[L. & M. / 29]
12,000—15-10-00.

# Local & Munl. (190 ) Department.

MISCELLANEOUS.
ROUTINE.

**G.O., No.** 705 L

**DATED** 20-3-57

[Despatch Abstract.]

C2366L/01
29/8/01

## BACK PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
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## FURTHER PAPERS.

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CRO. 3604

Misc

Order No 705 Muns. 25/3/97

Recorded.

2. As recommended by the Collector in para. 2 of his endorsement, agreements should be taken in the case of all the encroachments referred to in para. 5 of the Chairman's letter ~~, but~~. No action can however be taken to charge rents ~~levy~~ under Sec 208 of the Dist Municipalities Act IV of 1884, as the section ~~which can be~~ applicable only to cases in which the occupation of the municipal land is ~~has been~~ without permission.

3. The decision of the Bombay High Court quoted in the last paragraph of the Chairman's letter ~~lays down~~ shd be carefully noted ~~expresses the fundamental law (that occupation which is merely casual~~ not quiescent & meant to continue ~~will not constitute adverse~~ [illegible] ~~possession, and the Gov agrees with the Chairman in considering that the occupants of said Koradus and other similar erections of a temporary character cannot acquire a title to them~~

more
of ~~value of having been in~~ possession ~~for more than twelve~~ years.

4. The attention of the Municipal Council is drawn to the remarks in paras. 2 and 3 of the Sub Collector's and in para. 3 of the Collector's Endorsements.

(From orders)

V.R.
24/3/97

To
The Chairman, M.C. Conjeeveram
Collector of Chingleput

P. Sents

Desp. 29/3/97

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Encroachments in Conj

**LOCAL AND MUNICIPAL DEPARTMENT.**

189 , No.

Again G.O., dated from the

Current No. of 189 , dated

Current No. 360. M. of 1897, dated 30th Decr. /96. from the Chairman, M.C. Conjeeveram.

FOR ORDERS.

The Chairman requests order on the following two points:–

(i) Whether in the case of encroachments, on which the municipal council has decided to charge rents, agreements (in writing?) should be obtained from the individuals concerned for payment of such rent, and

(ii) Whether in case the parties do not come to terms, the rent can be charged under Section 268 of Act IV of 1884 and recovered under Section 269.

2. The Collector of Chingleput considers that agreements should be taken in all such cases and that if the parties do not execute agreements, higher rents than those sanctioned by Government (in G.O. No. 863. M. dated 21st May 1896) may be charged by the Council under Secti

~~[illegible] of [illegible]~~ more
be ~~posses-~~

Section 268. Vide para. 2 of his endorsement.

3. If the municipal council can, under Section 268, charge rents in the case of these encroachments, there will be no necessity at all for getting agreements from any of the parties. It will be much easier for the council to proceed under this section even where the encroachers are willing to enter into ~~agreements~~ agreement. For then, the rent dues can be recovered in the same manner as a tax, (Vide Section 269) whereas, if agreements are taken, the council will have to launch itself in innumerable civil suits for the recovery of rent from defaulters.

4. It is, however, very doubtful whether rents can be charged under Section 268 in the cases in question. This Section authorizes the municipal council to charge rents for the occupation of municipal lands "without permission," but all the encroachments have been made with permission obtained from the municipal council. If these permissions are considered to be

The rents are not to be charged under Sec. 268, but simply for the occupation of the municipal ground.

The Mty. has I believe adopted a form of agreement, which is independent of Sec. 268, which only applies where permission has not been previously given. There are no doubt cases also of this kind.

be alienations of municipal property, then they can be held to be invalid, the sanction of Government not having been obtained under G.O. No. 210. M. dated 20th February 1889, and action can ~~then~~ be taken under Section 268

5. With reference to the concluding portion of his letter, the Chairman may be informed that the class of cases therein referred to is also governed by the Advocate-General's opinions communicated with G.O. No. 863. M. dated 21st May 1896. (pages. 10 & 11.)

6. The council's attention may be drawn to the remarks of the Sub. Collector in his endorsement.

V.R.
27/2/97

H.V.L.

It seems enough if in recording the report, we add that agreements sho. be taken as the Coll^r. recommends but not under Sec. 268 which can be applied only in cases in which the occupation has been without previous sanction. The Bombay case

to. The Bombay case lays down the law where the original occupation is merely casual. The Adv. Gen's. opinion does not touch that point.

more
~~nature of [illegible]~~ possessor.

