7-12-66.5

Local & Munl. (1897) Department.

MISCELLANEOUS.

G.O., No. 2834 M.

DATED 8-12-97

INDEXED.

[Despatch Abstract.]

Erection of buildings in objectionable localities — Informing the municipal council Ootacamund that the question raised by it regarding —— will be borne in mind in connection with the legislation which it is proposed to undertake for giving increased powers to municipal councils in hill stations to regulate the construction & disposition of buildings & requesting the council meanwhile to submit at a very early date a full list of additional powers which it considers should be conferred on such municipalities.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Cur	2884 L/98						
Cur	2847 L/98						

Local & Munl. (1897) Department.

CURRENT No. 3750M

Order

From The Chairman
Municipal Council
Ootacamund.

No. 3115

Dated 22nd October 1897.

Received 1-11-97

Registered

Enclosures Three.

Spare copies.

SUBJECT.

Buildings.

Submitting for consideration, resolution of the Municipal Council dated the 16th October 1897, on an application of a Councillor, for the construction of a house, in an unsuitable locality.

SECRETARIAT * LOCAL & MUNICIPAL DEPARTMENT
1 NOV 1897

a/66/11

BACK PAPERS.

G.O.	No.	Department.	Date.
Go	1439	Mil	18-6-97
"	1843	Mil	30-10-96
Ext	1124/96		
Go	71	Legislative	14-9-9
"	24	Legislative	19-3-96
"	1662	Mil	18-10-95

FURTHER PAPERS.

G.O.	No.	Department.	Date.

~~No.~~

Extract from the Proceedings of a Meeting of the Ootacamund Municipal Council held on ~~Thurs~~ Saturday the 16th October 1897.

Present.

The Chairman
J. H. A. Tremenheere Esqr.
W. E. Smith Esqr.
~~Sithe~~ Bin Meanjel Sait Sahib
Col: W. F. Stevenson
G. Walch Esqr.
J. Browne Esqr.
M.R.Ry P. Maruthachella Mudaliar Mug:
N. M. Gool Mahomed Sait Sahib avergal.

Subject No. IX

Read letter dated 27th September 1897, from Messrs Winterton and Esqr. Solicitors. on the application from M.R.Ry Maruthachellam Mudaliar for erecting a building near the huts on the Hill near the Municipal Office.

RESOLUTION :—

Proposed by Mr. G. T. Walch and Seconded by Mr. J. Browne.

"That a copy of Mr. Winterton's letter be sent to Government with a request that it will take the opinion of its Law Officers on the subject and communicate the same to the Municipal Council, and further should that opinion be similar to Mr. Winterton's, the Municipal Council trusts that Government will so alter the Municipal Act that, in Ootacamund, the Municipality may be given powers to prohibit the erecting of buildings which may be considered inadvisable, because of overcrowding, unhealthiness, impossibility of efficient drainage of site, of position, or for other general sanitary reasons."

Carried:

MUNICIPAL OFFICE,
OOTACAMUND, 22d October 1897.

(True Extract)

To

Chairman.

No 1847

1/3750

Wimpton & Edge
Solicitors.

Ootacamund
21st September 1897

To
The Chairman. Municipal Council
Ootacamund

Dear Sir,

Maruthachellam Mudeliar.

With reference to your letter of the 21st ultimo, I have inspected the proposed site of the house, and have referred to the opinion given to the Council by us on the 4th day of November 1896 as to the power of District Municipalities under the Act of 1884, and have also referred to the Amending Act No. III of 1897.

We cannot find that the Act, as amended, expressly empowers the Council to refuse licenses for building houses on the applicants own land within the Municipality. Section 181 (4) gives the Council power to direct alterations in the matters referred to in clauses (a) (b) (c) and (d), but does not give power to refuse a license on general "Sanitary grounds" or on any ground at all. On the other hand that section (180 (3)) makes the grant of a license (subject to power to direct alterations under the above mentioned Sub-Section 4.) imperative; and Sub section (5) provides that in the absence of the issue of a license within 6 weeks from the

the date of the application (with or without directions for alterations in any of the respects above referred to) the applicant can proceed to build in accordance with the particulars and plan deposited.

