) and (*e*) of paragraph 1 of his letter.]—

Perhaps it might be well that the Collector and Sir George Moore should report in consultation what particular margins should be handed over, and which ones should be retained.

A. E. H[AVELOCK]—12-11-97.

[G.O. No. 2693 M. dated 4th December 1897.]

[L. & 500-18-8-96]

Local & Munl. (1896) Department.

CURRENT No. 3210 R.

118

Endorsement No. 217
23-2-97.

From The President Munl C.
Commission Madra

Referred to the
Revenue Department
for favour of Remarks.

No. 1249

Dated 27-11-96.
Received 30-11-96.
Registered
Enclosures
Spare copies

By G.S. Forbes
Secy to Govt

SUBJECT.

To
The Revenue Dept.

Requesting to reconsider the Ruling Contained in Certain Govt in respect of Sales of land recommended by the Munl Commission but not Sanctioned by Govt

2693 Rev

P.W.
1.

P. W. No. 1249

MUNICIPALITY OF MADRAS,
Public Works Department,

Madras, 27th March 1896

From

LIEUT.-COL. G. M. J. MOORE, C. I. E.,
President, Municipal Commission.

To

The Secretary to Government,
Local and Municipal Department,
Fort St George.

SIR,

I have the honor to request that the question involved in the Government Orders noted in the margin, namely the extent of land vested in the Municipality, may be reconsidered for the following reasons:

Enclosure.

No.	Date.
1794 M.Mis.	29-10-1895
1870 M.Mis.	8-11-1895
811 M.Mis.	11--5-1896
1066 M.Mis.	24--6-1896
1228 M.Mis.	22--7-1896
2018 M.Mis.	23-11-1896

(a) The land by the roadside is shewn in the old and new Surveys as a part of Municipal streets.

(b) The Deputy Collector has demarcated such lands as Municipal land prior to the sale being recommended by the Commissioners and the refusal by Government.

(c) Extensive encroachments on roadside land have been recently reported by the Engineer and are likely to continue unless they are vested in the Municipality beyond all doubt. Moreover the staff employed by the Revenue Authorities are not so likely to detect any ~~for~~ encroachment as the Municipal officers and staff.

(d) The definition of a street and Sections 223, 233 and 236 of the Madras Municipal Act appear to infer that the land by the side of streets not being private property is vested in the Commissioners.

(e) No attempt to conserve these lands and remove

noxious

noxious vegetation is made by the Collector.

2. The attention of the Superintendent, Revenue Survey to the necessity of carefully demarcating the limits of Government and Municipal land was called in G.O. No 476 M.Mis. dated 20th March 1896, but the plans which have been prepared do not shew that such strips of land by the roadside are Government or private property.

3. In My letter No 2716 dated 31st March 1896, I requested the Collector to furnish me with a complete list of Government lands within Municipal limits and that in case any portion of the same should be sold that the first refusal be given to the Municipality, and in reply was told that no such list existed and that the land will be sold by public auction. To adopt such a course would be most unsatisfactory, as it would deprive the owner of the adjacent land of a valuable frontage on Municipal Roads, unless he purchased it himself, in which case he might have to pay an excessive price.

4. Particulars of one case are submitted: An application was made by Mr Greatorex to include in his certificate the piece of land in front of house No 17 Kilpauk Garden Road. This was objected to by the Municipality in letter No 959 dated 1st August 1895 and the Deputy Collector disallowed the claim by Mr Greatorex. Application was then made to the Municipality for the purchase of the land and the sale was recommended by the Commissioners. This was refused by G.O.No 811 M.Mis. dated 11th May 1896.

5. The Deputy Collector was then asked if he would sell the land and in reply he stated that the land forms part of the roadway and is shewn as such in both the old and new Survey.

6. In conclusion I may mention that there are many cases, in which the importance of the land being vested in the Municipality is far greater than the one case in which particulars are given.

I have the honor to be,

Sir,

Your most obedient servant,

Lt.-Col.

President, Munl.Commn.

1/

Local & Munl. (1897) Department.

CURRENT No. 1942. M

From

The Revenue Department

~~Order~~ Reference. No. 709 dated 30. 6. 97.

The Revenue Department is requested to return the letter from the President, Municipal Commission, Madras. No. 1249, dated 27th November 1896, which was forwarded in original, with endorsement No. 217 dated 23rd February 1897.

V.R. 28/6/97

No. 2331.

Dated	8. 5. 97.
Received	13. 5. 97
Registered	13. 5. 97
Enclosures	4. & G.O. Nos 2018. M. 1228. M, 1066. M. 811. 870. M & 1794. M. read.
Spare copies.	

