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MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No.	963	Press Mis.
Dated	6-4-	1864.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
6th April 1864.*

No. 145. Read the following Circular from the Under Secretary to the Government of India, Public Works Department, to the Secretary to the Government of Madras, Public Works Department, dated Fort William, 3rd March 1864, No. 4 :—

The accompanying copy of extracts from the replies received from Local Governments and Administrations, to Public Works Department Circular No. 92 of 1863, regarding the working of the Arbitration Clauses of Act VI of 1857, are circulated for information.

(Signed) E. C. S. WILLIAMS, Captain, R. E.,

Under Secretary to the Government of India.

Opinions, suggestions, and practice of Local Governments and Administrations, in respect of the working of the Arbitration Clauses of Act VI of 1857, to accompany Circular No. 5 of 1864.

M A D R A S.

1. The Governor in Council concurs with the Board (of Revenue) that in this Presidency the interests of Government have been very fairly protected in the grant of compensation for land required for public purposes.

2. In the cases where a large extent of land has been required, as for instance, for the Irrigation Company in Kurnool, the Great Southern of India Company in Tanjore, and the North Western Railway, the duty of fixing the compensation has been entrusted to a Covenanted Assistant of the Collector or to an experienced Deputy Collector, and this plan has ensured justice to all concerned and has obviated delay. In other cases, the duty has been performed by Revenue Officers acting under the Collector's orders. References to arbitration have been comparatively rare, the award of the Government Officer having usually been accepted. Arbitration by a single arbitrator has been resorted to in very exceptional cases, and care of course taken that the individual selected was both impartial and independent. The precautions suggested by the Supreme Government appear to be already very generally adopted, and nothing more is requisite than to prescribe as a general rule that where arbitrators are appointed by each party, the Government nominee shall be a well qualified and trustworthy official, and that where only a single arbitrator is appointed under Section XI of Act VI of 1857, an Officer shall be specially deputed by the Collector to watch over the interests of Government.

3. The Government do not consider that the single arbitrator appointed under Section X of the above Act, with the concurrence of all interested, must necessarily be a person not in the service of Government; this prohibition seems restricted by Section XI to cases where no claimants attend, or where the parties interested refuse or neglect for 15 days to appoint an arbitrator. Practically, however, proprietors would rarely entrust their interests to an arbitrator dependent on the Government.

B O M B A Y.

2. Government will, His Excellency in Council believes, always have to pay a higher price, and that perhaps reasonably, on a compulsory sale, than would have been realized by ordinary sale.

3. The mere fact of Government wanting land raises its price, and if that land is to become contiguous to a Railway Station or road, its value is really increased.

4. The Revenue Commissioner, Southern Division, approves of the plan suggested by the Government of India, of a Government Officer being appointed to watch the proceedings of the Government arbitrator, but the Governor in Council is not disposed to support this, and thinks that the Collector or "other Officer" spoken of in the Act sufficient.

5. The Governor in Council suggests, as an amendment to the Act, that when the Collector and owners cannot agree, as to the price, each should be required to state in writing their valuation, and that the arbitrator or arbitrators should be required to fix on a sum between the two.

6. The Collector of Bombay is mistaken in supposing that the present Act provides for this. The Revenue Commissioner, Northern Division, states that such is the custom, but a case occurred here in 1861, when the Collector offered 3 Annas a square yard, the owners were willing to accept 4 Annas, and the arbitrators (2 out of 3 being servants of Government) awarded

• 11 Annas.

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7. This might induce the owners to put a higher value than they are really willing to accept; but to check this the provisions of Clause 22 might be extended, and the costs of both sides be thrown on the owners if the price they stand out for, should far exceed that finally awarded by the arbitrator.

8. Another apparent defect in the Act is, that according to Counsel's interpretation of Clause 8, if Government once refer to arbitration they are bound to accept the land whatever the award may be.