As, therefore, it appears that under Section 181 the Council considers the particulars and plan, and direct any alterations it may consider necessary under Clauses (a) (b) (c) or (d) of Section 180 (4).

It seems to us clear that Section 181 A does not apply to this case, and that Section 3 (1) does not operate so as to enable the Council to construe an application under Section 180 (1) for license to construct a house, as an application to build a hut or shed, so as to bring the application within the restriction laid down in Section 181 A.

It seems also clear that Section 226 (1) relates to overcrowding of persons in buildings, and not to over-crowding of buildings together.

We cannot find that there is any Bye law framed under Section 255 of the Act for the well being of the Municipality which would affect the construction of Section 180. (4)

We return the papers received with your letter.

We have &c.

Sd/ Winterton & Edge.

2/ 3750 of 1897

"True copy"

Chairman.

Winterton & Edge.
Solicitors.

Ootacamund
4th November 1896.

To

The Chairman. Municipal Council
Ootacamund

Sir,

We have perused the Dist. Municipalities Act No. IV of 1884 and the Reported Indian Case Law which follows the English Law, with reference to the questions contained in your letter No. 3014 dated the 1st. Inst.

Section 179. of the Act in its own words prohibits the use of certain materials for building except in the written permission of the Municipal Council.

Section 180 in effect precludes the erection of a building without a license from the Council, and makes it the duty of the person proposing to erect the building to adopt such ventilation, drainage, levels of lowest floor or foundation, situation and sufficiency of privies and "such other particulars as may have been required under the bye laws"

It will be observed that Section 180 does not in its own words give express power to the Council to control the situation of a proposed building, other than a privy, or to control the levels of the upper floors of buildings.

It is important to enquire what "other particulars" may be required under the byelaws.

Section

Section 255 regulates the scope of bye Laws which can be made by the Council, and Sub Sections (1) (iv) and (1) (vi) are so worded as necessarily to give the Council discretion as to what is necessary for securing cleanliness, safety and order in the streets, and for securing the good government and well being of the Munici-pality; but Sub Sections (1) (v) and (2) restrict the operation of bye-laws to the purposes of the Act, and save the rights of (inter alia) land owners under any law in force.

It will be seen that the power to make bye-laws is limited, and that its exercise is considered so important as to require the assent of the Governor-in-Council under section 255 (3).

In Beni Madhub v Mati Lal Das ILR, 21 Cal: 837, it was found that a certain bye Law was not one authorized by the terms of a section of the Act, and was consequently ultra vires.

Bearing this in mind, it is import-ant to enquire whether in the exercise of the discretion above referred to, the Council should construe the words of the Act strictly in favor of private rights, or liberally in favor of clean-liness, safety and order in the streets, and the good government and well being of the Municipality.

In Branson v Municipal Com-missioners Madras (I.L.R, 2 Mad: 362), with reference to the words of a statute, it was

was laid down that "an equitable construction was not permissible in a "taxing statute where it is possible to adhere to the words of a statute", but in the same case it was also said that "when a public "body is entrusted by the Legislature with "the duty of making public improvements, "and powers are entrusted to it for "such purpose, those powers will not be "subject to a restrictive construction"; and in Olivant v Rahimtula Nur Ma-homed (a Municipal Commissioner) (I.L.R, 12 Bombay 474) it was laid down that "where an Act gives power to a Munici-"pality or Corporation for the public benefit, a "more liberal construction should be given "to it than where powers are to be exercised "for private gain or other advantage."

In Ahmedabad Municipality v Manilal Udmath (I L R ~~XX~~ Bombay 212) the Court said "it is not the practice "of the Court to interfere with Corporate "bodies unless they are manifestly abusing "their powers" (Duke of Bedford v Dawson LR 20 Eq. 353.)

Then arises the question as to what bye-laws the Council can make, under a liberal construction of Section 255 of the Act, for securing cleanliness, safety & order in the streets & the good government and well being of the generally for securing Municipality with respect to the powers given by the Act in Section 180.

