MRO I—77,006—8-6-37

(1) Number of pages_____

(2) Date of repair_____

(3) Initials of the Referencer_____

MADRAS RECORD OFFICE.

Government of Madras.

Public works DEPARTMENT.

G.O. No.	3213	Press / Mis.
36).61		
Dated	20-12-	1871.

Not to be folded or roughly handled

Proceedings of the Madras Government, Public Works Department, 20th December 1871.

No. 367. Read the following Endorsement of the Revenue Department, dated 24th November 1871 :—

From the Government, Solicitor, to the Secretary to Government, Revenue Department, dated Madras, 23rd November 1871, No. 471.

I HAVE the honour to acknowledge the receipt of the Order of Government, dated 21st instant, No 1,982, Revenue Department, having reference to the question whether, in the event of a Revenue Officer deciding in favour of closing an existing pathway, an action would lie against the Railway Company

2 I submitted the matter for the consideration of the Acting Advocate-General, and I now forward herewith a copy of his opinion.

OPINION.

I PRESUME that the land used by the Great Southern of India Railway was taken up and appropriated by Government to their use under the provisions of Act XXII. of 1863. If that is so, I am of opinion that no action can be successfully maintained against the Railway Company. The case comes under the general principle that acts authorized by the Legislature, and properly done in pursuance of its authority, cannot be the foundation of a civil suit. If the statute grants compensation, that compensation is held to be a sufficient satisfaction for all infringement of private rights, if the statute grants no compensation, then the private rights are simply swept away.

2. It may be a question in this case whether the villagers, who had rights of way across the land taken up for the railway, could have got compensation under Act VI. of 1857. If they could have done so that was their appropriate remedy if not they have none.

3. Such a claim as that now set up would also probably be held to come within the latter part of Section 30 of Act XXII. of 1863, which provides that the Government alone shall be responsible for the payment of such claims.

(Signed) J. D. MAYNE,
Acting Advocate-General.

23rd November 1871.

TRANSFERRED to the Department Public Works, with reference to the Order in that department, dated 10th October 1871.

(Signed) W. HUDLESTON,
Secretary to Government.

No. 368. ORDER THEREON, 20th December 1871, No. 3,213.

RAILWAY, No 59.

COMMUNICATED to the Consulting Engineer for Railways in continuation of the Orders in the Revenue Department, dated 21st November 1871, No. 1,982.

(True Extract.)

Colonel, R.E.,
Secretary to Government.

To the Acting Consulting Engineer for Railways.

Exd. E. C. Shunker.

Govt. of [1871] Madras

PUBLIC WORKS.

To

THE ACTING CONSULTING ENGINEER

FOR RAILWAYS

Dated December 20th.

Recd. Encl

G. O., 20th December 1871, No 3,213

DECEMBER

Nos 367-368

Closing of public roads, etc—Letter from the Government Solicitor forwarding opinion of the Advocate General as to whether, in the event of a Revenue Officer deciding in favour of closing public roads an action would lie against the Railway Company, communicated to the Consulting Engineer for Railways.

Opinion.

I presume that the land used by the G.S.I. Railway was taken up and appropriated by Government to their use under the provisions of Act XXII of 1863. If that is so, I am of opinion that no action can be successfully maintained against the Railway Co^y. The case comes under the general principle that acts authorised by the Legislature, and properly done in pursuance of its authority, cannot be the foundation of a civil suit. If the statute grants compensation, that compensation is held to be a sufficient satisfaction for all infringement of private rights. If the statute grants no compensation then the private rights are simply swept away.

2. It may be a question in this case whether the villagers who had rights of way across the land taken up for the railway could have got compensation under Act VI of 185^7. If they could have done so that was their appropriate remedy. If not they have none.

3. Such a claim as that now set up would also probably be held to come within the latter part of s. 30 of Act XXII of 1863 which provides that the Government alone shall be responsible for the payment of such claims.

(Signed) John D. e Mayne
Ag Advt Genl
Nov: 23/71

(True Copy)

T. L. Pickard
Government Solicitor.

Rev. 3765/71

P. W. 5635/71.

Enclosure in Letter from the Govt: Solicitor, Madras, to the Secretary to Govt: Revenue Department, Fort St George, dated 23rd November 1871, No. 471. —

No 411.

Madras 23rd November 1871.

From
H. G. Prichard
Government Solicitor
Madras.

To
W. Hudleston Esqre
Secretary to Government
Revenue Department
Fort Saint George.

Sir,

I have the honor to acknowledge the receipt of the order of Government dated 21st instant, No 1982, Revenue Department, having reference to the question whether in the event of a Revenue officer deciding in favor of closing any existing pathway, an action would lie against the Railway Company.

2. I submitted the matter for the consideration of the acting Advocate General, and

3. I now forward herewith a copy of his opinion.

I have the honor to be
Sir
Your most Obedient Servant
H. G. Prichard
Government Solicitor

21 November 1871 No 213/16.

Rec. 1871. Revl.

From The Govt Solicitor Madras

To The Secy to Govt Revenue Dept Fort St George

Dated 23 Nov.
Rec'd 23 Nov.
2 Enclosures

No. 471

Forwards copy of the Advocate Generals opinion regarding the question whether in the event of a Revenue Officer deciding in favor of closing an existing pathway, an action would lie against the Railway Company.

Answered 29 Nov 1871

Copied
Read 29 Nov 1871

Rec'd 29 Nov. 1871

No. 3213.

Communicated to the Consulting Engineer for Railways in continuation of the orders noted in the Revenue Department dated 21st November 1871 No. 1982.

A.

J. A. Wilson Esqr
for Railways

Recd 22/12/71.

Ofp. 635.

Govt of 1871 Madras.

PUBLIC WORKS.

To [illegible]

Dated

Read Encl.

G.O. Decr 1871 3213.

Nos. 36 & 368

Closing of public roads &c

Letter from the Govt Solicitor forwarding Opinion of the Advocate General on whether an Execution Officer deciding in favor of closing a public road can be sued