M.R.O. 1—77,006—8-6-37.

(1) Number of pages 178

(2) Date of repair

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Public works **DEPARTMENT.**

G.O. No. 3465 Press ~~Mis.~~

520-71

Dated 28 10 18 69.

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department, 28th October 1869.

No. 570. Read the following Proceedings of the Madras Government in the Public Department:—

Communicating the decision of Government in respect to the right of the Municipality to certain Portia trees which have been cut down, and the parade-ground on which they were growing, and to the position of the Police in relation to the Commissioners. (Here enter 22nd October 1869, No. 1,452.)

No. 571. ORDER THEREON, 28th October 1869, No. 3,465.

ESTABLISHMENT, No. 50.

COMMUNICATED to the Officer in charge of Public Works Operations at Cochin.

(True Extract.)

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

To the Officer in charge of Public Works Operations at Cochin.

Exd. F. R. Bantleman.

Govt. of {1869} Madras.

PUBLIC WORKS.

To

or PUBLIC

WORKS OPERATIONS AT COCHIN.

Dated October, 28th.

Read. Encl.

G. O., 28th October 1869, No. 3,465.

OCTOBER.

Nos 570 571

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is to blame for not having desisted from cutting down certain Portia trees at that station required for the groynes under construction, pending a reference to Government, communicated to the officer concerned.

Proceedings of the Madras Government, Public Department, 22nd October 1869.

No. 92. Read the following letter from the Acting President of the Cochin Municipal Commission, to the Chief Secretary to Government, Fort Saint George, dated Calicut, 28th September 1869, No. 31.

From Vice-President, 18th Aug. 1869, No. 53, with two enclosures.
From Vice-President, 10th Sept. 1869, with one enclosure.

At the request of the Vice-President and Municipal Commissioners of Cochin, I have the honour to forward, for the Orders of Government, the papers marginally noted. The facts of the case seem to be as follow:—

2. In accordance with the Government Order, dated the 22nd August 1867, No. 1039, certain buildings formerly used by the Military Detachment stationed at Cochin were made over to the Municipal Commissioners in order that they might be converted into Police Offices. These buildings were situated on an open space formerly used as a parade-ground. At the back of the buildings were a line of Portia trees, under whose shade the sepoys used to clean their arms.

3. Some emergent work to prevent the encroachment of the sea being necessary, Mr. O'Shaughnessy, the Executive Engineer, applied to the Tahsildar for permission to cut the trees for the work. Leave was granted and the trees were felled. The Vice-President having apparently heard that the trees were to be cut down, informed the Executive Engineer that, as they were Municipal property, he would not allow them to be felled. Mr. O'Shaughnessy appears to have considered that the trees being Government property, and the permission of the Tahsildar obtained, the Municipal Commissioners had no authority to interfere, and accordingly went on with the work. The Municipal Commissioners then applied to the Police, who refused to act except under the orders of the Magistrate.

4. The Municipal Commissioners request the Orders of Government on two points:—

1*st*.—The right of the Municipality to these Portia trees, and to the parade-ground on which they were growing.

2*nd*.—The position of the Police in relation to the Commissioners.

5. With regard to the first point, I have the honour to observe that Government in their Order, dated the 5th April 1869, No. 432, made over to the Municipal Commissioners all avenue trees on district roads within the Municipality. The Commissioners in their first Proceedings argue that as the parade-ground is a public thoroughfare, and that as Government have surrendered to the Municipality all open ground through which the public have a right of way, the trees are clearly the property of the Municipality. I am unable to concur in the arguments of the Commissioners. If their view of the case be maintained, it follows that, as the public have a right of way through all open Government ground, all such ground in the Cochin Municipal limits has been vested in the Municipality. I cannot think that this was the intention of Government when making over to the Commissioners avenue trees on district roads, and, as this parade-ground does not appear to have been specially made over to the Commissioners, it appears to me that it is still the property of Government. The Commissioners contend that the ground was necessarily made over to them when the buildings were transferred, but as nothing was said about the ground at the time, I think the Commissioners' argument cannot be upheld.

