M.R.O. 1—77,006—8-6-37.

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MADRAS RECORD OFFICE.

Government of Madras.

PublicWorks DEPARTMENT.

G.O. No. 2667-68 Press / Mis.
196-78
Dated 12 - 11 - 1879

Not to be folded or roughly handled

No. 196. Read the following letter from the Consulting Engineer for Railways, to the Secretary to Government, Public Works Department, dated Madras, 7th October 1872, No. 537:—

A QUESTION has been started, by the Government of Mysore, as to whether such buildings as dwelling-houses for engine-drivers and other employés of a Guaranteed Railway Company may properly be erected upon land which was originally taken up under Class A. for station purposes; or whether, in the event of any portion of Class A. land being utilized for the erection of such buildings, the land so utilized should be at once removed from Class A., and entered under Class C.

2. Clause 3 of the Madras Railway Company's Contract places the Government under an obligation to provide "the land which shall be required for the said Railway and the works connected therewith and proper stations, offices, warehouses, and other conveniences." There was, at first, some doubt as to what were included under the term "conveniences;" and the Consulting Engineer, in his letter* of the 14th May 1860, reported that engine-drivers' houses had been built upon Class A. land, and gave his opinion that "an engine-driver's house, in common with a station-master's, is obviously one of the conveniences contemplated by Clause 3 of the Contract between the Government and the Railway Company." The question was referred to Calcutta, and, in reply,† it was stated that "the Government of India cannot admit that *dwelling-houses* for engine-drivers or station-masters, and still less for general workmen, are 'conveniences' under the terms of the contract. This sort of accommodation being given or refused is merely a question of wages."

* No. 95.

† No. 801, 16th March 1861.

3. Upon the lines of Railway in this Presidency the land taken up under Class A. for station purposes has proved to be in many cases in excess of the actual requirements for the buildings, etc., connected with the stations, for which the Government, under Clause 3 of the Contracts, were obliged to provide land. This arose probably from a liberal construction of the rule laid down by the Court of Directors‡ to the effect that "the full quantity of land likely to be required must be taken at once." And three years later the Secretary of State, in a Despatch§ to the Government of India, said that "With regard to the land (for stations) it has frequently been urged by the Home Authorities that the best policy is to purchase as much as can possibly be required for future accommodation. Even if more is taken than is ultimately used, the excess can always be disposed of at enhanced rates." These instructions have been liberally carried out; and, as mentioned above, the land taken up for stations under Class A. has often proved to be considerably in excess of what, according to the construction placed by the Government of India on Clause 3 of the Contracts, the Government were bound to provide. In no case that I am aware of has a proposal been made by one of the Companies to give up any of the surplus land; but in many cases it has been utilized by the erection of engine-drivers' houses and other buildings, which, in

‡ No. 46, 16th December 1857.

§ No. 98, 30th November 1860.

the opinion of the Government of India, are not "conveniences" under the terms of the contract.

4. The question was mooted, during 1871, by the Government of Mysore, with reference to the Madras Railway Company's station-ground at Bangalore, which is unusually extensive, covering nearly 101 acres. Dwelling-houses for the Company's employés have been built within the station-ground; and the Superintendent of the Nundidroog Division, under instructions from the Chief Commissioner of Mysore, requested to be informed how much of the land within the fixed boundaries of the station enclosure had been utilized under Classes A., B., and C., respectively, making at the same time a claim for rent for such portions of the land as had been utilized under Class C.

5. In requesting that the matter may be referred for the decision of the Government of India, I have the honour to submit three* letters which have lately passed between this Office and the Agent of the Madras Railway Company. It will be seen that the Railway Agent bases the claim to exemption from rent upon the fact that "the Company has been allowed to retain the land on which the houses referred to stand under Class A., and without being asked until late in last year to pay any rent." But if the claim is in other respects valid, and if the land, upon the erection of the buildings in question, ought to have been transferred to Class C., the fact of the claim not having been brought forward until now cannot render it invalid, inasmuch as the Agent is himself responsible for promptly reporting to this office all contemplated changes in the land in the Company's possession. The Board of Directors also resist the claim for rent; but they do so upon the ground that dwelling-houses for engine-drivers, and other of the Company's employés, properly come within the scope of the term "conveniences" for which the Government, under Clause 3 of the Contract, are bound to provide land free of charge.