9. If an enormous sum is awarded, it might be quite worth while to shift the road or Railway, and the owner could not in such case plead that his property had been injured by an extortionate demand not being complied with.

10. The land should, in the opinion of the Governor in Council, be vested in Government, not when the matter is referred to arbitration, but when the award is accepted. But to meet any emergent case, power might be reserved for Government to take immediate occupation, paying all damages and expenses if the land be not finally accepted.

BENGAL.

His Honour the Lieutenant Governor considers that the loss sustained by Government, from the unreasonable awards of Arbitrators, under Act VI of 1857, has resulted rather from carelessness and neglect on the part of the Officers who have had resort to the Act, than from any inherent defect of the law. His Honour has accordingly issued the following rules as a remedy:—

Rule 3 A.—“Collectors should make an award in all practicable cases, and recourse to arbitration should be had only when those who attend his enquiry demand an amount of compensation which is unreasonable and extravagant. The Collector's award should be the Rule; arbitration the exception.”

Rule 6 A.—“Where more than one arbitrator is appointed, the arbitrator on the part of Government should, as a rule, be an Officer of Government, and should not be below the rank of Deputy Collector. If a Deputy Collector is not available for this duty, the fees under Section 21 of the Act should be fixed at a rate sufficient to secure the services of men of undoubted integrity.”

Rule 6 B.—“In Divisions in which any great quantity of land is likely to be taken up for public purposes, a Special Deputy Collector should be employed as arbitrator in all important cases throughout the division, such an Officer would acquire practical experience in valuing land, which would enable him to effect a ready settlement in most cases. This Officer will stand attached to some particular District, but should always be held available to proceed to any other District in the Division in which his services as arbitrator are required in a case involving considerable interests.”

Rule 11 A.—“When the case is not entrusted to a single arbitrator, all three arbitrators must take part in the proceedings. Each must weigh every statement made and every document adduced on either side which is calculated to throw light on the real value of the property. The third arbitrator must not be considered an umpire or referee to be called in only in case of difference of opinion between the other two arbitrators. Collectors may reject an award as incomplete, if all three arbitrators have not taken part in the enquiry.”

Rule 11 B.—“Where there is only a single arbitrator, Collectors should invariably depute some intelligent subordinate Officer to state the case of Government before him.”

NORTH-WESTERN PROVINCES.

His Honour the Lieutenant Governor forwarded a report (of which the following is an extract) from the Sudder Board of Revenue, and was of opinion that there was no reason to modify the system in force in the North-Western Provinces.

2. It is comparatively of unfrequent occurrence in these provinces that arbitration is needed. The provisions laid down for making a preliminary offer of compensation (the chief of which are to be found in Appendix XXIII to directions to Collectors, pages 466—482 last edition) are so full and so just, both towards the Government and private interests, that the preliminary offer is in the vast majority of cases accepted.

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3. Where arbitration is resorted to, the existing provisions are as follow:—

15.—“Where resort to this measure is unavoidable, the Tahseeldar will forward a report to the Collector with the names of arbitrators, who should be selected on the part of Government, and the same number on the part of the claimants to elect an umpire and proceed to settle the dispute. If the arbitrators cannot agree about the nomination of an umpire, the Tahseeldar should select one.

17.—“Care must be taken against any systematic employment of the same parties as aid in private negotiations, or as arbitrators in formal arbitration, otherwise individuals will consider the office as one that should yield emoluments, and intrigues and other mischief will ensue.”

4. It does not occur to the Board that any further precautions are necessary. It is certain that abuses of the nature referred to in Colonel Strachey's letter are not prevalent in these provinces. The records of compensation are very carefully scrutinized by the Board before they are adopted by them; and it is very rarely indeed that they have found the awards of arbitrators excessive. On one or two occasions where the amount was *prima facie* exorbitant, explanation showed that the sums were calculated at the market value of the property in the vicinity of large towns, and were by no means immoderate.

PUNJAB.