6. In their Proceedings, dated the 9th September 1869, the Municipal Commissioners put forward an additional reason for claiming the land. They state that the old parade-ground is virtually a square, and that, therefore, by Section 11 it was made over to the Municipality on the introduction of the Act. I cannot agree with the Commissioners that the definition is applicable, and do not, therefore, consider that they have a claim to it under that Section. Government, however, in their Proceedings, dated the 30th January 1860, No. 132, allowed the inhabitants to use the parade-ground for the purpose of recreation when not required by the troops, and, therefore, if, on public grounds, its transfer to the Municipality is advisable, an application should be submitted, and if good cause is shown Government will doubtless make over the land.

7. At the same time I am not at all prepared to support the action of the Tahsildar. Cochin is not, I am informed, so well-wooded that the loss of these trees would be scarcely felt, and as they were growing on an open green such as the parade-ground must be, I think the Tahsildar would have evinced more judgment had he declined to grant permission for the trees to be cut down.

8. As regards the second point no remarks of mine seem necessary. The Police being under the orders of the Magistrate, can only be put in motion through him.

No. 93. ORDER THEREON, 22nd October 1869, No. 1452.

With the foregoing letter the Acting President of the Cochin Municipality submits certain papers relative to the felling of some Portia trees within the limits of the Cochin Municipality by the Executive Engineer, without reference to the Municipal Commissioners.

2. It appears from the papers that some timber was urgently required by the Executive Engineer, Mr. O'Shaughnessy, in connexion with the groynes under construction at Cochin, and that, with the permission of the Tahsildar, he cut down the Portia trees on the parade-ground in rear of the Police Station-house. The Vice-President endeavoured, both by written and verbal messages to the Tahsildar, and through the Police, to prevent the cutting down of the trees, but failed in doing so.

3. The Acting President, therefore, solicits the decision of Government on two points :—

1*st.*—The right of the Municipality to the Portia trees, and to the parade-ground on which they were growing; and

2*nd.*—The position of the Police in relation to the Commissioners.

4. Referring to the first point the Governor in Council is of opinion that the parade-ground and the Portia trees growing on it should be regarded as having been transferred to the Cochin Municipality on the introduction into that town of Act No. X. of 1865, and that the Tahsildar of Cochin had no right whatever to pass an order for felling any of the trees on the parade-ground, without obtaining the consent of the Municipal Commissioners for so doing.

Proceedings of the Madras Government, Public Department,
22nd October 1869.

5. With reference to the second point the Municipal Commissioners will be informed that the Police are under the orders of their own Officers and the Magistracy.

6. The Governor in Council considers the Tahsildar of Cochin, Mr. M. A. Platel, is much to blame in having, in opposition to the appeals of the Vice-President, permitted the felling of the trees; and Mr. O'Shaughnessy, the Executive Engineer, is also to blame for not having desisted from cutting down the trees pending a reference to Government.

(True Extract.)

Actg. Secy. to Govt.

To the Acting President of the Cochin Municipal Commission,
with enclosures returned.
" Public Works Department.
" Inspector-General of Police.

Exd. J. Wright.

For 1869 Dept

Govt. of {1869 / 1868} Madras.

№ 4613

PUBLIC.

To

THE ACTING PRESIDENT OF THE
COCHIN MUNICIPAL COMMISSION
&c., &c., &c

Dated October, 22nd.

Recd. Encl.

G. O., 22nd October 1869, No. 1452.

OCTOBER.

Nos. 92-93.

№ 3465. 28: Octr 69.

Communicating the decision of Government in respect to the right of the Municipality to certain portia trees which have been cut down, and the trade-ground on which they were growing, and to the position of the Police in relation to the Commissioners.

Write on Boston

3465

№ 3465

Communicated to the Officer in charge of Police Operations at Cochin.

Fort St. George
28: Octr 1869

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To the Officer in charge ... ...
of the Police Cochin.

Mr. S. despr 28/10/69.
P. C. 4/11/69.

Acc 4513

Govt. of {1869} Madras.

PUBLIC WORKS.

To The Officer in Charge of P.W. Operations at Cochin

Dated

Recd. Encl.

G. O. 28 Dec 1869. No. 3465

Nos. 570-571.

Portia trees Prom. Public Dept. stating that the Offr. in charge of the Operations at Cochin is to be informed for his having desisted from cutting down certain Portia trees at that station required for the purpose under construction pending a reference to Govt. and their decision