SUBJECT.

Transferring letter from the Board of Revenue, Land Revenue, Submitting a report on the suggestion of the President, Madras Municipality that all Land by the road side not being private property may be treated as vested in the municipality

Copy to dept. Keep papers together VR 2/7/97

To The Revenue Department.

Dept 2/7/97

1/5 4/4/6

1/2504 Dept 1897

BACK PAPERS.

G.O.	No.	Department.	Date.
Cir	1917	L/97	7c
Pr	609	Do	18-3-97

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Revenue (1897) Department.

108

CURRENT No. 3273.

LOCAL & MUNICIPAL DEPT.
CURRENT No. 1942 m

From

The Board of Revenue,
Land Revenue.

Order Mis No. 2331.

Transferred to the Local and Municipal Department.

No. 1395 Mis.

A. Knapp.

For. Ag: Secy. to Govt.

Ootacamund
8th May 1897.

13 MAY 1897

Dated 13th April 1897.
Received 19th ,, ,,
Registered 20th ,, ,,
Enclosures 3.
Spare copies

To the Local and Municipal Deptt.
with papers in original returned.
Copy to the Board of Revenue,
Land Revenue.

SUBJECT.

Submitting a report on the suggestion of the President, Madras Municipality that all lands by the road side not being private property may be treated as vested in the Municipality.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

In any future reference on this subject, please quote the No. and date of this communication.

Ref No. 670 C ens

MADRAS, 4

DEPUTY COLLECTOR'S OFFICE,

~~Mount Road~~, 5th May 1896

From

B. M. D'Cruz Esqre

Deputy Collector

of Madras,

To

W. I. Austin Esqre I. C. S.,

Collector of

Madras.

Sir,

* Herewith returned

With reference to letter* P. W No. 2716 dated 31st March last forwarded to me with your endorsement Ref No 1090 of the 8th ultimo, I have the honour to inform you that there is no separate list showing the Government lands in this District.

2. If such a list is to be prepared it will entail much trouble and labour as the Survey and Assessment Registers of all the 15 Divisions will have to be gone through in order to find out which of the Survey numbers that are noted as "Government property" in Survey

1897

REVENUE DEPARTMENT

No. 3273

will be better able to check encroachments on lands by the side of roads and to

Survey Registers have subsequently become private property and which continue to belong to Government - This, it would be difficult to accomplish without a special establishment of an extra clerk -

3. In the new Survey that is progressing, all the lands belonging to Government at present will be Surveyed and demarcated separately and it would therefore be easier to prepare the said list from the new Survey Registers that would be furnished to this Office after the Completion of the present Survey.

4. As regards the request of the Municipal President in the Concluding portion of the above letter wherein it is desired that the Municipality may be given the first refusal before any of the Government land is sold, I beg to point out that as all sales of Government land in this District will be effected by public auction the wishes of the Municipal President Could not be acceded to - Such of the lands as the Municipality wish to buy will have to be competed for by it in the same way as other private persons; and to enable it to arrange for this being done a Copy of the sale notice may, in every Case, be sent to the Municipal President in time before the date of sale -

I have the honor to be,

Sir,

Your most obedient Servant,

Deputy Collector.

Exd.

1548
Genl.

No.

[stamp] 7 MAY 98

From

The Dy. Collector
of Madras,

To

The Collector
of Madras.

Dated 5
Despd. 6 } May 18976
Recd.

Ref No. 670

Enclosures. 2

Subject.

Submitting the report called for regarding the application of the Municipality in respect of sale of Government lands within Munici-pal limits

2
Rev 1430/97

1942 M of 1897

No. 252/D enc 2.

In future reference on this subject, please quote the No. and date of this communication.

MADRAS,
DEPUTY COLLECTOR'S OFFICE,
~~Mount Road,~~ 16th March 1897.

68

From

B. H. Chester Esq.
Deputy Collector
of Madras,

To

W. P. Austin Esq. ICS
Collector of
Madras.

Sir,

In returning Board's Proceedings (Land Revenue) Reference on Government No. 501 of 1897 dated 10th Instant forwarded to me with your Endorsement Ref. No. 315/G+B of the 12th idem, I have the honor to report as follows.

2. The above reference is in connection with the representation of the President of the Municipal Commission of Madras urging that all land on the roadside not being private property may be treated as vested in the Municipality.

