7-9-08
5-9-22

Local & Muni. (1897) Department.

MISCELLANEOUS.

G.O., No. 888 and 889 in

DATED 26/6/89

Rec'd
Please send 50 copies of G.O. and
Circular
to Cantt. Supdt. for issue
Also
INDEX

[Despatch Abstract.]

Removal of buildings within the Military
Zone on the Quetta Bazar road leading
to the Gol of India
on the subject of

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Eccl 888/99							

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

13/7/99

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"*All public streets in the city (not being the property or kept under the* control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

GOVERNMENT OF MADRAS.
LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers:—

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To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1898 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4393, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parentheses save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

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H. TREMENHEERE.
Secretary to Government.

To the President, Municipal Commission, Madras.

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Dated—the 16th January 1899.
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To—the Secretary to Government, Local and Municipal Department.
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The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

[Here enter letter, ~~in Collection form, from the next page.~~]

MISCELLANEOUS.

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of—.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

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No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of

Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Defences.
Inland.

It is requested that the above heading, with number and date of this communication, may be quoted in any subsequent correspondence on this subject.

No. 3356-M.-W.

GOVERNMENT OF INDIA.

MILITARY DEPARTMENT.

Simla, the 1st December 1898.

To

THE SECRETARY TO THE GOVERNMENT OF MADRAS,
LOCAL AND MUNICIPAL DEPARTMENT.

Sir,

I am directed to acknowledge the receipt of your letter No. 1214-M—Mis., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1898 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it." In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting

Defences.
Inland.

It is requested that the above heading, with number and date of this communication, may be quoted in any subsequent correspondence on this subject.

No. 3356-M.-W.

GOVERNMENT OF INDIA.

MILITARY DEPARTMENT.

Simla, the 1st December 1898.

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THE SECRETARY TO THE GOVERNMENT OF MADRAS,
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Sir,

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2. It is pointed out that the Evening Bazar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1898 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

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Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads." The Government of Madras replied that "the reason assigned * * does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 * * for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them."

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus:—

"All public streets in the city (not being the property or kept under the control of Government) * * shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water pandal, iron bazars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the military zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal

Commission under section 436 of the City of Madras Municipal Act 1884, owing to their sanction to the construction of these being *ultra vires*.

I am,

Sir,

Your most obedient servant,

E G Barrow

for Secretary to the Government of India.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204-M-W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204-M-W, dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B-I-11848, dated the 21st July 1898.

G. C. Press, Simla.—No. 383 M. D.—6-12-98—107.

Govt. No. 858 + 859 dt 26-6-1899.

23

Local & Munl. (1898.) Department.

CURRENT No. 3852. h.

From The Govt. of India
Military department.

Order

No. 3356—M—W.

Dated 1st December 1898

Received 20th " "

Registered 20th Dcer. 98.

Enclosures

Spare copies. 6.

SUBJECT.

Removal of certain buildings situated within the Military Zone of Fort St. George.

Stating that the G.G.I.C. cannot admit that the roads in question vest in the Madras Municipal Commissioners, & that the maintenance of their position is of vital importance.

Secd. 15-2-99

I.H. 13/2/99

W. 1 v 99

Go. No. 3838+3894-98
26-6-1899.

23

Local & Munl. (1898.) Department.

CURRENT No. 3852. h.

From The Govt. of India
Military department

Order

No. 3356—M—W.

Dated 1st December 1898

Received 20th " "

Registered 20th Decr. 98.

Enclosures

Spare copies. 6.

SUBJECT.

Removal of certain buildings situated within the Military Zone of Fort St. George

Stating that the Govt. I cannot admit that the right in question vests in the Madras Municipal Commissioners & that the maintenance of their position is of vital importance.

Secd. 15-2-99

V.R. 13/2/99

1899

24

BACK PAPERS.

G.O.	No.	Department.	Date.
Go	2191	M	17-12-98
Do	1525	Do Do	21-6-99
Do	1213	Do M	8-7-99

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Rec
P. W.
I.

27

MUNICIPALITY OF MADRAS.

To the Works Department,

25

LOCAL AND MUNICIPAL DEPARTMENT.

From the Municipal Comr. - Fort St. Geo.

Papers to be read in proceedings:—

Rec

Again G.O., No. dated 189 .

Again G.O , No. dated 189 .

Current No. 3852 of 1899, dated 1st December 99, from the Govt of India

" " " 189 , " , "

" " " 189 , " , "

3 P.

8.8.99 M 26-6-99

Reference No. 158 dy 15-2-99.

~~ORDER~~.

In his letter No. 710, dated 30th September 1897, disposed of in Go No. 2156 M, dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's Shop on the Evening Bazar road, was Constructed, with the Sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were Constructed with the Sanction of the Municipality. Had the Municipality anything more todo with the Construction of these buildings than the approval by the President of their plans te under Sections 265 & 266 of Act I of 1865?

President. Mc Madras.

Recd. 15-2-99

VR
13/2/99

W 1 x 99

26

ERS.

partmen

27

P. W. No. 875

MUNICIPALITY OF MADRAS,
Public Works Department,
Madras, 16th January 1899.

From

The Hon. LIEUT.-COL. SIR GEORGE MOORE, KT., C. I. E.,
President, Municipal Commission.

LOCAL & MUNICIPAL DEPT.
CURRENT No. 204 M

To

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

SIR,

With reference to G.O.No.1320 M.Mis. dated 8th August 1896, I have the honour to forward copies of the marginally noted correspondence together with a plan showing the limits of Military Land.

3 Enclosures.

Letter No.814 dated 9th Decr.1898 from President to Genl.Officer Commanding, Madras District.

Letter No.13 B dated 3rd January 1899 from Genl.Officer Commanding, Madras District to the President.

If this land is Military Land it cannot be vested in the Commissioners, in accordance with Section 233 of Act 1 of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection I would invite attention to my letter No.1289 dated 20th January 1893.

G.O. 1669 L&M
2-12-93.

I have the honour to be,
Sir,
Your most obedient servant,

Lt.-Col

President, Munl.Commn.

30

BACK PAPERS.

G.O.	No.	Department.	Date.
So	1320	do	8-8-96
"	932	Dub	20-7-94
"	1669	Cab	2-12-93

FURTHER PAPERS.

G.O.	No.	Department.	Date.

P. W. I.

31

P. W. No. 814.

MUNICIPALITY OF MADRAS,
Public Works Department,
Madras, 9th December 1898.

55 P.

From

The Hon: LIEUT.-COL. SIR GEORGE MOORE, KT., C. I. E.,
President, Municipal Commission.

To

Enclosures

The General Officer Commanding,
Madras District, Fort St. George.

SIR,

With reference to your letter No. 3345 B. of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of Military land. The mere fact of the land being within the Military zone gives no right to the Military Department to the land on which the fountain stands.

Enclosure.

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

(Sd) G.M.J. Moore, Lt.Col.,
President, Muni. Comm.

(True copy)

Engineer, M. M. C.

Heading Special & Misc.

No. 13 B.

District Staff Office,

Madras District.

6 S.P.

Fort St. George, Madras 3rd Jany. 1899

Enclosure

From

The General Officer Commanding,

M a d r a s D i s t r i c t .

TO

The President,

Municipal Commission, Madras.

Sir,

With reference to your letter P. W. No. 814, dated the 9th December 98, I have the honour to forward a plan showing the limits of military land as requested in the above.

* To be returned

I have the honour to be,

Sir,

Your obedient s e r v a n t.

(Sd) M. R. Routh, Lt.Col. A.A.