2. Experience at Delhi and elsewhere has shown that in regard to agricultural landed property, the interests of the Government are in general attended to; but that the cases in which the interests of Government are overlooked are those of buildings in towns and their suburbs.

3. His Honour is of opinion that if the provisions of Act VI of 1857, were properly attended to, the interests of Government would be sufficiently protected, as it is always in the power of the local authorities to appoint an arbitrator, who ought to protect the interests of Government.

4. His Honour would also advocate the appointment of an agent to plead before the arbitrators in behalf of Government interests as is done in a Civil Suit. Thus, in estimating the value of a building, its original cost often forms the basis of the decision, and when this rule is applied to native buildings, the loss to the Government is enormous. An old domed building, a mass of bricks and mortar is valued according to its contents of solid masonry, while the materials are comparatively valueless. Again, land, which before the Railway line had been determined, was worth a trifle, has its value fixed at the rate to which the price of land has been raised by the proposed construction of the Railway. If an Agent of the Government were appointed to attend to the cases before the arbitrators he would at least be able to urge the adoption of some equitable system of valuation.

ODH.

2. When two arbitrators are appointed under Section XI of Act VI of 1857, the one nominated by the Collector might always be an official, but when only one arbitrator is appointed, the Chief Commissioner does not see that it is necessary to charge some Officer specially to look after the interests of Government, because he regards that as the duty of the Collector of the District, and in this province he is sure it has been so viewed.

3. But to give the Collector the power of effectually protecting the interests of Government, the Chief Commissioner thinks, Section 31, should be amended, so as to permit an appeal to the Commissioner of the Division on the ground of excessive award by the single arbitrator, and that the provision for appeal may not appear one-sided, the Chief Commissioner would give similar liberty to the party whose land is required on the ground of insufficient award.

HYDERABAD.

The Resident concurs in the necessity of some more efficient measures being adopted for the future, to guard the interests of Government in cases of land taken for public purposes under awards by arbitration.

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2. He can see no reason why, when two arbitrators are appointed, the one selected to represent the Government should not be one of its Officers. Where one arbitrator only is named under the Act, he cannot be an Officer of Government; but the Collector or chief Officer of the District should be required to depute an assistant or other subordinate well primed with all the information bearing on the subject to represent the Government view of the case to the arbitrator, and furnish him with documents, precedents, &c. There is no unfairness in this, for the other side is, of course, at liberty to appear as agent or otherwise. When the arbitrator has obtained all the information that seems to him necessary, he should be required to record the conclusion to which it leads him with the reasons in detail, and a copy of this being furnished to both sides, a short period should be allowed them to state in writing their views regarding it, and after considering these and making any further enquiry advisable, the arbitrator will record his final decision in writing. The Resident is of opinion that this procedure, or something of the same kind, if made compulsory by law, and any arbitration not so conducted declared invalid, would tend greatly to the interests of fair dealing; the arbitrator would be compelled to acquire as very considerable amount of knowledge of the subject with which he had to deal, and would be ashamed to leave on record a decision exhibiting gross ignorance or partiality.

No. 146.

ORDER THEREON, 6th April 1864, No. 963.

Communicated to the Revenue Department, with reference to the Orders in that Department No. 1,479, dated 10th August 1863.

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R. E.,
Secretary to Government.

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NOTE.—For Circulars Nos. 1, 2, 3, [PUBLIC WORKS] see Circulars Nos. 4, 5, 6 already issued.

CIRCULAR No. 4 of 1864.

(PUBLIC WORKS.)

PUBLIC WORKS DEPARTMENT.

FORT WILLIAM, 3RD MARCH, 1864.

General.

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Captain, R. E.,
Under Secy. to the Govt. of India.

The Secretary to the Govt. of India.

1864/14

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3. But to give the Collector the power of effectually protecting the interests
ment, the Chief Commissioner thinks, Section 31, should be amended, so as to
Commissioner of the Division on the ground of excessive award by

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