In

In face of such rulings as those above quoted, we think it would be dangerous to hold that a byelaw could be made to require more ~~that~~ than further particulars of the incidents or features of buildings specially put under the Control of the Council by the words of Sections 179 and 180, as the express provisions of those Sections preclude any implication of Control by the Council as to other incidents or features of buildings.

We are asked (2) whether if Section 180 (4) does not contain certain restrictions against buildings, a byelaw imposing such restrictions could be made under Section 255 (iv); and we are of opinion for the above reason that such byelaw in excess of the restrictions contained in sections 183 and 184 would be "ultra vires".

In reply then to the question (1) put to us as follows, namely

Whether Section 184 (4) gives the Council power
(1) To prevent the erection of buildings in unsuitable localities:
(2) to prevent the erection of houses "higgledy-piggledy" or
(3) to ensure that some methodical arrangement in building shall be followed;

putting a liberal construction on Section 184, we are of the following opinion.

(1) We can find nothing in Section 184 which gives power to the Council to fix the situation of

of

of any building other than a privy, having regard to what the Council's views may be as to suitableness or otherwise of a locality, or having regard to such order in the streets or good Government and well-being of the Municipality as is contemplated by Section 255.

Such power would in our opinion, and in the language of Sec: 255 (2) be repugnant to the law in force, which gives every land-owner right to build on his own land; but this opinion is given subject to the qualification under para (3) below.

(2) Taking the expression "higgledy-piggledy" to mean "in confusion", we observe that the principle shewn in Section 187 (3) on removal of crowded buildings, is that of compensation to the owner or occupier even in case of impracticability of cleansing &c. by reason of crowding. But, on the question of granting or withholding a license to build under Section 180, we are of opinion that such confusion in the proposed building as would affect ventilation, drainage, and scavenging, and as, therefore, would affect the well being of the Municipality, would be a good ground for refusal of a license to build or for the Council to direct some other order in the building.

We think that it may be taken to be a reasonable construction of the Act that the Council has power under Section 180 to prevent the erection of

Such

such buildings as it has power to removal under Section 187; but that if the Council has allowed the erection of an insanitary building under section 180, it should compensate the owner on its removal under Section 187.

(3) We think that methodical arrangement in the erection of a building or buildings can be ensured by refusal of license or directions for alterations only for the objects or purposes of the Act expressly alluded to in sections 180 and 187, which may be taken to be ventilation, drainage and sanitation; and that, under the head of sanitation, prevention of over-crowding may be included; but that the Act does not provide for aesthetic control of the features of a building or group of buildings.

We have &c.
sd/ Winterton & Edge.

(True Copy.)

Chairman.

3/3750 M of 1897

Through the Collector of

No. ....

Ootacamund Municipal Office,
22nd October 1897.

LOCAL & M
3750 M

Cur 13/4/97

From

THE CHAIRMAN,
MUNICIPAL COUNCIL,
OOTACAMUND.

To

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

Enclosures Three.

Sir,

Referring to the papers marginally noted, I have the honor to submit for the favorable consideration and early orders of His Excellency the Governor-in-Council copy of a resolution passed by the Ootacamund Municipal Council, on the 16th October instant, on the renewed application from a member of the Council to build a house, the original application having been rejected[x] by the Council on sanitary grounds.

Chairman's letter no. 2496 dated 25th September '95
G.O. No. 1662 Mn. Mis: dated 18th October 1895
Chairman's letter no. 4594 dated 22nd February '96
Do no. 1726 dated 1st August '96
G.O. No. 1124 dated 30th September 1896
Chairman's letter no. 380 dated 29th April '97
Collector's remarks no. 1024 dated 9th May '97
G.O. No. 1439 Mn. Mis: dated 18th June '97

[x] on the 5th April '97.

2. The papers connected with the applications were referred to the Municipal Council Counsel, and copy of his opinion[x] is also submitted together with copy of the opinion given by him on the 4th November 1896, as to whether Section 180(4) of Madras Act IV of 1884 gave the Municipal Council power (1) to prevent the erection of buildings in unsuitable localities, (2) to prevent the erection of houses higgledy-piggledy wherever space is available, or (3) to ensure that some methodical arrangemen

[x] dated 27th September 1897

1000.
1-8-97.

building shall be followed.