3. For some years past, the Madras Municipality has been claiming the ownership of the sites of pials and pavements attached to private houses. These claims have come up for consideration in

1897
2
3273

will be better able to check encroachments on lanes by the side of roads and to prevent the growth of noxious vegetation

1942

(3) that the definition ...
... given in the Act and sections 223, 233

No. 659 / Genl

From

The Dy. Collector of Madras,

16 MAR 97

To

The Collector of Madras.

Dated 16 } March 1897.
Despd. "
Recd.

No. 252 / D.

Enclosures. 2

Subject.

Submitting the report called for in Boards' Proceedings (Land Revenue) Ref on Government No. 501 of 1897 dated 10. March 97, regarding the representation of the Municipal President urging that certain lands on the road side may be treated as vested in the Municipality.

2/942. Rev of 1897

3 / Rev/1430/97

× Sent in original.

Ref on No. $\frac{315}{G\&B}$ Encls 2.

Endorsement on letter[×] from the Deputy Collector of Madras No 252 dated 16th March 1897.

Submitted to the Commissioners of Land Revenue in reply to the Board's reference quoted, the enclosure to which is returned.

2. The Deputy Collector's letter quoted at para 5 of the above is enclosed for reference and return.

3. The Collector concurs in Mr. Chester's views generally, but considers with reference to para 4 of the foregoing letter that nothing need be done at present regarding the open lands therein referred to, which may remain in *Statu quo* till required for a road or street when they may be taken up by the municipality in the prescribed manner

Madras Collector's office } 17th March 1897 }

W. [illegible]

Collector.

---

be reconsidered . He points out that, [illegible]
will be better able to check encroachments on lands by the
side of roads and to prevent the growth of noxio[illegible] vegetation

3,000
10-12-96.

REVENUE BOARD OFFICE. MADRAS.

Proceedings of the Board of Revenue

(Land Revenue)

No.1395 Misc.,dated 13 th April 1897.

Read the following:-

1. Government Order,Revenue Department,No.1248 Misc., dated 5th March 1897.

And the following Reference thereon dated 10th March 1897.

Referred to the Collector of Madras for early remarks,which should reach the Board's office on or before the 20th instant.

2. Also Endorsement of the Collector of Madras,Ref.on No.315/G & B ,dated 17th March 1897.

Resolution

The Madras Collector's Endorsement,read above,will be submitted to Government with reference to its order No.1248 Misc.,Rev.,dated 5th March 1897.

2. In his letter forwarded for report with the Government Order quoted above,the President Madras Municipality,suggests.

(1) that all land on the road side,not being private property,may be treated as vesting in the Municipal Commissioners.

& (2) that,whenever Government land within Municipal limits is to be sold,the refusal should be given to the Commissioners.

3. As regards roads in Madras,Government has held that only the actual road-way vests in the Municipality.The Municipal President requests that this ruling may be reconsidered . He points out that,while the Municipality will be better able to check encroachments on lands by the side of roads and to prevent the growth of noxio[illegible]egetation

(3) that the definition of [illegible]

thereon, the definition of a "street" and sections 223, 233 and 236 of the Madras Municipal Act suggest the inference that land by the side of streets, not being private property is vested in the Commissioners. The Madras Deputy Collector suggests that the land vested in the Corporation under Section 233 of the Municipal Act may be taken to be the portion contained between the side-drains plus the drains themselves, inclusive of the brick works. He points out that the sites of pials and pavements have generally come to be regarded as private property. The Collector is of opinion that the lands in question should be allowed to "remain in Statu quo till required for a road or street."

4. The Board considers that all land (not being private property), over which the public have no right of way, should remain at the disposal of Government. But it observes that the provisions of Madras Act I of 1884 as it stands seem to favor the Municipal President's claim. Section 233 vests all public streets in the Commissioners and the term "street" is defined to include land, not being private property, which lies between the roadway and the main wall of any house adjacent thereto. The same definition of "street" occurs in the present District Municipalities Act IV of 1884, but in the Bill for amending this Act it has been found necessary to restrict the meaning of the word "street" to the actual roadway and the drains alongside the roadway, excluding poramboke specially reserved by Government and also any private fields or waste lands bordering on the actual roadway. The Board considers that the definition of "street" in the city of Madras Municipal Act should be similarly amended.

Please see portion flagged G+H.

5. As regards the sale of Government land, the Collector states that sale by public auction is the most advantageous course for Government to follow. While agreeing with the Collector, the Board considers that no sale should be ordered without previous consultation with the Municipality and that when the Municipality can in any case show that there are special reasons for the land coming into its possession, a transfer may be arranged for on special terms.