FOR Brigadier General Commanding

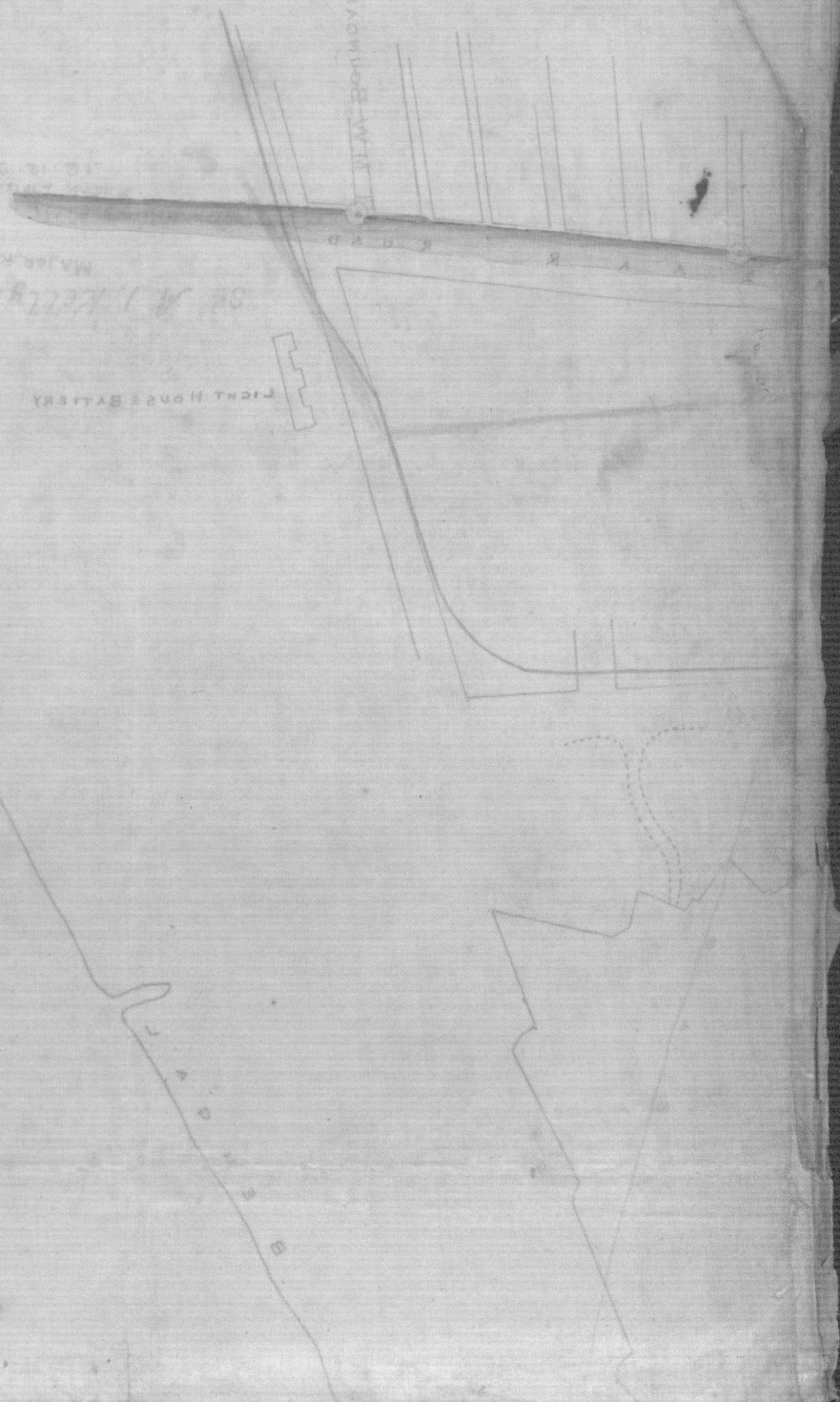
Madras District.

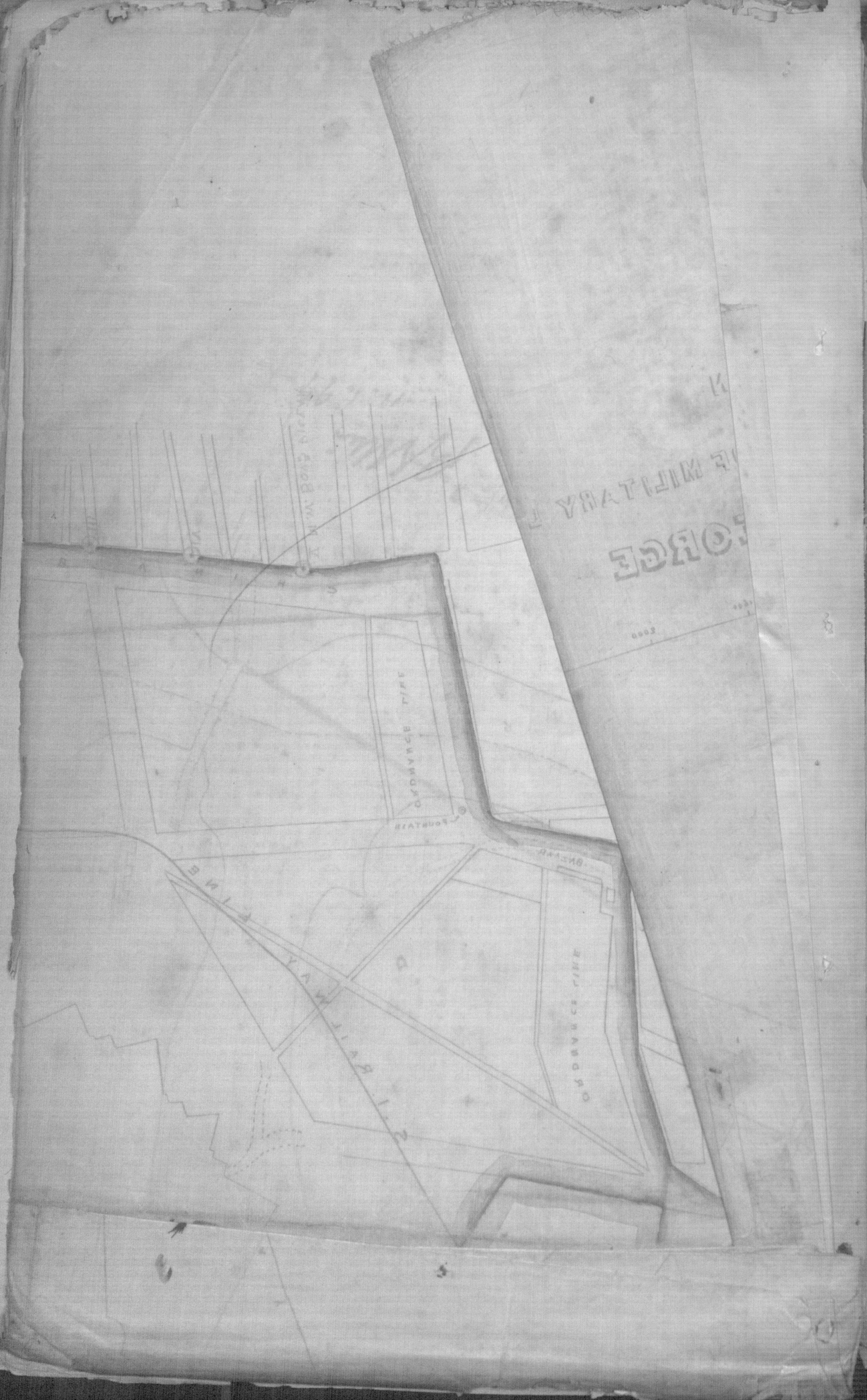
(True copy)

Engineer. M. M' C.

2/204/m/99

3
204/m/99





P. W. No. 1075

MUNICIPALITY OF MADRAS,
Public Works Department.

Madras, 2nd March 1899.

From

The Hon. Lieut.-Col. SIR GEORGE MOORE, Kt., C. I. E.,
President, Municipal Commission.

LOCAL & MUNICIPAL DEPT.
7199

To

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

Sir,

With reference to your Memorandum No.158 dated 15th February 1899, I have the honor to state that the parties were never recognized as the owners of the land. They were always charged rent.

Enclosure.