3. The site of the house is on the slope of the Hill n which the Municipal Office is built. It hugs two long huts occupied by indigent people and people of the Scavenger Class. There is no land over which a road can be made, nor is there sufficient space for the erection of out-Offices (as latrine, Stables, Coach-house, fowl-house &ca) which would in the ordinary course have to be attached to a dwelling house consisting of the following accommodation viz:

1. Visiting room . . .	12'x15'
1. Dining room . . .	12'x15'
1. Bed room . . .	12'x15'
1. Bath room . . .	7'x8'
1. Store room . . .	9'x8'
1. Cook room . . .	9'x12'
1. Servants' room . . .	9'x12'
1. Verandah . . .	17½x6'

The total length of the building is 41 feet and the breadth 38 feet. The site selected measures 50 feet long, and the average width is 36 feet i.e., ne end 30 feet wide and the other end 42 feet wide.

4. The Bye-laws drafted by Mr. G. T. Walch under Section 180 of the present Municipal Act are still under the consideration of a Sub Committee appointed by the Municipal Council on the 14th June 1897. They do not, however, touch the points raised in the Resolution submitted now.

I have the honor to be,
Sir,
Your Most Obedient Servant,

Chairman

Dep. Coun. No 2957 | (1557)

Forwarded to Government with the following remarks.

2. In respect of a house which is not a hut or shed, the Act, apart from byelaws, gives no power to the Council except to alter the levels, the means for ventilation or drainage & the latrine accommodation. Thus, for instance, if a man wants to build in part of an unhealthy swamp, the Council can only require him to raise his levels and to drain perhaps a portion of the swamp (Sec 213 A). If he wants to build a native hotel next to an infectious disease shed or a public latrine or in an overcrowded locality or in a place for other reasons conspicuously unfit, he cannot be prevented, unless the construction shall actually endanger human life (Ss 180, 181. 181 A). It is true that, under certain circumstances, the Council may immediately

afterwards proceed to pull down such a building, but it has to compensate the owner (S 187).

3. The Council may also require alteration in certain particulars prescribed by byelaws to be entered in the application for licence. Such particulars, I take it, may explain, or be in line with, the provisions of the Act, but cannot extend its scope. Such byelaws might prescribe particulars affecting Latrines Drains &c + general Sanitary Regulations (SS 206 to 230) - for instance under sec 217 might require the proposed location of nightsoil receptacles to be specified but I do not think a byelaw requiring a margin of private land between a proposed house and an already overcrowded lane or between a hotel + a public latrine would be legal, because such a byelaw would extend the scope of the Act.

4. For the above reasons I think that Messrs Winterton + Eddys opinion merits consideration by Government & that Ootacamund is not sufficiently protected under the present act from objectionable building

Nilgiri Collector's Office }
Ootacamund 28th October 1897 }

Collector

Copied

Cmpd.

LOCAL AND MUNICIPAL DEPARTMENT.

C. No. 3750 M.

SUBJECT.

Erection of buildings in objectionable localities. Ootac

H. M. for FOR ORDERS.

Submitted that this is ~~not~~ perhaps hardly necessary.

If the H. M. wishes, suggestions will be made for remedying what seems to be defects or rather deficiencies in the law.

H. T.
6.12.97.

Apparently this is to the effect that a Building Act is required in Ooty. But I have said a dozen times that one is required. One should be prepared. There was no need to send me this.

7/12/97

As to whether the Advo General should be consulted in matter, as requested by the munici Council. The exposition of the regarding the powers of the Cou in controlling and regulating construction and disposition of buildings in municipalities and in framing byelaws on the subjec given by Messrs Winterton and Edge and Collector in paragraphs 2 and 3 of endorsement seems to be correct and the Council's attention ma be drawn to the Collector's remark with an expression of concurrence in them.