~~[illegible]~~ expresses the fundamental law as to occupation nearly all along the merely casual & not ea adverso.

S. R. 17/2/97

19/3/97

FOR ORDERS.

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Current No. 115/Gl of 96;

Current No. ~~15 Suppl~~ 115/1897

Local & Munl. (189 ~~7~~) Department.

CURRENT No. 360 M

18 JAN 1897

SUB COLLECTOR
4 JAN 1897
CHINGLEPUT

Forwarded.

2. Para 8. The 3 cases against the temporary absentees shd be filed as such in the return. It is difficult to understand why 4 persons were acquitted of violation of conditions of passes on the ground of long occupation. Records will be called for.

3. Para 8. I consider that the

**Order** Chairman's view is correct, that the rejection of the evidence of municipal servants as to encroachment ~~was improper~~, merely because they could not specify dates, was improper. The accused apparently could produce no satisfactory evidence. There appears to have been a failure of justice in these cases, & it is worth considering whether the cases shd not be reheard.

14 [illegible].

[illegible] collector

Forwarded.

2. Para 5. Agreements should, I consider, be taken in all such cases. The Chairman has been informed that, if the parties do not execute agreements, higher rents than those sanctioned by Government may be charged by the council under section 268 of the Act and recovered under section 269.

3. Para 8. The Chairman may address the Divisional Magistrate regarding the cases of acquittals referred to by him.

D. Murdoch

Saidapet
29th January, 1897

Ag Collector

9/2 a/10/1/97

**From** The Chairman
Municipal Council
Conjeeveram

~~Refer~~ **No.** 49/G.O. of 96

**Dated** 30. December 96.

**Received** 30th Jany/97.

**Registered**

**Enclosures** I

**Spare copies**

SUBJECT.

Encroachment.

Submitting report upon — as directed in G.O. No: 1694 Mis dated 2nd October 96.

## BACK PAPERS.

| G O. | No. | Department. | Date. |
|---|---|---|---|
| fo | 1694 | Mu | 2-10-96 |
| fo | 1603 | Mu | 19-8-96 |
| fo | 863 | L | 21-5-96 |

## FURTHER PAPERS.

| G.O. | No. | Department. | Date. |
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Ref on No: 49/G.O of 96.

Office of the Municipal Coun
Conjeeveram. 30th December 96

LOCAL & MUNICIPAL DEPT.
CURRENT No. 3600 M

From

The Chairman,
Municipal Council
Conjeeveram

To

G. S. Forbes Esquire
Secretary to Government
Municipal & Local Fund Departm
Madras

Through the Sub-Collector & Collector of Chingleput district.

...ent up with previous references! Should have been ... Municipal ... Madras

Sir

With reference to G.O. No. 1694 M. Mis dated 2nd October 1896 directing me to submit my report in the matter of Encroachment I beg to report as follows:

2 The 26 cases referred to, in para 4 of my report No. 49/G.O dated 30th Aug. 1896, as pending further Enquiry by the Council, have been disposed of by it, — 24 cases of which were ordered to be rented and in the remaining 2 cases no further proceedings were considered necessary as in 1 case the party removed the Encroachment and in the other the Encroachment could not be removed as there was a civil suit in respect thereof by the party against the Municipality and the decree therein was given against the latter.

Disp. 1694 M
2-10-96

The 24 cases ordered to be rented were brought into the rent Register, kept for the purpose, and the Survey Registers are awaited to find out the actual Extent of Encroachments therein to enable me to charge rent. In the 85 Cases referred to, in para quoted above, as those in which the Council had resolved upon issuing notices to the parties for the removal of Encroachments, formal notices had been issued to them and it resulted in the removal in 61 cases; prosecution in 18 cases owing to default made to remove them; and the renting of Encroachments in 2 cases while in 1 case further enquiry was Considered necessary on the representation of the party and in the remaining 3 Cases notices were not served owing to the absence of the parties. In the 18 Cases in which prosecutions were entered in the Stationary Magistrate's Court, there were convictions in 12 cases; acquittals in 2 cases; prosecution withdrawn on the removal of Encroachment in one & Enquiry is pending in the Court in 3. Out of the 12 cases convicted Encroachments were removed in 8 Cases

80 1694 IV / 2-10-96

Ingo 1694 III / 2.10.96

and in the remaining 4, steps are being taken for their removal.