2. They were allowed to build under the provisions of Sections 265 & 266 of Act 1 of 1884.

I have the honor to be,

Sir,

Your most obedient servant,

Geo Moore

Lieut.-Col.,
President, Muni. Comm.

AB
Inv

V.P.
413.

Local & Munl. (189) Department.

CURRENT No. 719-M

ASSISTT SECY TO GOVT
2-MAR 1899
JUDICIAL PUBLIC EDL & LEG DEPT

From

THE PRESIDENT,
Municipal Commission,
Madras.

P. W. No. 1075.

Refer Order

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

Dated 2nd March '99.
Received
Registered
Enclosures
Spare copies

V.P.
8/3/99

8399

SUBJECT.

Re: Memorandum of the Local and Municipal Department no. 158 dated 15th February 1899.

Stating that the parties were never recognised as the owners of the land and they were always charged rent, They were allowed to build under Sections 265 and 266 of act I of 1884.

The President, Munl Commr Mad
Dept. 14/3/99

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Local & Munl. (1899) Department.

CURRENT No. 857m

SECY TO GOVT
18 MAR 1899
LOCAL MUNL. &DL & LEG. DEPTT.

From

THE PRESIDENT,
Municipal Commission,
Madras.

Order

P. W. No. 1149.

Dated 18th March '99.
Received
Registered
Enclosures -
Spare copies

SUBJECT.

Re: Memorandum no. 308 dated 14.3.99, Local + Municipal Department.

Stating that the Municipal act and G.O. no. 2516 m. mis dated 15.11.97 decide the question of ownership and that the — Government was addressed in letter P.W. no. 875 dated 16-1.99 wherein the question of ownership is discussed.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Local & Munl. (1899) Department.

CURRENT No. 857m

SECY TO GOVT
18 MAR 1899
LOCAL MUNL & LEG DEPT

From

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Municipal Commission,
Madras.

Order

P. W. No. 1149.

Dated 18th March '99.
Received
Registered
Enclosures -
Spare copies

SUBJECT.

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LOCAL AND MUNICIPAL DEPARTMENT:

Cur. 3852 m. of 98 & 204, 719 and 857 m. of 99.

Removal of buildings within the military zone on the Cuaring Bazaar road.

108

ORDER:- No. 888 Mis 8
26/6/99

The following letter will be addressed to the Government of India.

LETTER: No. 889 Mis 8
26/6/99

To

The Secretary to the Government of India,
Military Department.

Sir,

I am directed to acknowledge the receipt of your letter, No.3556 M-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the Military Zone of Fort Saint George.

Cur. 3852 m of 98 Flag V.

2.

2. It is pointed out that in his letter, No.453 M.W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs.6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the Zone, the Quarter Master General of the Madras Army stated, that "So long as the Zone now fixed "(within which no buildings can be erected) "is preserved, there is no necessity to "maintain as 'Military Roads' the roads run- "ning across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commissioners cannot be "said to have sole control over the roads "within the Military Zone, no buildings "being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs.6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the

in fo. no. 1104 m 18-8-94 F.

Vide para. 4 of his letter

Vide his letter no 124 G. dated 19th June 1894 Flag. C.

Ver fo. no. 932 m 20-7-94 C.

the distinct recognition by the Municipal Commissioners that they have no control over the roads within the Military Zone, in asmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under ~~der~~ the control of Government" occurring in section 253 of the Municipal Act save the roads within the Military Zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs.6000 was made until 1894 were distinctly kept under the control of Government and that ~~th~~ the present contention of the President is inconsistent with that reservation on the part of Government and that admission ~~and~~ on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs.6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the Military Zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that " as the Com- "missioners cannot be held to have sole "control over the roads within the Military "Zone, no buildings being allowed on those "roads, Government might fairly be asked "to continue the contribution to those "roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that

Vide the President's letter in fo. 1104 m 18-8-94 C.

they

they had no control not only over the roads for which the contribution of Rs.6,000 was then paid, but also over all the roads all the roads within the Military Zone, and that the roads were consequently under the control of Government. This inference, however, ~~does not appear to be~~ is not correct, for all that the Commissioners meant ~~apparently~~ was that the Government ~~by way~~ in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in Section 233 of the City of Madras Municipal Act, save the roads within the Military Zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant

Vide the list of roads submitted by the Dy: Adjutant Genl. in G.O. no 1213 m 8-7-78 E.

of

Vide G.O. no 1859 Mil/dep, 17-4-75 D

of Rs.6,000; that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, that it was then handed over to the Municipality without any reservation whatever. In consequence as this road and then was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the Military Zone round Fort Saint George within which building is prohibited, having been constituted only in 1892,] the road was then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified. Moreover,

Vide G.O. no 1454 m 7-9-92 H.

4

Cir. 204 m of 1876 W.

the President of the Municipal Commission, Madras, now contends that if all the land within the Military Zone of Fort Saint George is military land, it cannot be vested in the Commissioners in accordance with Section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the Zone, notwithstanding the fact that they are in Municipal limits. If therefore the Government of India were to still adhere and could legally enforce to the view that the roads within the Military Zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would ~~appear~~ have to take over the maintenance of the roads within the Zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an Executive order

4.

5. With regard to the observation at the close of para.6 of your letter that in the case of the lines of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under Section 436 of the Act, — owing to their sanction to the construction of these being ultra vires, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads which however as shown above was not the case, ~~and not on the ground~~ (it cannot be considered) that the fact that the road was subsequently included within the Military Zone, is affected in any way the legal ownership possessed by the right of the Municipal Commissioners over the land in question. So far as the Government understands the case the Municipality appears to have acted throughout within its powers, and that the present action of the Govt of India appears to be illegal.

(From orders)

V.R. 1/6/99

A.A. 12.6.99

S.914 15.6.99

Manager.

G.G. 16.6.99

Dept 26/6/99

Vide m/p. to Nos 888 & 889 m 26.6.99.

LOCAL AND MUNICIPAL DEPARTMENT.

Removal of buildings within the Military Zone on the Evening Bazar Road.

C No 3852 m of 1898

L C No 204, 719 & 857 Jul 99

To. H.H. & H.E.

FOR ORDERS.

From the Govt of India no 2356 m.w. 1-12-98

" President M.C. Commrs. Nos 875 d 16-1-99

" " 1075 d 2-2-99

" " 1149 d 18-3-99

Linked File

A

B

Please see the notes and orders in G.O. No.1213 M., dated 8th July 1898 and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs.6,00 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort Saint George.

Print

C

Vide p.o. 1104 m 18-8-94

D

Vide p.o. 1859 military 17-4-75

E

the list of roads referred to in that p.o. forwarded with the Dy Adjutant Genl's letter no. 1211 m/m 8-7-98.

Print

2. In the letter read above, the Government of India states in reply that in his letter, No.453 M. W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs.6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quarter-Master-General of the Madras Army stated that "so long as the zone now fixed(within "which no buildings can be erected) is pre-"served, there is no necessity to maintain "as 'military roads' the roads running across "it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have "sole control over the roads within the mi-"litary zone," no buildings being allowed on these roads, and that thereupon the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs.6,000 for the roads in question, stated that they should be maintained entirely from municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners,

that

that they have no control over the roads within the military zone, in as much as no buildings are allowed on those roads. It is further stated that the words "not "being the property or kept under the con-"trol of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs.6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and as it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs.6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that " as the Commis-"sioners cannot be said to have sole con-"trol over the roads within the military "zone, no buildings being allowed on those "roads, Government might fairly be asked

to

to continue the contribution to those "roads." The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had no control, not only over the roads for which the contribution of Rs.6,000 was then paid, but also over all the roads within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in para.2 of G.O. No.1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the evening bazar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs.6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort Saint George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

5. In para.6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutt. General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutt. General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazars and chemists' shop at Stone 19, will be paid from Imperial Funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, the compensation should be paid by the Municipal Commissioners

Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was ultra vires. In his letter, No.710, dated 30th September 1897, disposed of in G.O. No.2516 M., dated 15th November 1897, the President stated that these bazars were constructed with the sanction of the Municipality in 1895. It is however not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans &c.. The President may therefore be asked to report how and when the owners of the buildings came by the lands on which they ~~buildings in question~~ are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

G

Do the final please
11.2.99

V.R.
10/2/99

In reply to the reference made to him, the President states that the parties were never recognised as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of Sections 265 and 266 of the Act.