(True Copy & Extract)

L W Swamikannu.

Asst. Secretary.

14 APR 1897

To

The Secretary to Govt. R.D., with a letter & 2 Enclos. in original.

Md. R.H.

Local & Munl. (1897) Department.

Ans

CURRENT No. 2504 M

From

The Revenue Department.

Order

No. 1266. R.

Dated 7th July 1897.

Received 10 JUL. 1897

Registered 10-7-1897

Enclosures /

Spare copies

SUBJECT.

Ordering that the letter from the President Munl. Commission, Madras, No. 12497 dt. 27th Nov. 1896, be returned to the L & M Dept.

14/7

616

...or as municipal land and

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

F. 16 2,000—25-5-97.

REVENUE DEPARTMENT.

178

2504/M

PROCEEDINGS OF THE MADRAS GOVERNMENT.

~~Read~~

Read Memorandum from the Local and Municipal Department. No. 709 dated 30th June 1897.

Order thereon R. No. 1266 dated 7th July 1897.

Ordered accordingly.

(True extract)

/

C. A. Sherburn
for Sec'y to Govt.

To,

The Local and Municipal Department.
with the President's letter.

JJKD.

(roadmargins Madras municipality)

LOCAL AND MUNICIPAL DEPARTMENT.

1D

Current No. 3210 M
1942 M.
2504

From

("no 3210 M of the President Municipal Comm^rs Madras.
("no 1942 M)
2504 M) from the Rev Dept.

[Subject – Lands adjoining the streets in the Madras municipality.]

FOR ORDERS.

E	1794 M dated 29" October 1895	
F	1870 M ,, 8" November 1895	
G	811 M ,, 11 May 1896	
H	1066 M ,, 24" June 1896	
I	1228 M ,, 22" July 1896	
J	2018 M ,, 23" November 1896	

In its Proceedings noted in the margin, the Government declined to sanc-tion the sale by the Madras Municipa-lity of certain plots of land adjoin-ing the street, on the ground that they did not form part of the actual roadway and could not therefore be held as vesting in the Municipal Commissioners under Section 233 of the city of Madras Municipal Act I of 1884. The President now asks for a reconsideration of these orders on the grounds chiefly,

(1) that the lands by the roadside are shown in the old and new surveys as part of the municipal land,

(2) that such lands had, prior to the sales recommended by the Commissioners and refused by Government, been demarcated by the Deputy Collect-or as municipal land and

(3) that the definition of "street" given in the Act, and sections 223, 233

and 236 thereof, lead to the inference that lands by the sides of streets not being private property, are vested in the Commissioners.

2. In G.O. No.476 M, dated 20" March 1896, the Government while declining to reconsider the decisions arrived at in the two previous orders, drew the attention of the Superintendent, Revenue Survey, to the necessity of demarcating the limits of Government and Municipal lands in the course of the new survey, and it was observed that all the small outlying pieces of Government land may be sold by the Collector of Madras. From para 2 of the President's letter, however, it appears that the plans now prepared do not show that such strips of land by the roadside are Government or private property. The President also instances a case in which application was made to the Revenue authorities for the sale of one of these bits of land, the alienation of which by the Municipality was disallowed in G.o No.811 M, dated 11" May 96, but which was not sanctioned by the Deputy Collector on the ground that the land formed part of the roadway and was shown as such in the old and new survey registers.

3. The term "Street" is defined in the Act as "any road, street &c, over which the public have a right of way together with land not being private property &c which lies between the roadway and the main wall of any house adjacent thereto", and under Section 233, " all public streets in the city (not being private property or kept under the control of Government) &c shall vest in the Commissioners." The bits of land on the margins of roads not being according to the survey accounts, either private or Government property, will obviously fall within the definition of " street" if the public have a right of way over them, and must consequently vest in the Commissioners. Before however passing final orders on this subject, it is submitted that the papers may be referred to the Revenue Department so that the question may be fully investigated and decided once for all.

V.R. 5/1/97

It does not at all necessarily follow that because a piece of land lies between the house & the roadway it is a street vesting in the Comrs. In some cases the intervening bit may be so trifling in extent that even tho' it may never have formed a part of the original house site acquired, it wd not be worth disputing the Comrs title to it as a street. In other cases the piece may be valuable. The fact that the owner of a site lying back from

roadway has a right of way
ex necessitate over the intervening
plot a bit does not ~~make~~ give
a public right of way over
it. However we better refer
to the Rev. Dept.

