...sal & Muni. (189) Department.

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G.O., No. 1196 dd

DATED 18/8/89.

INDEXED.

[Despatch Abstract.]

Act.

Passing orders on certain points raised by the Chairman, Municipal Council ~~Municipality~~ Conjeeveram in regard to the interpretation of the rules framed by Govt. under Sec. 14 of the Madras Act II of 1888 (Places of public Resort Act).

BACK PAPERS.

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

FURTHER PAPERS.

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

Government {1899} of Madras.

LOCAL AND MUNICIPAL.

Recd. } 1899. *Enclosures*

Regd. *Spare copies*

G.O., No. 1196 M., 18th August 1899.

AUGUST.

Act.

Passing orders on certain points raised by the Chairman, Municipal Council, Anantapur, in regard to the interpretation of the rules framed by Government under section 14 of the Madras Act II of 1888 (Places of Public Resort Act).

GOVERNMENT OF MADRAS.

LOCAL AND MUNICIPAL DEPARTMENT.

READ—the following paper :—

From M.R.Ry. P. ADIMURTI Rao Garu, Chairman-delegate, Municipal Council, Anantapur, to the Secretary to Government, Local and Municipal Department (through the Collector and the Revenue Divisional Officer), dated 4th July 1899, No. 513.

Referring to G.O., No. 1460 M., dated 10th September 1891, I have the honour to request that you will kindly enlighten me on the following points :—

(i) Whether the license fee prescribed under rule 1 of rules framed under section 14 of Act II of 1888 and embodied in the said Government order is leviable even though the pavilion intended to be utilized as a place of public resort is constructed on a private land.

(ii) In cases in which a pavilion is constructed on land vested in the Municipal Council with its formal permission whether the rent of the land should be collected in addition to the license fee prescribed therefor under the said rules.

(iii) Whether a licensee to enact dramatic performances under the said rules could permit any other dramatic company to utilize the licensed pavilion for the same purpose during the period covered by the license on his own responsibility for consideration or otherwise, and whether or not such permission tantamounts to a transfer contemplated in the rule.

2. As regards the first and second points my view is that the word license is not used in Act II of 1888, Madras, in the ordinary sense in which it is used in the Indian Easement Act, according to which the grantor should be the owner of the land. A license under this Act is purely intended for enforcing all reasonable precautionary measures necessary to ensure the safety of persons to be assembled in the licensed shed in cases of accident and the fee is prescribed to cover the expenses of inspection to be held from time to time by the licensing authority. Section 3 of the said Act (II of 1888, Madras) is too general to include all areas. This restriction, though inconsistent with the general proprietary rights vested in an individual under civil law, has yet been imposed in consideration of public safety. Hence this fee is leviable irrespective of the nature of the property.

The rent of the land occupied by the pavilion, not being included in the license fee, ought to be collected in addition.

3. The third point is one of considerable difficulty. According to the Indian Easement Act a license is strictly personal, and except it be one to attend a place of public entertainment it cannot be transferred or exercised by the licensee's servant or agent. Under the rules framed under section 14 of Act II of 1888 a license granted is likewise not transferable. This provision seems to be analogous to the said provision in the Easement Act with this difference, viz., that an agent or servant of the licensee could carry out the purposes for which the license has been obtained under the rules.

In a case under section 52 of the Indian Easement Act decided by the Madras High Court and reported in 16 Madras, page 280, Indian Law Reports, where a licensee to capture elephants in a private forest of the grantor for a term of six years permitted another person to capture ten elephants in the same forest during the continuance of the license, it was held that this permission constituted a transfer.

This ruling, though dealing with a case under the Easement Act, may be referred to on analogy for the purpose of interpreting the said license condition.

My view therefore is that a licensee of the above description cannot authorize or permit any other dramatic company to enact its dramas in the licensed premises without a fresh license, as such authority or permission is sufficient to convert the transaction into a lease which is one kind of transfer of property.

It may be contended *contra* that merely allowing any other company to enact its dramas in the licensed premises under the permission of the original licensee does not constitute a transfer, because there is involved no transfer of liability and that a fresh license for the same licensed premises during the continuance of the original license is inequitable.

These contentions, however harmonious they may sound, cannot be accepted in the face of the condition "this license is not transferable," which means that the license is personal and cannot be assigned.

4. As the points raised herein are intricate and have not, I think, as yet been settled by an authoritative ruling for the guidance of the Municipal Councils before whom these now and then crop up, I have thought it expedient to lay them before you for orders.