U

Vide CM 7/192 857 m.

With the Second of the letters read above, the President forwards a plan showing the limits of Military land round Fort Saint George and Contonment. As it is land is Military land, it cannot be rented by the Commissioners in accordance with Section 233 Act I of 1884, and that therefore Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits. He also invites attention to his letter No. 128 dated 20th January 1898, ~~enclosures~~ enclosures in G.O. 1664 M. dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be handed formally handed over.

K

V. Rathnavelu Chetty
20/4/99

apparently it did not by Act I of 1884 the road became vested in the Govt. of Madras before.

M.L. p.37

F.S.

Vide note in the Cricket file - A

The points seems to be whether in 1875, when the Contribution for the Bazaar Road was withdrawn, the Government withdrew all its Control over that road & thus it became vested in the Commissioners. The difficulty that has now arisen was foreseen (vide G.O. 17 dt 25.1.1875) and relating from the Correspondence it would look as if the Government had reserved all rights over the Bazaar Road then. From the former note in the Cricket file it appears that His Excellency is inclined to think that the case of the Municipality is as strong as was represented to the Govt of India. In any case the points now taken up by the Govt of India do not justify

if the municipality is to be made to
pay for the removal of their buildings it
must be on the ground that in 1876,
when the fort grant was reduced, the
Government did not withdraw its Control
in order to avoid - not on the ground that
Road was subsequently included within
the Military Zone -

The question now seems to be whether
Government of India should be addressed
again - and it pointed out that their
position is based on a mistake - or
whether according to view of the Govt of India
the municipality should be called upon at
once to remove the buildings at its own
expense - The municipality will no
doubt protest again -

24. IV 99

Certainly. India should be
addressed again. As far
as I can see the action decided
by the Govt of India is illegal
& the Secy. will take legal
proceedings if necessary
Their defence

MER 9.5.99.

Yes. I would press the Govt. of India once more to state what
they want by pressing for it.

A.E.M.
18.5.99

Ordered
Cons

8-5-13 B 11
3-8-15
2-6-27 II
22-1-29 II

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. — *Enclosures*

1899.

Regd. — *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

N

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

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2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

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There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

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The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

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H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways, within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK]

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.
H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

A.T.A.—9-5-99.

Yes. I suppose the Government of India can obtain what they want by paying for it.

A.E.H.—18-5-99.

The question now seems to be whether the Government of India should be addressed again—and it pointed out that their position is based on a mistake, or whether accepting the view of the Government of India the Municipality should be called upon at once to remove the buildings at its own expense. The Municipality will no doubt protest again.

M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

N. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

LOCAL AND MUNICIPAL DEPARTMENT.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*

From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.

" " " " *2nd March* " " 1075.

" " " " *18th* " " " 1149.

Please see the notes and orders in G.O., No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK]

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

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This should be made clear to India.

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number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.
H. TREMENHEERE—11-2-99.

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V. RAGHAVA CHARLU—20-4-99.

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M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

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A. T. A[RUNDEL].
A. E. H[AVELOCK]

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.

H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

A.T.A.—9-5-99.

Yes. I suppose the Government of India can obtain what they want by paying for it.

A.E.H.—18-5-99.

The question now seems to be whether the Government of India should be addressed again—and it pointed out that their position is based on a mistake, or whether accepting the view of the Government of India the Municipality should be called upon at once to remove the buildings at its own expense. The Municipality will no doubt protest again.

M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

N. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

III

Letter—from the Hon'ble Lieut.-Col. Sir George Moore, *Kt.*, c.i.e., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

Enclosures.

Letter—from the Hon'ble Lieut.-Col. Sir George Moore, *Kt.*, c.i.e., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir George Moore, *Kt.*, c.i.e., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir George Moore, *Kt.*, c.i.e., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. Hammick,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commissioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

N. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

LOCAL AND MUNICIPAL DEPARTMENT.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*
From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.
" " " " *2nd March* " " 1075.
" " " " *18th* " " " 1149.

Please see the notes and orders in G.O , No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK]

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.

H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

The question now seems to be whether the Government of India should be addressed again—and it pointed out that their position is based on a mistake, or whether accepting the view of the Government of India the Municipality should be called upon at once to remove the buildings at its own expense. The Municipality will no doubt protest again.

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

A.T.A.—9-5-99.

Yes. I suppose the Government of India can obtain what they want by paying for it.

A.E.H.—18-5-99.

M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M, dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

N. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

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If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

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To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

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H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

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(True Extract.)

M. HAMMICK,
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To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
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I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commissioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Local and Municipal Department.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26th JUNE 1899.

[Subject.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*

From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.

" " " " *2nd March* " " 1075.

" " " " *18th* " " " 1149.

Please see the notes and orders in G.O, No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Local and Municipal Department.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26th JUNE 1899.

[Subject.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1*st December* 1898, *No.* 3356-*M.W.*

From the President, Municipal Commission, Madras, dated 16*th January* 1899, *No.* 875.
" " " " 2*nd March* " " 1075.
" " " " 18*th* " " " 1149.

Please see the notes and orders in G.O, No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

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roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.

H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—16-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

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Yes. I suppose the Government of India can obtain what they want by paying for it.

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M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

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[G.O., Nos. 888, 889 M., dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } *Spare copies*

G.O., [illegible] Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

Government of Madras.

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GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed cut that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*

From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.

" " " " *2nd March* " " 1075.

" " " " *18th* " " " 1149.

Please see the notes and orders in G.O., No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*
From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.
" " " " *2nd March* " " 1075.
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2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

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Please see the notes and orders in G.O., No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26th JUNE 1899.

[Subject.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*

From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.

" " " " *2nd March* " " 1075.

" " " " *18th* " " " 1149.

Please see the notes and orders in G.O, No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

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3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

LOCAL AND MUNICIPAL DEPARTMENT.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*

From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.
" " " " *2nd March* " " 1075.
" " " " *18th* " " " 1149.

Please see the notes and orders in G.O, No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK]

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.

H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

The question now seems to be whether the Government of India should be addressed again—and it pointed out that their position is based on a mistake, or whether accepting the view of the Government of India the Municipality should be called upon at once to remove the buildings at its own expense. The Municipality will no doubt protest again.

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

A.T.A.—9-5-99.

Yes. I suppose the Government of India can obtain what they want by paying for it.

A.E.H.—18-5-99.

M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

N. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

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To the President, Municipal Commission, Madras.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

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In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

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The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

LOCAL AND MUNICIPAL DEPARTMENT.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*
From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.
" " " " *2nd March* " " 1075.
" " " " *18th* " " " 1149.

Please see the notes and orders in G.O, No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.

H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

A.T.A.—9-5-99.

Yes. I suppose the Government of India can obtain what they want by paying for it.

A.E.H.—18-5-99.

The question now seems to be whether the Government of India should be addressed again—and it pointed out that their position is based on a mistake, or whether accepting the view of the Government of India the Municipality should be called upon at once to remove the buildings at its own expense. The Municipality will no doubt protest again.

M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. }1899. *Enclosures*

Regd. }1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

N. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

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2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

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There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

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"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

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II

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In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

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As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

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H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

LOCAL AND MUNICIPAL DEPARTMENT.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*

From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.

" " " " *2nd March* " " 1075.

" " " " *18th* " " " 1149.

Please see the notes and orders in G.O, No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK]

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.

H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

A.T.A.—9-5-99.

Yes. I suppose the Government of India can obtain what they want by paying for it.