S.V.R.
20.2.97

Current. Nos 3210-M of 96 & 1942 & 2504 M
of 1897

In reply to the reference
made to it, the Revenue Depart-
ment forwards without comment
a copy of the resolution of the
Board of Revenue, Land Revenue,
No 1395. Misc, dated 13th April 1897.
In paragraph 4 of this resolution,
the Board of Revenue observes
as follows:—

"The Board considers that all"
"land (not being private property)"
"over which the public have no"
"right of way, should remain"
"at the disposal of Government."
"But it observes that the provisions"
"of Madras Act I of 1884, as it"
"stands, seem to favour the muni-"
"cipal President's claim (which is"

Note The portion within brackets has been put in by the Office.

"that all land on the roadside not
"being private property may be
"treated as vesting in the municipal
"Commissioners). Section 233 vests all
"public streets in the Commissioners
"and the term "street" is defined to
"include land, not being private pro-
"perty, which lies between the road-
"way and the main wall of any
"house adjacent thereto." The Board states that
the definition of "street" in the mufassal
Municipal Act has been recently
amended so as to restrict the mean-
ing of the word "street" to the actual
roadway and the drains along-
side the roadway, excluding
poramboke specially reserved by
Government and also any private
fields or waste lands bordering on
the actual road way, and accordingly
suggests that the definition of the
term given in the city of Madras
Municipal Act may also be similarly

all public streets "not being
the property or kept under
the control of Govt" is the
wording: but apparently
~~meaning~~ in a restricted
sense e.g. streets in the part
of 817

Under the def^n of street in the
Amendment Act of 1897, the term
includes the land "on either
"side of the roadway up to
"the boundaries of the adjacent
"property, whether that property
"be private property or property
"reserved by Govt for other purposes"
i.e. it does not include a strip
of Govt land beyond the drains
& between them & the a house
set back from the roadway.

S.V.R.

amended.

2. As regards the Presidents' request that, in case any Government land within municipal limits is sold, the first refusal should be given to the Municipality, the Board while agreeing with the Collector that sale by public auction is the most advantageous course for Government to follow, considers that no sale should be ordered without previous consultation with the Municipality and that when the Municipality can show any special reasons for the land coming into its possession, a transfer may be arranged for on special terms.

|8V

3. Orders are now solicited as to whether the Government orders noted in the margin of page 1 of the note for orders above should be reconsidered and as to the policy to be adopted in dealing with

Vide small file putup

future applications for sales of land by the municipality. Some applications, since received, have been ordered to lie over pending orders on the general question raised in the papers under disposal.

P.R.
3/9/97

Putup I.L. XIX 1 a d quoted in the Collector's letter

S.K. 10/9/7

Put up
14/9/97

H.M.

The difficulty is this that the Presdt. under the shelter of sec. 233 & the defn. of "street" {s3.(n)} in the City Mun. Act virtually claims as municipal property all pieces of govt. land lying between the roadway or thoroughfare & the houses adjacent thereto. In some cases these may be mere narrow strips but in other cases

the house may be set a considerable ~~way~~ distance back, & the intervening piece may be valuable.

The defn of "street" in the City Act includes with the thoroughfare over wh. the public have a right of way, any "land, "not being private property," which "lies bet. the roadway & the main "wall of any house adjacent thereto"

A literal interpretation of this defn wd. include as "street" plots of public (or pvt.) land however extensive & valuable which might lie bet. the roadway & the a house adjacent thereto. To make the defn reasonable (in view of sec 233 & other sections of the Act) it will seem necessary to attach to "adjacent", or to interpret the

words "not being private property" as meaning merely not being the property of the municipality. This however will be a severe straining of the clause; & it may possibly have been that the legislature meant to relinquish all claim to public land lying between the fronts of houses & the roadway, overlooking inadvertently the fact that valuable land in the case of houses for set back might be sacrificed. But more likely it was purely an inadvertence.

The defn of "street" in the recent Provincial Mun. Amending Act distinctly recognizes the difficulty, by providing that govt land reserved for other purposes (re. purposes other than 'street') equally with private land is not to vest in the Mty. as 'street'.

to legislation in amendment
of the City Act is in contem-
plation in connection with increased
taxation & other matters the
opportunity may be taken of
amending the defn of "street"
in the sense now embodied
in the Municipal Incr. Act.