3. Out of the 29 cases referred to in para 5 of my last report, in which the Council sanctioned prosecution for acting contrary to the conditions of passes granted therein, only 17 cases were filed in the Stationary Magistrate's court as in 6 cases prosecution could not be entered, – the parties in 2 cases having left the place altogether, disposing their houses and those in 4 cases parties died, as in 3 cases prosecutions were not filed owing to the temporary absence of the parties; as in 1 case prosecution was stopped pending further Enquiry; and as in 2 cases the parties have removed the Encroachment. The 17 cases filed in the Court, 14 were disposed of by the Court – 1 was permitted to be withdrawn on the party removing the Encroachment therein, 6 were convicted, 4 were acquitted on the ground of long occupation, 2 were acquitted on the ground that the parties therein have not violated the conditions of the passes granted to them as they have complied with 1 of its 2 conditions which permitted them

them to make the construction complained of in a line to that of adjacent houses, though they have exceeded the 2d Condition which limited its width within certain limits; 1 was acquitted by the Court on the ground that the party has removed the Encroachment, - 3 cases are pending enquiry in the Court. In 6 cases of Convictions, removal of Encroachments were effected in 4 cases, steps are being taken to enforce removal in the remaining 2.

4 Since my last report, the Sub-Committee appointed for the inspection of Encroachments, inspected 566 Encroachments out of those suggested to be removed by the Probationary Deputy Collector & referred to in para 2 (a) of my last report and their recommendations sent in. A statement showing as to how they were disposed of is enclosed herein.

5 Nothing has been done in the matter of Encroachments for which the Sub-Collector of Chingleput and the Probationary Deputy Collector M.R.Ry Hanumantha Rao avergal suggested rent being charged; as also in those cases which the Council, on the report of the Sub-Committee, ordered rent to be charged. In all there are 656 cases of Encroachment to be charged with rent. The actual extent of these Encroachments will have to be ascertained by a reference to the Survey Registers before any intimation could be given to the parties as to the amount of rent to which they are liable and as the Registers were not as yet received from the Survey Department there is no other alternative left but to defer proceedings in them till the Registers are received. I have doubts in these cases whether agreements should be taken from all of these parties binding them to pay rent for these Encroachments before steps are taken to enforce payment of rent. In the matter of an Encroachment of Sepoy Munisawmy Naidu (deceased) the Government has been pleased to accord its sanction to the Encroachment being rented to his widow in G.O. No. 1603 Rev. dated 19th September 1896. The council resolved in it that an agreement should be taken from her binding her to pay the rent according to the sanctioned scale. The council passed this resolution with a view to prevent further litigation without taking into consideration the difficulty, which it might have

X

This is unsatisfactory
What did the Survey
Dept. survey? Existing
occupation? or occu-
~~[illegible]~~
pation according to
[illegible]? or
[illegible] 2? or 23
4

(1)

have to experience in other cases of encroachments by adopting this procedure. Should the Council take an agreement in this case it will have to take similar agreements in the several cases in which rent was ordered to be charged. In that case I feel confident that in almost all of these cases parties will not come to terms to pay rent, much more will they execute agreements, and the result will be that the renting of encroachments will come to a stand and the matter will be prolonging for a number of years without any beneficial results. Under Section 268 of the Municipal Act the Council is empowered to charge rents on these encroachments. In acting under that Section, if the Council gives notices to the parties of the amount of rents they will have to pay for them and should they fail either to remove the encroachment or agree to pay rent for them, the rent may be treated like other taxes & collected from them under Section 269 of the Act & I have for the purpose of clearing my doubts in the matter addressed the Collector

No. The Section applies only to those cases where the lands have been occupied without the permission of the Council.

(2)

the Collector of the District for his opinion in my letter No. 914/Jn dated 6th Decr 96.

6 Out of the remaining 113 cases pending enquiry before the Stationary Magistrate's Court, referred to in para 7 of my last report, 102 were acquitted & 5 convicted while in 6 cases, prosecutions had to be withdrawn as summons in 3 cases could not be served owing to the absence of the parties and as in 3 cases the parties removed the encroachments therein. There were also 9 cases of new encroachments traced out lately & filed in the Court since my last report, out of which 6 were convicted, 2 were acquitted and 1 is pending trial.