A.E.H.—18-5-99.

The question now seems to be whether the Government of India should be addressed again—and it pointed out that their position is based on a mistake, or whether accepting the view of the Government of India the Municipality should be called upon at once to remove the buildings at its own expense. The Municipality will no doubt protest again.

M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. }
Regd. } 1899.

Enclosures

Spare copies

G.O., &c., Nos. 888, 889 M., 26th June 1899.

1-N. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
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Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

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The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commissioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

LOCAL AND MUNICIPAL DEPARTMENT.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*

From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.

" " " " *2nd March* " " 1075.

" " " " *18th* " " " 1149.

Please see the notes and orders in G.O, No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

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roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

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A. E. H[AVELOCK]

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

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5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.
H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

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The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

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[G.O., Nos. 888, 889 M, dated 26th June 1899.]

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With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

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[G.O., Nos. 888, 889 M, dated 26th June 1899.]

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3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK]

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.
H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

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Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

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A.E.H.—18-5-99.

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M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M, dated 26th June 1899.]

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

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number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

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V. RAGHAVA CHARLU—20-4-99.

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M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M, dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

N. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the abcve.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E, President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the ann contribution of Rs. 6,000 paid to the Madras Municipality from the Military Wo Funds for the maintenance of certain roads within the military zone was under consid ation, the Municipal Commissioners requested the continuance of the contribution the ground that "as the Commissioners cannot be held to have *sole* control over t "roads within the military zone, no buildings being allowed on those roads, Gover "ment might fairly be asked to continue the contribution to those roads". Th Government of India argues that this statement amounts to a recognition by th Municipal Commissioners that they had *no control* not only over the roads for whic the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question also exercised some control over them along with the Municipality, and not that roads were entirely under the control of Government and that the Commissioners h no control over them. Nor can it be said that the statement of the Commissione had reference to any roads other than those the contribution for whose maintenan it was then proposed to withdraw. Any admission which they might have made the time can only be held to apply to the roads then under discussion. With rega to the contention of the Government of India that the words "not being the proper or kept under the control of Government" occurring in section 233 of the City Madras Municipal Act, save the roads within the military zone from the operation that section, I am to point out that the Evening Bazar Road on which the building in question stand, was not one of those roads which were kept under the control Government in the orders withdrawing the grant of Rs. 6,000; but that when t contribution for this road was stopped in 1875, the Government withdrew all control over that road, and that it was then handed over to the Municipality without a reservation whatsoever. In consequence as this road was thus not under the contr of Government when Act I of 1884 (Madras) came into operation, [the military zo round Fort St. George within which building is prohibited, having been constitute only in 1892], the road then vested in the Municipal Commissioners. His Excellenc the Governor in Council therefore considers that the position now taken by the Gov ernment of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

LOCAL AND MUNICIPAL DEPARTMENT.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*
From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.
" " " *2nd March* " " 1075.
" " " *18th* " " " 1149.

Please see the notes and orders in G.O., No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000

In G.O., No. 1104 M., dated 18th August 1894.

paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK]

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.

H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

A.T.A.—9-5-99.

Yes. I suppose the Government of India can obtain what they want by paying for it.

A.E.H.—18-5-99.

The question now seems to be whether the Government of India should be addressed again—and it pointed out that their position is based on a mistake, or whether accepting the view of the Government of India the Municipality should be called upon at once to remove the buildings at its own expense. The Municipality will no doubt protest again.

M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read.	1899.	*Enclosures*
Regd.		*Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

N. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the abcve.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, No. 3356-M.W.
From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.
" " " " *2nd March* " " 1075.
" " " " *18th* " " " 1149.

Please see the notes and orders in G.O, No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*
From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.
" " " " *2nd March* " " 1075.
" " " " *18th* " " " 1149.

Please see the notes and orders in G.O, No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.

H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

A.T.A.—9-5-99.

Yes. I suppose the Government of India can obtain what they want by paying for it.

A.E.H.—18-5-99.

The question now seems to be whether the Government of India should be addressed again—and it pointed out that their position is based on a mistake, or whether accepting the view of the Government of India the Municipality should be called upon at once to remove the buildings at its own expense. The Municipality will no doubt protest again.

M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. / *Regd.* } 1899. — *Enclosures* / *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

N. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E, President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

LOCAL AND MUNICIPAL DEPARTMENT.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*

From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.

" " " " *2nd March* " " 1075.

" " " " *18th* " " " 1149.

Please see the notes and orders in G.O, No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK]

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.
H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

A.T.A.—9-5-99.

Yes. I suppose the Government of India can obtain what they want by paying for it.

A.E.H.—18-5-99.

The question now seems to be whether the Government of India should be addressed again—and it pointed out that their position is based on a mistake, or whether accepting the view of the Government of India the Municipality should be called upon at once to remove the buildings at its own expense. The Municipality will no doubt protest again.

M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. / *Regd.* } 1899. — *Enclosures* / *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

N. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

LOCAL AND MUNICIPAL DEPARTMENT.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*

From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.

" " " " *2nd March* " " 1075.

" " " " *18th* " " " 1149.

Please see the notes and orders in G.O., No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.

H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

A.T.A.—9-5-99.

Yes. I suppose the Government of India can obtain what they want by paying for it.

A.E.H.—18-5-99.

The question now seems to be whether the Government of India should be addressed again—and it pointed out that their position is based on a mistake, or whether accepting the view of the Government of India the Municipality should be called upon at once to remove the buildings at its own expense. The Municipality will no doubt protest again.

M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

Government of Madras.

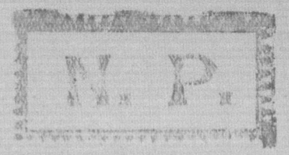
LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.



Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the abcve.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

LOCAL AND MUNICIPAL DEPARTMENT.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*
From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.
" " " " *2nd March* " " 1075.
" " " " *18th* " " " 1149.
" "

Please see the notes and orders in G.O., No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK]

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.

H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

A.T.A.—9-5-99.

Yes. I suppose the Government of India can obtain what they want by paying for it.

A.E.H.—18-5-99.

The question now seems to be whether the Government of India should be addressed again—and it pointed out that their position is based on a mistake, or whether accepting the view of the Government of India the Municipality should be called upon at once to remove the buildings at its own expense. The Municipality will no doubt protest again.

M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

H. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

Nos. 888, 889 M., 26TH JUNE 1899.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

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Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras requesting Government to continue the contribution . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . ." replied that "the reason assigned . . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, *as stated in paragraph 2 of your letter*, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E, President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

LOCAL AND MUNICIPAL DEPARTMENT.

NOTES CONNECTED WITH G.O., Nos. 888, 889 M., DATED 26TH JUNE 1899.

[SUBJECT.—*Removal of buildings within the Military zone on the Evening Bazaar Road.*]

From the Government of India, dated 1st December 1898, *No.* 3356-*M.W.*
From the President, Municipal Commission, Madras, dated 16th January 1899, *No.* 875.
" " " *2nd March* " " 1075.
" " " *18th* " " " 1149.

Please see the notes and orders in G.O., No. 1213 M., dated 8th July 1898, and the letter to the Government of India thereon. In that letter it was pointed out that the Evening Bazaar road, on which the buildings in question stand, was not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until sometime in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads and since maintained by the Municipality at its own cost, that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Commissioners under section 233 of the Act, and that the Municipality had the power to erect any buildings it liked on the roads vested in it, irrespective of the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

Vide G.O., No. 1104 M., dated 18th August 1894.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads referred to in that Government Order, forwarded with the Deputy Adjutant-General's letter in G.O., Nos. 1213 and 1214 M., dated 8th July 1898.