* From Agent, No. 339, 22nd May 1872.
To ,, ,, 399, 28th ,, ,,
From ,, ,, 602, 20th Aug. ,, with enclosure.

6. It would, in my opinion, be advisable to take an early opportunity of revising the grants of land which have been made under Class A. for station purposes to the Railway Companies in this Presidency. Experience has shown that the land so taken up has been often far in excess of actual requirements; and in many cases, as for instance in Malabar, the surplus land, now lying useless in the possession of the Railway Company, is of very great value. The Secretary of State, when ordering that all possible requirements should be provided for, suggested that any excess in the quantity of land so purchased could always be disposed of at enhanced rates; and it seems to me that the time has come for giving effect in some measure to that suggestion.

From the Agent and Manager of the Madras Railway Company, to the Consulting Engineer for Railways, dated Madras, 22nd May 1872, No. 339.

With reference to your office letters noted in the margin, I have the honour to inform you, with reference to letter, No. 53, of the 26th of January last, that some of the land within the station compound at Bangalore is occupied by dwelling-houses which were built for the use of employés.

No. 540, 31st August 1871.
,, 776, 16th Dec. ,,
,, 15, 9th Jan. 1872.
,, 53, 26th ,, ,,

Proceedings of the Madras Government, Public Works Department, 12th November 1872.

2. This, as also other land on various parts of the line similarly occupied, was applied for under Class A., and has always been held under that head, no rent having ever been paid for it.

3. In the despatch from the Government of India, No. 801, of the 16th of March 1861, with which was enclosed Circular No. 55 of 1861, to which allusion is made in the correspondence marginally noted, it is observed that the engine-drivers' houses built at Madras, Perambore, and Beypore are on land permanently transferred to the Railway Company, and that it had been argued that an engine-driver's house, in common with a station-master's, is obviously one of the conveniences contemplated by Clause 3 of the Contract between the Government and the Railway Company.

4. It is true that the Government of India do not admit that dwelling-houses for engine-drivers or station-masters, and still less for general workmen, are "conveniences" under the terms of the Contract; but I contend that the question, which at the time the despatch under notice was written in 1861 may have been an open one, has since then been conclusively settled by the fact that the Company has been allowed to retain the land on which the houses referred to stand under Class A., and without being asked until late in last year to pay any rent.

5. Copies of your office letters on this subject have, from time to time, been forwarded to the Board, and I will, if you desire it, apply for the instructions of my Directors as to their interpretation of the contract. In the meantime, however, I am not prepared to admit the liability of the Company to the claim advanced.

6. I must apologize for the delay which has occurred in replying to the letters under notice.

From the Consulting Engineer for Railways, to the Agent and Manager of the Madras Railway Company, dated Madras, 28th May 1872, No. 399.

In reply to your letter of the 22nd instant, No. 339, I have the honour to state that I am unable to admit the conclusiveness of your argument, that the question of the liability of the Madras Railway Company to pay rent for lands at Bangalore occupied by staff quarters is "settled by the fact that the Company has been allowed to retain the land on which the houses referred to stand under Class A., and without being asked until late in last year to pay any rent."

2. The lands in question were originally made over to the Madras Railway Company as Class A. lands; and, supposing that houses for employés are not "conveniences" within the meaning of the contract, it is clear that the utilization of these lands as building sites for staff quarters was equivalent to a "change in the land in the possession of a Railway Company."

3. I need scarcely remind you that, under the orders of the Government of India,* such a change should, when contemplated, have been reported to this office for the information of Government. Proper steps would then have been taken to inform the Revenue Authorities with a view to their entering such changes in their records and carrying out all further proceedings that are requisite on such an occurrence.