× Moreover an interpretation
of "street" which would vest
in the City Corpn. land which
belonging to govt. was not
needed for the public purpose of
a street wd. be ultra vires,
since the disposal of govt. land
is regulated by Statute &
Acts of the Imperial Legislature
founded thereon. It was in
with reference to this con-
sideration that the Govt. of
India pointed out the invalidity
of the sections of the Municipal
Acts vesting

× This is a slip. It shd
have been Resolutions of
the Govt. of India under the
Statute. I had not the files
of 2nd Dept. by me when I
wrote & I was under the
impression that the mode
of execution required by Statute
had been prescribed by Acts
as well as by Resolns of the
Govt. of India - in either case

immoveable property of govt.
in the local bodies; & that
we are cutting them out
of those Acts by our amending
Acts - vide recent Dub. Wtr. Bill.

Meantime we may
accept the Bom recommendation
of the Board of Revenue & in
their Progs. of 13 Apr. 97 that
"all land (not being private
"property) over wh. the public
"have no right of way &c
"remain at the disposal of
"Govt". Applications by
the Mcty. for pieces of such
land will therefore remain
to be dealt with in the usual
manner in wh. applications
for any other Govt. land are
disposed of.

We may so inform the
Corpn. & inform them that

any other conclusion wd. be *ultra vires* of the local enactment

S.R. ×4/10/97

[illegible] – but *circ:*

[illegible]

11/10/97

It seems evident that, as the City of Madras Municipal Act 1884 stands at present, "valuable land" in the case of houses "for set back" is (perhaps through the "inadvertence" of the Legislature) the property of the Municipality. The Sec. says that the Act, in this respect, was *ultra vires* as it orders disposal of Government land, & so is opposed to Imperial acts. Sec 5 of 55 & 56 Vict. Cap 14, however, provides that the Local Legislature may repeal or amend, with refer to its province any law or regn. made by any other authority *in India*. It seems to me, therefore, that there is no way of remedying the "inadvertence" except by passing an amending Act. Till that is done, I think no order on the Current shd be issued.

[illegible]

14/10/97

× was not sent me until the 9th

[illegible]

I concur in all of the views [illegible] [illegible]

78

in circulation, I wd. explain the point taken in my note as to the questionable validity of the clause in the Madras Mun. Act. The statutes & files I required were not readily available in Ooty & I kept the file back till we returned to Madras.

Under s. 5 of Act 55 & 56 Vic. c. 14 the local legislature has no doubt full authority, in the circs. therein stated, to repeal or amend any law made by any other authority *in India*. But this confers no authority to affect the Statute law of the British Parliament & it is *statute* law which is the real bar in this case to disposing of govt. land except in the particular way prescribed from time to time

The law stands thus.

By 21 & 22 Vic. c. 106 s. 39 "all
"lands & hereditaments, monies.... & other real & personal
"estate of the said [E.I.] Company xxx, become vested in Her
"Majesty to be applied & disposed of, subject to the provisions of
"this Act, for the purposes of the Govt. of India"

Sec. 40 further provides that "the S. of State in C., with the
"concurrence of a majority of votes at a meeting, shall have full
"power to sell & dispose of all real & personal estate xxx vested
"in Her Majesty under this Act xxx & make the proper assurances
"xxx & any conveyance or assurance of or concerning any
"real estate to be made by the authority of the S. of S. in C. may be
"made under the hands & seals of three members of the Council"

Sec 41 declares that no grant or appropriation of any property coming into the possn. of the S. of S. in C. by virtue of this Act shall be made without the concurrence of a majority of the Council.

Then came 22 & 23 Vic. c. 41 which by sec. 1 ~~empowered~~ enacted:—

"The G.G. in C., the Govr. in C. of Fort St George, & the Govr. in C. of Bombay xxxx
"xx, subject to such provisions or restrictions as the S. of S. in C. with the
"concurrence of a majority of votes at a meeting shall from time to time
"prescribe, are hereby respectively empowered to sell & dispose of all real
"& personal ~~property~~ estate in India for the time being vested in H.M. by the
"said Act [i.e. 21 & 22 Vic. c. 106], within the limits of their respective Govts.
"xxx & to make proper assurances ..."

Sec. 2 of the same Act made certain provisions as to the execution of such deeds made in India, declaring that

"The S. of S. in C. may be named as a party to any such
"deed ... & it shall be sufficient to use the designation of
"S. of S. in C. in such deed ... & the same may be expressed
"to be executed on behalf of the S. of S. in C. by or by order of the
"G.G. in C., Govr. in C. ...."