2. In the letter read above, the Government of India states in reply that in his letter, No. 453-M.W., dated 16th March 1894, offering remarks on the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated that "so long as "the zone now fixed (within which no buildings can be erected) is preserved, there "is no necessity to maintain as 'military roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads, was based on the ground, that "the Commissioners cannot be said to have sole "control over the roads within the military zone," no buildings being allowed on these roads, and that thereupon the Government, while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore points out that the opinion of the Madras Government, that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners, that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those

In G.O., No. 1104 M., dated 18th August 1894.

roads. It is further stated that the words "not being the property or kept under "the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant, and it was admitted at that time by the Municipal Commissioners that not only these roads, but also all the roads within the military zone were thus under the control of Government, and that the present contention of the President of the Municipality is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. It is true that in 1894, when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of this contribution on the ground that "as the Commissioners "cannot be said to have *sole control* over "the roads within the military zone, no buildings being allowed on those roads, "Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners, that they had *no control*, not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were under the control of Government. This inference, however, does not appear to be correct, for all that the Commissioners meant apparently was that, as the Government also exercised some control over the roads in question by way of prohibiting the construction of buildings thereon, it should also bear a proportionate share of the cost of their maintenance, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might then have made can only be held to apply to the roads then under discussion. If these views be concurred in, the contention of the Government of India, that the opinion of this Government, expressed in paragraph 2 of G.O., No. 1214 M., dated 8th July 1898, is contrary to the views of the Commissioners, falls to the ground.

Vide the President's letter, dated 19th June 1894, in G.O., No. 1104 M., dated 18th August 1894.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

4. With regard to the argument of the Government of India that the words "not being the property or kept under the control of Government," occurring in section 233 save the roads within the military zone from the operation of that section, it is observed that the Evening Bazaar road on which the buildings in question stand was not one of those roads which were kept under the control of Government in the orders stopping the grant of Rs. 6,000, that this road was handed over to the Municipality in 1875 without any reservation whatsoever, and that, as it was thus not under the control of Government when Act I of 1884 came into operation, the military zone round Fort St. George, within which building is prohibited, having been constituted only in 1892, it is clear that the road vests in the Municipal Commissioners.

Vide G.O., No. 1859, Military, dated 17th April 1875, and the list of roads mentioned in it.

This should be made clear to India.

A.T.A.
A.E.H.

5. In paragraph 6 of the letter read above it is stated that the Government of India has no objection to allow the water trough to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras, that steps must be taken to remove the other buildings, if the Lieutenant-General who has been asked to report on the matter considers them objectionable, that in that case the compensation for the water pandal, iron bazaars and chemists' shop at Stone 19 will be paid from Imperial funds, as they date from before the definition of the military zone, but that in the case of the line of buildings constructed in 1895 to replace a

number of mat bazaars, the compensation should be paid by the Municipal Commissioners under section 436 of the Act, as their sanction to the construction of these buildings was *ultra vires*. In his letter, No. 710, dated 30th September 1897, disposed of in G.O., No. 2516 M., dated 15th November 1897, the President stated that these bazaars were constructed with the sanction of the Municipality in 1895. It is, however, not known whether the Municipality had anything more to do with the construction of these buildings than the approval by the President, under sections 265 and 266, of their plans, etc. The President may therefore be asked to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these were constructed with the sanction of the Municipality.

Do this first, please.

H. TREMENHEERE—11-2-99.

V. RAGHAVA CHARLU—10-2-99.

In reply to the reference made to him, the President states that the parties were never recognized as the owners of the land, that they were always charged rent by the Municipality, and that they were allowed to build on these lands under the provisions of sections 265 and 266 of the Act.

With the second of the letters read above, the President forwards a plan showing the limits of military land round Fort St. George and contends that if this land is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in municipal limits. He also invites attention to his letter No. 1289, dated 20th January 1893, embodied in G.O., No. 1669 M., dated 2nd December 1893, in which he suggested that the road which it was then proposed to transfer to the Municipality should be formally handed over.

V. RAGHAVA CHARLU—20-4-99.

The point seems to be whether in 1875, when the contribution for this bazaar road was withdrawn, the Government withdrew all its control over that road and thus it became vested in the Commission. The difficulty that has now arisen was foreseen then (*vide* G.O., No. 1859, dated 17th April 1875) and certainly from the correspondence it would look as if the Government had resigned all rights over this bazaar road then. From the former note it appears that His Excellency is inclined to think that the case of the Municipality is not as strong as was represented to the Government of India. In any case the position *now* taken up by the Government of India does not seem justifiable and if the Municipality is to be made to pay for the removal of their buildings it must be on the ground that in 1875, although the Government grant was reduced, the Government did *not* withdraw its control then over the roads—*not* on the ground that the road was subsequently included within the military zone.

Apparently it did, and by Act I of 1884 the road became vested in the Municipal Council if not before.

A. T. A[RUNDEL].
A. E. H[AVELOCK].

Certainly. India should be addressed again. So far as I can see the action desired by the Government of India is illegal and the Municipality will take legal proceedings if necessary in their defence.

A.T.A.—9-5-99.

Yes. I suppose the Government of India can obtain what they want by paying for it.

A.E.H.—18-5-99.

The question now seems to be whether the Government of India should be addressed again—and it pointed out that their position is based on a mistake, or whether accepting the view of the Government of India the Municipality should be called upon at once to remove the buildings at its own expense. The Municipality will no doubt protest again.

M. HAMMICK—24-4-99.

[G.O., Nos. 888, 889 M., dated 26th June 1899.]

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

N. P.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I.

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II.

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884?

H. TRENENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, Kt., C.I.E., President, Municipal Commission, Madras.

To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., *dated 8th August 1896, I have* the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, Kt., C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, Kt., C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognised as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 245 and 246 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognised as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

To the President, Municipal Commission, Madras.

H. TEMPLEMAN,
Secretary to Government.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, Kt., C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, *dated 14th March 1899, I have the* honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of those roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. — *Enclosures*

1899.

Regd. — *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. *Enclosures*
1899.
Regd. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

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Dated—the 3rd January 1899.
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Dated—the 2nd March 1899.
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2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

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H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

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(True Extract.)

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To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
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3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

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Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. *Enclosures*
1899.
Regd. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern-"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. *Enclosures*
1899.
Regd. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

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3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

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2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

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II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

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LOCAL AND MUNICIPAL DEPARTMENT.

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G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

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4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

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To the President, Municipal Commission, Madras.

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H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
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With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
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With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
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To the President, Municipal Commission, Madras.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commissioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

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II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884?

H. Tremenheere,
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GOVERNMENT OF MADRAS.

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I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

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The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

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To the President, Municipal Commission, Madras.

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H. TREMENHEERE,
Secretary to Government.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'Military Roads' the roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

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H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

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IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
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3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

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2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern-"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

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4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

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The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

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H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

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Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

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Dated—the 3rd January 1899.
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To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
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Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commissioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

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Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. *Enclosures*

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G.O., &c., Nos. 888, 889 M., 26th June 1899.

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LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

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The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

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Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

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I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

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4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

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The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

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H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

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To—the Secretary to Government, Local and Municipal Department.
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G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

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Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

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To the President, Municipal Commission, Madras.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

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G.O., &c., Nos. 888, 889 M., 26th June 1899.

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3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. *His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.*

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

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The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

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I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

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The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

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H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

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In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

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In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

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READ—the following papers :—

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2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

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4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

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H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

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3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

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Read. — *Enclosures*

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G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

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II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
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H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern-"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

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Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

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G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

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3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

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The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commissioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

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Secretary to Government.

To the President, Municipal Commission, Madras.

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4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

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LOCAL AND MUNICIPAL DEPARTMENT.

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Addressing the Government of India on the subject of —.

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2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

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4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

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The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

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H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

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Dated—Ootacamund, the 26th June 1899.
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Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

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READ—the following papers :—

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Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

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Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

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To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
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To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

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No.—3356/M.-W.

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2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

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The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

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(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

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LOCAL AND MUNICIPAL DEPARTMENT.

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G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

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H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

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IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
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3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern-"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. — *Enclosures*

1899.

Regd. — *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

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Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

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Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

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LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

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"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

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H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

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I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds." There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

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There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

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The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

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H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern-"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. — *Enclosures*

1899.