2. In paragraph 4 of his endorsement, the Collector points out that "Ootacamund is not sufficiently "protected under the present a

Recd 28-12-97

om objectionable building." The
iadequacy of the provisions of the
ct on this subject, to meet the require-
ents of Ootacamund was once before brought
the notice of Government by the
hairman and the Collector - vide the
tter and endorsement in G.O. No 1439 M,
ted 18th June 1897, but the Govern-
ent was then of opinion that the
unicipal council had very con-
iderable powers under sections 180
81-B of the Act to regulate the con-
ction and disposition of build-
s. Please see the notes and orders
G.O. No 1439 M, dated 18th June 1897.

CA
11/11/7

Is there a special act or
special legislation for
Simla or Darjeeling

GH
18/11/7

Note for the Secretary

No special act or special legislation regarding the construction or disposition of buildings for Simla or Darjeeling can be traced.

2. Simla being a municipality

Put up the Acts & papers
quoted in this note
14/11/7

in the Punjab is governed by the Punj
Municipal Act XX of 1891. Chapter VI
of this Act contains some special
regulations, and sections 91 to 95
thereof deal with the construction
reconstruction and repair of build-
-ings. Section 92 says that
"every person who intends to
"erect or reerect any building shal
"× × × × give notice in writing
"× × × × of his intention to the
"Committee, and the Committee may within six we
"after the receipt of such notice
"either refuse to sanction the said
"building or may sanction the said
"building either absolutely or subje
"to any written directions × × ×"
Under section 88 of the Punjab
Municipal Act XIII of 1884, which
was repealed by the later Act of
1891 above referred to, however,
the municipal Committee had
power to prohibit the erection or
reerection of a building only
if such erection or re-erection was
"likely to be injurious to the in-
"habitants of the neighbourhood".

In introducing the bill to
amend the Punjab Act XIII of 1884,
the Honorable Sir Philip Hutchin

observed that the powers such as those given by section 93 for the regulation of building, though "not expressly confined to hill-"stations are not likely in practice "to be applied elsewhere" Attention is also invited to the remarks of the Honourable Mr Rattigan on chapter VI of the Bill — vide pages 250 and 251 of the Proceedings of the Viceregal Legislative Council for 1891.

It will thus be seen that section 93 of the Punjab Municipal Act XX of 1891, contains some special provisions regarding buildings which were obviously intended for Simla and other hill stations.

3. The provisions of the Punjab Act were imported into the Bengal Municipal Act by the amending Act IV of 1894 — vide sections 236 to 244 of the Bengal Municipal Act III of 1884, as amended, and these regulations will be in force in Darjeeling, if they had been applied to that municipality under section 220 of that Act.

V.R.
4/11/97

[L. & M.
300—2-1897.]

Erection of buildings in objectionable localities – Ootacamund

LOCAL AND MUNICIPAL DEPARTMENT.

Papers to be read in Proceedings :—

Again GO., No. , dated 189 .

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

Current No. 3750-M of 1897, dated 22nd October 1897 from the Chairman M. C. Ootacamund

" " " 189 , " , "

" " " 189 , " , "

Mess ORDER. No. 2834 M Mis 18/12/97

The Government does not consider it necessary to consult the La Officers, as requested by the municip council.

2. The questions raised by the council, will however be borne in mind in connection with the legislation, which it is proposed to undertake for giving increased powers to municipa councils in hill stations to regulat the construction and disposition of buildings. In the meantime, the municipal council is requested to sub at a very early date a full list of additional pow for ~~regarding the regulation of buil~~ ~~and such other matters~~, which, it siders, should be conferred on suc municipalities. The list need not be (From orders)

× restricted merely to building regulations, but shd include all powers necessary in the view of the Council for proper administration of a Hill Sanitarium

The Chairman M. C. Ootacamund through the Collector of the Nilgiris

despt. 20/12/97

1/17 12 97

V.R. 17/12/97

When given for copying
When copied
When examined
When signed 18/12
189

READ AGAIN G.O., No. DATED
189

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT .. .. .. A A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DITTO

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.

N.B.—
A = Copy in full.
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