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MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. 25 73 Press Mis.

98-99

Dated 5 - 9 - 18 64.

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department, 5th September 1864.

No. 93. Read the following letter from C. DALE, Esq., Government Pleader, to Colonel C. A. ORR, R. E., Secretary to Government, Public Works Department, dated Madras, 24th August 1864, No. 191:—

SIR,

1. With reference to the Proceedings of Government, &c., under the dates and numbers noted in the margin, I have the honor to report for the information of the Honorable the Governor in Council, that I have perused the English papers laid before me, and am of opinion that in none of the cases (except perhaps that numbered 13) can the Contractors and their Sureties be proceeded against, as I consider the claims are barred by the Statute of Limitation.

Proceedings of Government, 11th January 1864, No. 84, Public Works Department.
Letter from Government Pleader, to Secretary to Government, 13th January 1864, No. 4.
Proceedings of Government, 13th May 1864, No. 1,402, Public Works Department.

2. The case No. 13 is somewhat different from the others; the contract was dated the 18th June 1859. The Contractor was Veláyudam Servai, and he undertook to perform the works specified within nine months, for Rupees 830, payable by instalments.

3. On the same date two men named, first, Veláyudam Servai (a different man from the Contractor) and, second, Vérappanambalam executed what is called a Security Bond, whereby they bound themselves, if the work were not completed according to the conditions of the Kararnamah, to pay a penalty of 5 Rupees a day, as also to refund any amount that might be advanced to the Contractor; moreover to be responsible for any loss that might be incurred from defective workmanship, and consented that on default property belonging to them and specified at foot should be sold by public auction.

4. On the contract are receipts for three payments, viz.:—

	Rs.
At the time of signing the contract	150
23rd July 1859	120
18th October ,, ...	200
Total...	470

5. In the draft plaint prepared by Captain Moberly, it is averred that the Contractor has done work to the value of Rupees 207-8-0 only; that he has neglected to carry on the work for the balance of his advance and will not refund the money.

6. There are several inaccuracies in the plaint, which however I do not here purpose dwelling on.

7. If the matter had rested there, this case would have differed from the others, and the claim of Government would, in my opinion, have been clearly barred by the Statute of Limitations.

8. But with the papers laid before me there are two documents, one headed "Deposition," the other "Kararnamah and Security Bond."

9. The first purposes to have been made by the Contractor before the Deputy Collector of Madura on the 29th January 1861; it appears to be a mongrel sort of document; it is neither a deposition nor a contract. It cannot properly be styled a deposition, because the Contractor was not affirmed to the truth of his statement, nor does it appear to have been taken in any enquiry, investigation or matter pending before the Deputy Collector; nor is there any Jurat; nor is it attested in any manner by the Deputy Collector, and there are not the necessary elements to constitute it a contract.

10. In this document the original contract is recited: the Contractor acknowledges the receipt of another Rupees 30, making a total of Rupees 500 advanced to him; states that he had provided the necessary bricks and chunam; had deposited them at the proper place, and had also cut the earth for the foundation, when Mr. Drane communicated to him (the Contractor) that he had received an order not to carry on the work, and he (the Contractor) was obliged to stop it. The Contractor then proceeds to state that if he were permitted to conduct the work on the payment of a further advance he was ready to complete it.

11. The "Kararnamah and Security Bond," mentioned in paragraph 8, is dated the 15th October 1862, and purports to be executed by Aiyasami Maisteri "*on behalf of Her Majesty's Government of India*, in *presence o* an Assistant Overseer.

what is called a Security Bond whereby they bound

12. It is very evident that it was intended to be expressed that the instrument was entered into by Aiyasami with the Assistant Overseer, acting on behalf of Her Majesty's Government. It is desirable that instruments entered into by Officers of Government should be expressed in a manner which would render them intelligible, and not senseless as in this case.

13. The Kararnamah alludes to a contract entered into by Velâyudam Servai, and doubtless it was intended to refer to the contract mentioned in paragraph 2, but several inaccuracies occur; amongst other things, the date of the contract and the amount for which the work was to be done are mis-stated. It however proceeds to state that Velâyudam Servai had failed to complete the work within the prescribed period, and that on the Assistant Overseer making a demand upon him to refund the 500 Rupees advanced, he had replied that he would complete the work if an extension of six months were allowed, which request the Assistant Overseer had complied with on a sufficient security being given. The Kararnamah then proceeds that he Aiyasami Maisteri bound himself to account IN LIEU of Velâyudam Servai for the Rupees 500 and to carry on the work, undertaking to execute within four months sufficient work to cover that amount; to receive the balance of the estimated amount by instalments, and to complete the bridge in two months more. If he (Aiyasami Maisteri) failed to complete the work within such prescribed period, he consented that the amount he should have received should be recovered by the public sale of his house.