Regd. — *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds." There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

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The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

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H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

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Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

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2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

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Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

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Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
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With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

To the President, Municipal Commission, Madras.

H. TREMENHEERE,
Secretary to Government.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
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The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. THRMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. *Enclosures*

1899.

Regd. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

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II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TRENENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

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To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
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To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
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(True Extract.)

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Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

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4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

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Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. *Enclosures*
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G.O., &c., Nos. 888, 889 M., 26th June 1899.

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READ—the following papers :—

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2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

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There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

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II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. } 1899. *Enclosures*

Repd. } *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds." There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

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The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

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In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Government might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

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Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. — *Enclosures*

1899.

Regd. — *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

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2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

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H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

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Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. } 1899. *Enclosures*

Repd. } *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on these roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. TRENCHERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

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With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

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To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
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IV

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To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

To the President, Municipal Commission, Madras.

H. TREMENHEERE,
Secretary to Government.

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Dated—the 18th March 1899.
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(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern-"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

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Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Read. — *Enclosures*

1899.

Rega. — *Spare copies*

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H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

The Home Department, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Director-General of Military Works, for information, in continuation of Military Department letter No. 3204/M.W., dated the 5th November 1897.

The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir George Moore, *Kt.*, c.i.e., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

Enclosures.

Letter—from the Hon'ble Lieut.-Col. Sir George Moore, *Kt.*, c.i.e., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
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To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
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Letter—from the Hon'ble Lieut.-Col. Sir George Moore, *Kt.*, c.i.e., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
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With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

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Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

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Letter—from the Hon'ble Lieut.-Col. Sir George Moore, *Kt.*, c.i.e., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
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(True Extract.)

M. Hammick,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis- "sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern-"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

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LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

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3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern-"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

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2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which [illegible] of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

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The Lieutenant-General Commanding the Forces, Madras, for information and guidance, with reference to the correspondence ending with his letter No. B.I. 11848, dated the 21st July 1898.

II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

III

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 16th January 1899.
No.—P.W. 875.

With reference to G.O., Mis. No. 1320 M., dated 8th August 1896, I have the honour to forward copies of the marginally-noted correspondence together with a plan showing the limits of military land.

Letter No. 814, dated 9th December 1898, from the President to General Officer Commanding Madras District.
Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

Letter—from the General Officer Commanding Madras District.
To—the President, Municipal Commission, Madras.
Dated—the 3rd January 1899.
No.—13-B.

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Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

V

Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

H. TREMENHEERE,
Secretary to Government.

To the President, Municipal Commission, Madras.

VI

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commissioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

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GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

Read—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

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2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds." There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

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H. Tremenheere,
Secretary to Government.

To the President, Municipal Commission, Madras.

Editor's Table - Dup. 10/11.11

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was [illegible]er consideration, the Municipal Commissioners requested the continuance of th[illegible]ontribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they migh[illegible]nade at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out tha[illegible]he Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was ...ler consideration, the Municipal Commissioners requested the continuance of th... ontribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern-"ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might ... nade at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out tha... the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

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5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

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Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Secretary to the Government of India, Military Department.
To—the Secretary to the Government of Madras, Local and Municipal Department.
Dated—Simla, the 1st December 1898.
No.—3356/M.-W.

I am directed to acknowledge the receipt of your letter, Mis. No. 1214 M., dated the 6th July 1898, communicating the views of the Government of Madras on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that the Evening Bazaar road, on which the buildings in question stand, is not one of those roads towards the maintenance of which an annual contribution of Rs. 6,000 was made from Military Works funds until some time in 1894, but one of the roads excluded in 1875 from those originally reserved as purely military roads, and since maintained by the Municipality at their own cost, and that when the City of Madras Municipal Act I of 1884 came into force, this road, not being the property or kept under the control of Government, vested in the Municipal Commissioners under section 233 of the Act. It is further stated that the Municipality have the power to erect any buildings they like on roads vested in them under section 233, and that they are therefore at liberty with respect to such roads to disregard the orders of the Government of India prohibiting the erection of buildings within the military zone round Fort St. George.

3. With reference thereto, I am to invite attention to the correspondence forwarded under cover of Madras Military Department letter No. 4893, dated the 6th August 1894, relative to the discontinuance of the annual contribution of Rs. 6,000 made by the Military Works Department to the Madras Municipality for the maintenance of certain roads traversing or skirting the military zone round Fort St. George, which, although having a very pertinent bearing on this case, would seem to have been overlooked. It will be observed that the Quartermaster-General of the Madras Army stated in his letter No. 453-M.-W., dated the 16th March 1894, that "so long as the zone now fixed (within which no buildings can be erected) is preserved, there is no necessity to maintain as 'military roads' the roads running across it". In respect to this transaction the President of the Municipal Commission wrote, on the 19th June 1894, that a resolution of the Municipal Commission requesting Government to continue the contribution was "based on the ground that, as the Commissioners cannot be said to have sole control over the roads within the military zone, no buildings being allowed on these roads, Government might fairly be asked to continue the contribution to those roads". The Government of Madras replied that "the reason assigned . . . . does not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 . . . . for the roads in question, which should be maintained entirely from Municipal funds."

There is here a distinct recognition by the Municipal Commission that they have no control over the roads within the military zone inasmuch as "no buildings are allowed on those roads," yet the Government of Madras are of opinion, as stated in paragraph 2 of your letter, that "the public roads maintained by the Municipal Commission are their property and that they are at liberty to do what they like with them".

4. This contention is based on section 233 of the City of Madras Municipal Act, 1884, which vests streets in the Commissioners. This section runs thus :—

"All public streets in the city (not being the property or kept under the control of Government) . . . . shall vest in the Commissioners."

The words within parenthesis save the roads within the military zone. The roads in respect to which a grant of Rs. 6,000 was made up to 1894 were distinctly kept under the control of Government in the orders stopping the grant. Furthermore, it was admitted at that time by the Municipal Commission that not only these roads, but all the roads within the military zone, were thus under the control of Government.

The present contention of the Municipal President cannot be admitted as it is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commission.

5. I am to state, for the information of His Excellency the Governor in Council, that the maintenance of the position indicated above is of vital importance, and that the Government of India cannot consent to withdraw from it.

6. It is stated in paragraph 4 of your letter that, with the exception of the water trough, the buildings in question were in existence before 1892 in which year the zone was constituted and that they are the property of private individuals, the Municipality having merely sanctioned their renewal or reconstruction.

I am to say that, on reconsidering the matter, the Government of India are of opinion that the water trough may be allowed to stand, since it is held to be unobjectionable by the Lieutenant-General Commanding the Forces, Madras.

As regards the other buildings, the Lieutenant-General Commanding will be directed to report whether they are objectionable from a defence point of view, and in the event of their being declared objectionable, steps must be taken for their removal. In the case of the water-pandal, iron bazaars and chemist's shop at stone 19, the compensation involved will be paid from Imperial funds, as they date from before the definition of the militaty zone; but in the case of the line of buildings constructed in 1895 to replace a number of mat bazaars, it will be for consideration whether the compensation should not be paid by the Municipal Commission under section 436 of the City of Madras Municipal Act, 1884, owing to their sanction to the construction of these being *ultra vires*.

Copy of the above forwarded to—

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II

Memorandum No. 158, dated 15th February 1899.

In his letter No. 710, dated 30th September 1897, disposed of in G.O., No. 2156 M., dated 15th November 1897, the President stated that the line of buildings to the east of the Chemist's shop on the Evening Bazaar road was constructed with the sanction of the Municipality in 1895. He is requested to report how and when the owners of these buildings came by the lands on which they are situated and to explain what is meant by the statement that these buildings were constructed with the sanction of the Municipality. Had the Municipality anything more to do with the construction of these buildings than the approval by the President of their plans, etc., under sections 265 and 266 of Act I of 1884 ?

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No.—P.W. 875.