7. I have managed with the aid of Nuisance Inspectors to persuade some of the people to remove their encroachments and thus succeeded in getting removed 430 encroachments chiefly consisting of mud Korados enclosed by granite stones.

8 In conclusion I respectfully beg to submit that there were several cases of acquittals mostly in cases of mud korados filed before the Magistrate. The cause is attributed to want of Evide

[illegible]

Evidence in behalf of the Municipality. It is found difficult to get outsiders, acquainted with the Circumstances of the Case, to come forward & depose to them in the Court for they are quite reluctant to bear any testimony against their neighbours nor are the Municipal Servants acquainted with the facts of [illegible] [illegible] case to swear to the exact date in which the offence was committed and to their personal knowledge of the offence, except to the fact of the non-existence of the Encroachment on or about certain time. The latter evidence is considered insufficient to support a conviction. The wording of the charges in the Criminal procedure Code "That on or about certain date" an offence was committed admit, in my humble opinion, the admission of such evidence, for if it be otherwise & direct Evidence, but not circumstantial, is needed in all criminal cases in most of the heinous offences committed in that will necessarily escape punishment. The Municipality is not able to adduce Direct Evidence as to the date in which the Encroachments were committed in the majority of cases. I beg to state that some allowance is generally made in

Certainly
JH

in some courts for any gaps in the Evidence in consideration of the long time that had intervened between the date of offence and the date in which the prosecution had to be undertaken. All the Municipality could do in cases of long standing is to adduce evidence that certain Encroachment forms part of the Municipal land under the payment account. and that the Defendant Encroached upon it on or about certain time. This evidence was not considered sufficient in most of the cases acquitted. The Defendants were not called upon to produce any Documentary or reliable Evidence in support of their usual plea of 12 years possession but allowed to call their neighbours who are interested in the Cases and their evidence is appreciated by the Court and the Defendants acquitted. Again these Encroachments are construed by the court as giving adverse possession to the Defendant and limiting the time for instituting the Complaint to 12 years. The Encroachments could not have been created more than 6 years ago; even if they were constructed 12 years ago, as was set up in the defence as they are of temporary character, I think that ~~their~~ possession of the land

This is all matter of evidence not of law. If the Ct. go wrong the Dt. Magte can always intervene in his revisional capacity.
JH

Report [illegible] X

for more than 12 years would not give a title to the land by adverse possession. There was a case of somewhat in the nature of these Encroachments reported I L R XVII Bombay Series page 338 wherein a small piece of land being of no present use to its owner and being useful to his neighbour, the latter made use of it in various ways for more than 12 years by building sheds for cows, goats, fowls &c and a hut for ghari wallahs, such user as this was held insufficient to give title to the land by adverse possession. I respectfully beg to state that it is desirable if orders are passed whether or not the construction of mud Koradus or Eminences flanked with stones on the road itself or on the land adjoining it, coupled with enjoyment of more than 12 years, would give adverse possession to the person so enjoying them.

I have the honor to be
Sir
Your most obedient Servant

Chairman.

CR

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Statement showing the measures taken by the Council in the Conjeevaram [illegible] regarding the Encroachments suggested to be removed by the Deputy Collector.

| Total cases pending on the 1st September 1896 for inspection. | No. of cases inspected & ordered by the Council. | | | | | | Pending | Total | Remarks. |
|---|---|---|---|---|---|---|---|---|---|
| | To be removed | To be rented. | For Enquiry | To be struck off the list as old. | Reported as already removed. | As no Encroachment | | | |
| 566. | 175<br>208<br>83<br>23<br>77<br>566 | 208 | 83 | 10 | 13 | 6. | 71 | 566. | |

Chairman.

Municipal office,
Conjeevaram 2d Jany 97. CR

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examined 26/3
en signed 26/3
} 1897 -

EAD AGAIN G.O., No. DATED
189 .

CURRENT No.

ENCLOSURES TO O. No.

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|---|---|---|---|---|---|---|---|
| ORDER OF GOVERNMENT .. .. .. | A | A | A | A | A | A | A |
| LETTER OF GOVERNMENT | | | | | | | |
| STATEMENT WITH DITTO | | | | | | | |
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