14. The (so called) Deposition and Kararnamah do not in any way affect Velâyudam Servai the surety (mentioned in paragraph 3) and Vérappanambalam; in my opinion, therefore, they cannot be sued by Government.

15. And as regards the Contractor and Aiyasami Maisteri the documents are, if of any effect, so inconsistent with each other that it is difficult to gather the extent to which they operate against those two parties.

16. I think, however, the so-called deposition must be treated as wholly inoperative, if it were otherwise it would only affect the Contractor; but it appears to me, its effect is nothing more than an expression of the then willingness of the Contractor to complete the work on receiving a further advance. It is not mentioned that this offer was ever accepted; indeed it would seem that it was not, because no mention is any where made of any further advance having been made to the Contractor; under such circumstances I am of opinion that that document is totally inoperative, and such being the case the Contractor not being a party to the Kararnamah of the 15th October 1862, the claim of the Government is gone equally with that against his sureties.

17. The only remaining point left to be determined is whether the Government can successfully maintain proceedings against Aiyasami Maisteri. I have given the matter due consideration, the result of which is that I advise His Excellency in Council not to institute proceedings against that man; no consideration is shown for his taking upon himself the payment of the Contractor's debt, and he does not appear to have received any further advance.

18. I return all the papers which accompanied the Proceedings of the 13th of May 1864, noted above.

No. 99. ORDER THEREON, 5th September 1864, No. 2,573.

1. Under the opinion expressed by the Government Pleader, the Government have no alternative but to authorize the outstanding balance of Rupees 2,345-13-8* in the Madura District to be written off "to profit and loss."

* See paragraph 3 of G. O. No. 84, dated 11th January 1864.

2. The particular attention of Superintending Engineers will be requested to paragraph 12 of Mr. Dale's letter recorded above.

(True Extract.)

(Signed) J. H. M. SHAW STEWART, Major, R. E.,
Deputy Secretary to Government.

To the Superintending Engineer, 8th Division.
To all other Superintending Engineers.
To the Controller of Public Works Accounts.
„ Accountant General.

Exd. S. T. Augustin.

No. 191

From Clement Dale Esquire Government Pleader Madras.

To. Colonel C. A. Orr R. E. Secretary to Government Public Works Department.

Madras 24th August 1864

Sir

Proceedings of Government 11th January 1864 No. 84 Public Works Department.
Letter from Govt. Pleader to Secretary to Govt. 13th January 1864 No. 4 - - -
Proceedings of Government 13th May 1864 No. 1402 Public Works department.

Para. 1. With reference to the Proceedings of Government &c. under the dates and Numbers noted in the Margin, I have the honor to report for the information of the Honorable The Governor in Council that I have perused the English papers laid before me, and am of opinion that in none of the Cases (except perhaps that No. 13) can the Contractors and their Sureties be proceeded against, as I consider the Claims are barred by the Statute of Limitation.

2. The case No. 13 is some what different from the others. The Contract was dated the 18th June 1859. The Contractor was Velâyudam Servai, and he undertook to perform the works specified within 9 Months, for Rupees 830 payable by instalments.

3. On the same date two men named 1st Velâyudam Servai (a different man from the Contractor) and 2d Verappanambalam executed what is called a Security Bond, whereby they bound

themselves, if the work were not Completed according to the Conditions of the Kararnamah, to pay a penalty of 5 Rupees a day as also to refund any amount that might be advanced to the Contractor, moreover to be responsible for any loss that might be incurred from defective Workmanship and Consented that on default property belonging to them and Specified at foot Should be Sold by public auction.

4 On the Contract are Receipts for 3 payments, viz

At the time of Signing the Contract Rupees 150—

23d July 1859 ——— 120—

18th October 1859 ——— 200—

Total Rupees 470—

5 In the draft plaint prepared by Captain Moberly, it is averred that the Contractor has done work to the value of Rupees 207: 8—: 0 only. That he has neglected to carry on the work for the balance of his advance and will not refund the Money.

6. There are Several inaccuracies in the plaint, which however I do not here purpose dwelling on.

7 If the matter had rested there, this Case would not have differed from the others, and the Claim of Government would in my opinion have been clearly

barred by the Statute of limitations.

8 But with the papers laid before me there are two Documents, one headed "Deposition," the other "Kararnamah and Security bond."

9. The first purposes to have been made by the Contractor before the Deputy Collector of Madura on the 29th January 1861. It appears to be a mongrel sort of document. It is neither a Deposition nor a Contract. It cannot properly be styled a Deposition, because the Contractor was not affirmed to the truth of his Statement, nor does it appear to have been taken in any inquiry investigation or matter pending before the Deputy Collector, nor is there any Jurat; nor is it attested in any manner by the Deputy Collector, and there are not the necessary Elements to constitute it a Contract.