The importance of a rigid observance of the statutory provisions was illustrated in this Pcy. in connection with the inam settlement. The inam title deeds by wh. this Govt. purported to convey to the inamdars on certain considerations real rights previously vesting in the State were drawn so as not to express that they were executed by order of the Govt. in C. or further, so as to purport to have been ~~that they were~~ executed on behalf of the Govt. instead of on behalf of the S. of S. for India in C.. It was accordingly found necessary in 1869* to go to Parliament & have a special statute (32 & 33 Vic. c 29) enacted confirming ~~validating~~ the deeds issued by the Inam Commr.. This statute was passed, I may remark, notwithstanding that the Madras Legislature in 1862 passed an Act (IV of 1862), declaring that the title deed issued by the Inam Commr. "shall be deemed sufficient "proof of the enfranchisement of "land previously held on "inam tenure".

* i.e. 10 years after the inam settlement

The Statute 32 & 33 Vic c. 37
was replaced & the more general
Statute 33 & 34 Vic. c. 52 conferring
all deeds similarly executed or wh.
might be executed within a year
after the passing of the Statute.
This Statute (Sec 2) also empowered
the G. G. in Cl. from time to time to
vary the form of execution prescribed
by 22 & 23 Vic. c. 41.

The effect of the
Statute laws is thus shortly
this, that a legal & valid
conveyance of any public
land, or land vested in
Her Majesty can be carried
out only by deed executed
under or in accordance with
powers expressly conferred
by these statutes. Hence the
Resolutions which have
been periodically issued
by the Govt. of India declaring
the officers by whom certain
instruments shall be
executed.

Vide S.O. 8 June 1874 no 1026
S.O. 25 Apr. 1895 no 856

The next point is that

p. 9. of blue pamphlet

"shall not have the power of making any laws or regulations
"wh. shall repeal or in any way affect any of the provisions
"of this Act: or... any provisions of the Act of 21 & 22 Vic
"c. 106... or of the Act, 22 & 23 Vic c. 41 to amend the
"same"

I was Undersec. in the
Home Office & the objection
I remember was first
taken with reference to
the Central Provinces Bill
& I.T.

as the law stands the
Indian legislature has no
authority to derogate from
these statutory provisions;
for by sec. 22 of 24 & 25 Vic.
c. 67 it is enacted that
"the said Gov. G. in Cl.
Accordingly it was with reference
to the state of the law as above
indicated that the S. of State in 1883,
when the schemes for local self gov.
were sent to him, objected to the
clause which appeared in some
of the Bills empowering the local
Govt. & Govt. to vest in a district
Council property belonging to
the State. The clause was ac-
cordingly struck out of some of
the Bills. The Madras Bill had
been dealt with in the local
legislature; & the S.S. instead of
disallowing them on this
ground (intrinsic) and expressed the hope
that they wd. be amended
in the direction indicated at

an early opportunity. So far as the Madras dist. Mties Act is concerned the amendment was made in the recent amending enactment, while it is proposed to make a similar amendment of the Local Boards Act by the bill now under consideration.

I presume a similar objection may be taken to the vesting clause in the City Act, and it was of this objection I proposed to take advantage in the suggestions made in my original note in this file.

In 1883 the Govt. of India intended, as I remember, to [illegible] as the S. of State specially [illegible] the inconvenience caused by the statutory restrictions on conveyances in cases such as of those to local bodies. But apparently nothing came of it; as our omission (sec. 25) of the vesting clause from the recent dist. Mties Act was accepted without a word.

G.T.F. 6/11/97

The case seems to be made out, and the proposed order may issue, but an Act should be introduced at once to amend the City Act.

J.G.
10/11/97

The file has now to go to H.E., as originally marked.

[illegible] 11/11/97

I concur that the proposed Order should issue. I think however, that there is force in Sir Geo: Moore's argument as to the expediency of handing over some of these margins to the Municipality. (See Cond [illegible] of para. 7 of his letter.) Perhaps it might be well that the Collector and Sir Geo: Moore should report in consultation what particular margins should be handed over and which ones shd. be retained. A.S.H. 12.11.97

Sale of road margins – Madras municipality

LOCAL AND MUNICIPAL DEPARTMENT.

[5]
200—23-9-7.

Papers to be read in Proceedings:—

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Again G.O., No. , dated 189 .

Current No. 3210 M. of 1896, dated 27th November 1896 from the President M.C. Madras.
Current No. 1942 M. of 1897, dated 8th May 1897 from the Revenue Department.
Current No. 2504 M. of 1897, dated 7th July 1897 from the Revenue Department.

G.S. Forbes Esqr.

P.S. Order. No. 2693 [illegible] 4-12-97.