N. Dis. Gl. No. 718.

Submitted.

2. *Question 1.*—The Act clearly lays down that even private lands should be licensed.

3. *Question 2.*—The fee prescribed by the rules in this respect is quite distinct from any rent which the Municipal Council like any other private owner can charge for giving the use of the land.

4. *Question 3.*—I differ from the view taken by the Chairman-delegate. What is licensed under Act II of 1888 is the place and the use to which it should be put and not the person. Sections 6 and 7 of the Act do not prescribe any condition as to the person to whom a license is to be granted, and under section 9, a license can be revoked on the ground of (1) fraud, (2) using the premises for any purpose other than that mentioned in the license, and (3) that the place has become unsafe. Again section 13 by implication authorises the existence of two individuals—one being the person having the control of the building, and the other, the person whom the former permits to use the building for the purpose mentioned in the license. Thus under the Act and the rules, the person who gets his premises licensed is responsible for carrying out the conditions imposed upon him by the license, but is not prohibited from employing any person to carry out in the building the purpose for which such building was licensed. It is the purpose which is essential and is restricted and not the person employed. It could never have been the intention of the Legislature that a person who has licensed premises should himself be the dramatist or the actor and that he should not find persons who will be able to put the building to the use for which it was licensed.

There was lately a case here in which the Municipal Council held this opinion and reversed in appeal the decision of the Chairman to collect a second fee from the players who acted under the authority of the original licensee during the continuance of his license; and I believe this is the view obtaining in other places where there are licensed places of public resort.

As stated by the Chairman-delegate, there is a condition in the license that it is not transferable. Reading the rules with the Act, it seems to me to mean an absolute disconnection of the licensee from the rights and liabilities created by the license for however short a time it may be and not to apply to cases in which the licensee retains in his hand the full responsibilities according to the license, whatever may be the agreement between him and the persons he engages in respect to other matters.

(Signed) M. ARUMUKAM PILLAI,
Deputy Collector.

20*th July* 1899.

No. 1196 M., 18TH AUGUST 1899.

Submitted. N. Dis. No. 1281.

2. The Act seems to be clear as regards questions 1 and 2 raised by the Chairman.

3. I agree with the Revenue Divisional Officer as regards question 3 so long as the site licensed and the purpose for which it was intended by the licensee are left unchanged.

ANANTAPUR,
25*th July* 1899.

(Signed) B. MACLEOD,
Collector.

ORDER—No. 1196 M., dated 18th August 1899.

The first and second questions raised by the Chairman will be answered in the affirmative.

2. With reference to his third question, the Chairman's attention is drawn to the remarks of the Deputy Collector and the Collector in paragraphs 4 and 3 of their respective endorsements, in which the Government concurs.

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

To the Chairman, Municipal Council, Anantapur.
,, all other Chairmen of Municipal Councils.
,, all Collectors.
,, the Judicial Department.

Extd. A. F. Eccleston.

Government {1899} of Madras.

LOCAL AND MUNICIPAL.

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(Signed) T. A. SHANMUGASUNDARAM,
Deputy Collector.

20*th July* 1899.

M. Arunachalam Pillai.

N. Dis. No. 1281.

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ORDER—No. 1196 M., dated 18th August 1899.

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(True Extract.)

for *Ag. Secretary to Government.*

To the Chairman, Municipal Council, Anantapur.
" all other Chairmen of Municipal Councils.
" all Collectors.
" the Judicial Department.

Ord. A. F. Eccleston.

Gen. (Subordinate Officers)

No. 718 of 1899.
6.7.99

Local & Munl. (1899) Department.

CURRENT No. 20449

Dept

No. 1196 M. dt 18/8/99

Rs

Order MM 15/8/99

From The Chairman Delegate Municipal Council Anantapur

No. 513
5-7-99

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Dated 4th July 1899
Received 31 JUL 1899
Registered
Enclosures nil
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18
10/8/99

W. W. 11/8

SUBJECT.

Soliciting orders on some points raised in the rules framed by Govt under Section 14 of the Madras Act III of 1888 (Places of Public Resort)

Circular 12 2/8/99

To The Chairman, Mc Anantapur
All other Chairmen of Municipal Councils
" Collectors
" Board of Prov. Dept 6 Opies 2/9/99

2

1/5 a/9/8

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"	802	do	21-7-94

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ORDER OF GOVERNMENT

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15-1-09

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Date taken out.	For what purpose.			Initials of clerk taking the paper or of attender.	Date returned.	Initials of attender.
	Department.	C. No.	Year.			
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