10. In this Document the original Contract is precited, the Contractor acknowledges the receipt of another Rupees 30 making a Total of Rupees 500 advanced to him; states that he had provided the necessary bricks and Chunam, had deposited them at the proper places, and had also cut the earth for the foundation, when Mr Drane communicated

to him (the Contractor) that he had received an Order not to Carry on the work, and he (the Contractor) was obliged to stop it. The Contractor then proceeds to state that if he were permitted to conduct the work on the payment of a further advance he was ready to Complete it.

11. The Kararnamah and Security Bond mentioned in para 8 is dated the 15th October 1862, and purports to be executed by Aiyasami Maistri "on behalf of Her Majesty's Government of India, in "the presence of an Assistant Overseer;

12 It is very evident that it was intended to be expressed that the Instrument was entered into by Aiyasami with the Assistant Overseer acting on behalf of Her Majesty's Government. It is desirable that Instruments entered into by Officers of Government should be expressed in a manner which would render them intelligible, and not senseless as in this case.

13. The Kararnamah alludes to a Contract entered into by Velayudam Servai, and doubtless it was intended to refer to the Contract mentioned in para 2, but several inaccuracies occur. Amongst

other things, the date of the Contract and the amount for which the work was to be done are misstated. It however proceeds to state that Velayudam Servai had failed to complete the work within the prescribed period, and that on the Assistant Overseer making a demand upon him to refund the Rupees 500 advanced, he had replied that he would complete the work, if an extension of Six Months were allowed, which request the Assistant Overseer had complied with on a sufficient Security being given. The Kararnamah then proceeds that he Aiyasami Maistri bound himself to account in lieu of Velayudam Servai for the Rupees 500 and to carry on the work undertaking to execute within 4 Months sufficient work to cover that amount; to receive the balance of the Estimated amount by Instalments, and to Complete the Bridge in two Months more. If he (Aiyasami Maistri) failed to complete the work within such prescribed period, he consented that the amount he should have received should be recovered by the Public Sale of his House.

14 The (so called) Deposition and Kararnamah do not in any way affect Velayudam Servai the Surety (mentioned in para 3) and Virapperumbelam. In my opinion therefore they Cannot be sued by Government.

15 And as regards the Contractor and Aiyasami Maistere the Documents are, if of any effect, so inconsistent with each other that it is difficult to gather the extent to which they operate against those 2 parties.

16. I think however the so called Deposition must be treated as wholly inoperative, if it were otherwise it would only affect the Contractor, but it appears to me, its effect is nothing more than an expression of the then willingness of the Contractor to complete the work, on receiving a further advance. It is not mentioned that this offer was ever accepted, indeed it would seem that it was not, because no mention is any where made of any further advance having been made to the Contractor; Under such Circumstances I am of opinion that that Document is totally inoperative, and such being the case the Contractor not being a Party to the Kararnanamah of the 15th October 1862 the claim of the Government is gone equally with that against his Sureties.

17. The only remaining point left to be determined is whether the Government can successfully maintain proceedings against Aiyasami Maistere, I have given the matter due consideration, the result of which is that I advise His Excellency in Council not to institute proceedings against that man: no Consideration is shewn for his taking upon himself the payment of the Contractor's Debt; and he does not appear to have received any further advance.

18. I return all the papers which accompanied the proceedings of the 13th May 1864 noted above.

I have the honor to be
Sir
Your most Obedt Servant
Wm. R. Dalk.
Government Pleader.

W 1864 Dept
No 3764 Records
From Government Pleader
Madras
To Secretary to Government
P. Works Department

Dated 24th August 1864
Rec'd 26th " "

No 191
with 35 Enclosures

Of opinion that in
none of the Cases can the
Contractors and their Sureties
be proceeded against, the
claims being barred
by the Statute of Limitations
&c.

[illegible]

No 2573-5 September 1864.

Write an Order

No. 98. 99

C. 312 Ed 1st 1864 Or. 1st Letter

Recorded

95 13

No 2573

Under the opinion expressed
by the Government Pleader, the Government
have no alternative but to authorize
the outstanding balance of Rupees
2345. 13. 8 in the Madura District
to be written off to profit and loss.

2. The particular attention
of Superintending Engineers will
be requested to para 12 of
Mr Dale's letter recorded above.

+ See para 3 of G.O. No 84 of 11th January 1864

To The Supg Engr 8th Div
" All other Superintg Engineers
" Controller of P.W. Accounts
" Accountant General
Chepauk 5th September 1864.

Dod 12th " September
Vide 82 Index

58

9/11.