Hon. Mr. Rose

In his letter read above, the President of the Municipal Commission, Madras requests reconsideration of the orders of Government, therein quoted, declining to sanction the sale by the Municipal Commissioners of certain plots of land adjoining the street, on the ground that they did not form part of the actual roadway and could not therefore be held as vesting in the Commissioners under section 233 of ~~Act I of~~ the City of Madras Municipal Act ~~1884, as amended by Acts VII of 1884 and II of 1892~~. He states that from the definition of "Street" given in that act ~~above referred to~~ the terms of and Sections 223, 233 and 236 it may apparently be ~~[illegible] leads to the~~ inferred that the "land by the sides of streets not being private property is vested in the Commissioners"

~~he~~ duly points out that it would be advantageous for ~~the~~ purposes of conservancy and for ~~putting down~~ preventing encroachments, that such land should be so treated.

2. The term "Street" as defined in clause (n) of section 3. of the City of Madras Municipal Act I of 1884, as amended by Acts III of 1884 and II of 1892, includes with the thoroughfare over which the public have a right of way, the "land" not "being private property ..... which "lies between the roadway and the "mainwall of any house adjacent "thereto." ~~A literal interpretation of "street" as given in clause (n) of sec. 3 of the Act of the definition would bring within the meaning of "street"~~ plots of public or Government land, however extensive and valuable, ~~which might lie~~ between the roadway and any other adjacent house. But any interpretation of this term which would invest in the municipal Commissioners land which while belonging to Government was not needed for the purpose of a public street, and which in the case of buildings far set back from the line of houses

Under the interpretation sh. the Pres.t is inclined to give to the Act it might be contended that all land had been alienated to the City. But any construction so wide as to have this effect would apparently be ultra vires of an enactment of the local legislature, inasmuch as the disposition of all real estate vested in the Govt. is regulated by the statute law contained in 21 & 22 Vic c 106 & 22 & 23 Vic. c. 41, which cannot be affected by an enactment so passed.

is likely to be extensive and valuable would be ultra vires, as the disposal of Government land is regulated by Parliamentary Statute and the Resolutions of the Government of India passed under it. In these circumstances, the Government regrets its inability to modify the orders already passed in the matter. ~~Advantage will be taken~~ Care will be taken to the next opportunity ~~to~~ will be taken to amend the definition of "Street" so as to exclude from its operation all Government land reserved for purposes other than a street, ~~and all private land situated on the sides of roads.~~

~~3 The recommendation of the Board of Revenue that~~ All land not being private property, over which the public have acquired no right of way must therefore be held ~~should~~ remain at the disposal of Government, ~~is approved~~. Applications by the municipality for

Let us so frame it as to bring it into accord with statute law & what must be presumed to have been the intention of the legislature

Note It is not desirable here to indicate the precise nature of the amendt. required. The Legal Dept. may have something to say

S.V.

~~pieces of~~ such land will therefore be dealt with in the same manner as applications for any other Government land.

4. ~~The Government~~ H.E. the Gov. in C. however considers that it would be expedient for purposes of Conservancy and for checking encroachments on public streets that ~~some~~ at any rate certain plots of ~~the~~ lands ~~on~~ along the margins of roads should be handed over to the care of the municipality. The Collector of Madras is accordingly requested to report in consultation with the President ~~which of them~~ what lands might advantageously ~~should~~ be so transferred.

(From orders.) [illegible]

K.B.
29/11/97

[illegible]
30/11

To
The Revenue Department for counter initials.

To { The President M.C. Madras
.. Collector of Madras
.. Revenue Department
All Presidents of Dist. Bds. Copied 5/1/98
~ Collectors Copied 6/1/98

Copied 6/1/98

NOTE FOR THE Secretary 151(?)

There is no objection to the draft order below being counter-initialled in this Dept.

K.B.
30/11/97

Hon. Mr. [illegible]

The draft may be accepted.

[illegible]
30/11/97

Seen
[illegible]
2/12/97

Copy sent to Press. 7-12-97

Returned for signature. 22-12-97

Despatched in print. 4-1-98
5-1-98

READ AGAIN G.O., No. 6-1-98
189 ,

NUMBER OF COPIES REQUIRED. { Order complete. 56
Letter only.
Order complete with Letter. 15

CURRENT No. 3210 W986
1962 W987 A
250 4.11

ENCLOSURES TO C. No. 1962 W987 } A.
2506

Order of Government .. .. ..

Letter of Government.

Statement with ditto.

Papers not filed up being meant for despatch in original.

P 70
Skin proof please
PP
4/12/97

N.B.—

A = Print in full.
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.