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In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

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Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

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With reference to your letter P.W. No. 814, dated the 9th December 1898, I have the honour to forward a plan showing the limits of military land as requested in the above.

IV

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the Secretary to Government, Local and Municipal Department.
Dated—the 2nd March 1899.
No.—P.W. 1075.

With reference to your Memorandum No. 158, dated 15th February 1899, I have the honour to state that the parties were never recognized as the owners of the land. They were always charged rent.

2. They were allowed to build under the provisions of sections 265 and 266 of Act I of 1884.

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Memorandum No. 308, dated 14th March 1899.

The President is requested to state who were recognized as the owners of the land in question, who charged rent from the occupiers thereof and under what authority.

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Dated—the 18th March 1899.
No.—P.W. 1149.

With reference to Memorandum No. 308, dated 14th March 1899, I have the honour to refer you to the Municipal Act and to G.O., Mis. No. 2516 M., dated 15th November 1897, and to inform you that ground rents were collected by me.

In my letter No. 875, dated 16th January 1899, I have addressed Government with reference to G.O., Mis. No. 1320 M., dated 8th August 1896, and therein the question of ownership is discussed.

Order—No. 888 M., dated 26th June 1899.

The following letter will be addressed to the Government of India.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

Letter—from M. HAMMICK, Esq., I.C.S., Acting Secretary to the Government of Madras, Local and Municipal Department.
To—the Secretary to the Government of India, Military Department.
Dated—Ootacamund, the 26th June 1899.
No.—889 M.

I am directed to acknowledge the receipt of your letter, No. 3356 M.-W., dated 1st December 1898, communicating the views of the Government of India on the subject of the removal of certain buildings on roadways within the military zone of Fort St. George.

2. It is pointed out that in his letter, No. 453 M.-W., dated 16th March 1894, dealing with the proposal to withdraw the contribution of Rs. 6,000 paid to the Municipality by the Military Works Department for the maintenance of some of the roads traversing or skirting the zone, the Quartermaster-General of the Madras Army stated, that "so long as the zone now fixed (within which no buildings can be "erected) is preserved, there is no necessity to maintain as 'Military Roads' the "roads running across it," that the President of the Municipal Commission then said that the resolution of the Commissioners requesting Government to continue the contribution on account of these roads was based on the ground that "the Commis-"sioners cannot be said to have sole control over the roads within the military zone, "no buildings being allowed on those roads," and, that thereupon, the Government while considering that the reason assigned by the Commissioners did not constitute an adequate ground for objecting to the withdrawal of the annual contribution of Rs. 6,000 for the roads in question, stated that they should be maintained entirely from Municipal funds. The Government of India therefore observes that the opinion of the Madras Government that the public roads maintained by the Municipal Commissioners are their property and that they are at liberty to do what they like with them, is inconsistent with the distinct recognition by the Municipal Commissioners that they have no control over the roads within the military zone, inasmuch as no buildings are allowed on those roads. It is further stated that the words "not being the property or kept under the control of Government" occurring in section 233 of the Municipal Act save the roads within the military zone from vesting in the Commissioners, as the roads in respect of which a grant of Rs. 6,000 was made until 1894 were distinctly kept under the control of Government and that the present contention of the President is inconsistent with that reservation on the part of Government and that admission on the part of the Municipal Commissioners.

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Letter No. 13-B, dated 3rd January 1899, from General Officer Commanding Madras District, to the President.

If this land is military land it cannot be vested in the Commissioners, in accordance with section 233 of Act I of 1884, and therefore the Commissioners cannot be held responsible for the maintenance of the roads, notwithstanding that they are in Municipal limits.

In this connection, I would invite attention to my letter No. 1289, dated 20th January 1893.

ENCLOSURES.

Letter—from the Hon'ble Lieut.-Col. Sir GEORGE MOORE, *Kt.*, C.I.E., President, Municipal Commission, Madras.
To—the General Officer Commanding Madras District.
Dated—the 9th December 1898.
No.—P.W. 814.

With reference to your letter No. 3345-B of the 23rd November 1898 and enclosures herewith returned, I have the honour to request that you will send me a plan showing the limits of military land. The mere fact of the land being within the military zone gives no right to the Military Department to the land on which the fountain stands.

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3. In reply, I am to state that when the question of withdrawing the annual contribution of Rs. 6,000 paid to the Madras Municipality from the Military Works Funds for the maintenance of certain roads within the military zone was under consideration, the Municipal Commissioners requested the continuance of the contribution on the ground that "as the Commissioners cannot be held to have *sole* control over the "roads within the military zone, no buildings being allowed on those roads, Govern- "ment might fairly be asked to continue the contribution to those roads". The Government of India argues that this statement amounts to a recognition by the Municipal Commissioners that they had *no control* not only over the roads for which the contribution of Rs. 6,000 was then paid, but also over *all the roads* within the military zone, and that the roads were consequently under the control of Government. This inference, however, is not correct, for all that the Commissioners meant was that the Government in prohibiting the construction of buildings on the roads in question, also exercised some control over them along with the Municipality, and not that the roads were entirely under the control of Government and that the Commissioners had no control over them. Nor can it be said that the statement of the Commissioners had reference to any roads other than those the contribution for whose maintenance it was then proposed to withdraw. Any admission which they might have made at the time can only be held to apply to the roads then under discussion. With regard to the contention of the Government of India that the words "not being the property or kept under the control of Government" occurring in section 233 of the City of Madras Municipal Act, save the roads within the military zone from the operation of that section, I am to point out that the Evening Bazar Road on which the buildings in question stand, was not one of those roads which were kept under the control of Government in the orders withdrawing the grant of Rs. 6,000; but that when the contribution for this road was stopped in 1875, the Government withdrew all its control over that road, and that it was then handed over to the Municipality without any reservation whatsoever. In consequence as this road was thus not under the control of Government when Act I of 1884 (Madras) came into operation, [the military zone round Fort St. George within which building is prohibited, having been constituted only in 1892], the road then vested in the Municipal Commissioners. His Excellency the Governor in Council therefore considers that the position now taken by the Government of India cannot be justified.

4. Moreover, the President of the Municipal Commission, Madras, now contends that if all the land within the military zone of Fort St. George is military land, it cannot be vested in the Commissioners in accordance with section 233 of Act I of 1884, and that therefore the Commissioners cannot be held responsible for the maintenance of the roads situated within the zone, notwithstanding the fact that they are in municipal limits. If therefore the Government of India were still to adhere to and could legally enforce the view that the roads within the military zone are under the control of Government and have not vested in the Municipal Commissioners, the Military Department would have to take over the maintenance of the roads within the zone or revive the payment of a contribution towards their maintenance. I am however to add that roads which legally vest in the Municipal Commissioners cannot be withdrawn from them by an executive order of Government.

5. With regard to the observation at the close of paragraph 6 of your letter that in the case of the line of buildings constructed in 1895 to replace a number of mat bazars, it will be for consideration whether the compensation should not be paid by the Municipal Commissioners under section 436 of the Act owing to their sanction to the construction of these being *ultra vires*, I am directed to say that if the Municipality is to be made to pay for the removal of these buildings it must be on the ground that in 1875, although the Government grant was stopped, the Government did not withdraw its control then over the roads, which, however, as I have shown above, was not the case. It cannot be contended that the fact that the road was subsequently included within the military zone affected in any way the legal right of ownership possessed by the Municipal Commission over the land in question. So far as this Government understands the case I am to say that the Municipality appears to have acted throughout within its powers, and that the proposed action of the Government of India appears to be illegal.

Government of Madras.

LOCAL AND MUNICIPAL DEPARTMENT.

MISCELLANEOUS.

Recd. } 1899. *Enclosures*

Regd. } 1899. *Spare copies*

G.O., &c., Nos. 888, 889 M., 26th June 1899.

Removal of buildings within the military zone on the Evening Bazaar Road, Madras.

Addressing the Government of India on the subject of —.