* *Vide* Madras Railway Orders, Part I., page 107, and Part II., page 15.

4. No such report having been submitted by your predecessor, the Revenue Authorities were left in ignorance of the fact that lands made over as Class A. lands were occupied as Class C. lands; these registers were not altered; and they did not, of course, make any claim for rents on account of these lands.

5. If, then, the Revenue Authorities even had any claim to rent for the lands in question, it seems clear that the omission, on their part, to press that claim, arose from no negligence on their part, but from failure on the part of your predecessor to comply with the prescribed course of procedure.

6. Apart altogether from these considerations, I would point out that, in acknowledging* the claim for the rent due for lands taken up in the Kolar District—a claim put forward at the same time as, and in fact of longer standing than, the claim now under discussion—you virtually admitted that this claim, if originally valid, was not barred by lapse of time.

* *Vide* your letter of 5th August 1871, No. 468.

7. With regard to the interpretation which is to be put upon the word "conveniences" in the third clause of the contract, without claiming, on behalf of the Government, the right of

declaring authoritatively what meaning shall, or shall not, be held to attach to any word or words in the contract, I would remind you that the Government of India, as far back as the 21st January 1859, put forward their interpretation of the contract; and, though that interpretation may not have been formally accepted by your predecessor, it would appear, at any rate, to have been received without protest. All lands which have, since that date, been made over to the Madras Railway Company, including the lands in question, have been transferred with the declared understanding, so far as the Government of India is concerned, that rent must be paid for building sites for staff quarters, and it appears to me that, in accepting without protest the transfer of these lands, you and your predecessors virtually expressed concurrence in the views of the Government of India.

8. As the Chief Commissioner of Mysore is pressing for a settlement of the question, I shall be glad to receive an early reply.

From the Agent and Manager of the Madras Railway Company, to the Consulting Engineer for Railways, dated Madras, 20th August 1872, No 602.

WITH reference to the correspondence noted in the margin, I have the honour to enclose, for the information of Government, a copy of paragraph 17 of a letter from the Secretary, No. 495, dated the 19th ultimo, in which the views of my Directors are expressed with regard to the question which has been recently raised as to the liability of the Company to pay rent for certain lands upon which houses for the use of servants of the Company have been built.

From Consulting Engineer, No. 540, 31st August 1871.
To „ „ „ 726, 30th November „
From „ „ „ 776, 16th December „
To „ „ „ 15, 9th January 1872.
From „ „ „ 53, 26th „ „
To „ „ „ 339, 22nd May „
From „ „ „ 399, 28th „ „

2. I have also the honour to enclose a copy of the extracts referred to, upon which the opinion of the Board of Directors is based, and I trust that, after His Excellency the Governor in Council has perused the Despatch from the Secretary of State dated the 12th of January 1860, No. 1, the claim for rent will be withdrawn.

Extract from a letter from the Secretary, Madras Railway Company, dated London, the 19th July 1872, No. 495.

PARAGRAPH 17.—The Board have had under their attentive consideration the correspondence referred to in paragraph 49 of your No. 1,004, on the subject of a claim made by the Consulting Engineer for rent on account of land within the station compound at Bangalore occupied by dwelling-houses built for the use of employés of the Railway, respecting which you ask for instructions. In reply, I am directed to inform you that, in the opinion of the Board, it will only be necessary for you to draw the particular attention of the Consulting Engineer and the Government to the precise wording of the Contract, paragraphs 3 and 4, to afford a sufficient justification of the view which you have correctly taken of this question. By Clause 3 the Government are bound to hand over to the Railway whatever land may be required for its works and "other conveniences for the same," and by Clause 4 these conveniences are shown to be all such works and conveniences as are constructed in accordance with the written opinion of the Government as being necessary or expedient for * * * * "other causes whatsoever." It is obvious, therefore, that whatever conveniences have been erected under the written orders of Government are entitled to the provision of land under Clause 3, and are not subject to any claim for rent; and this interpretation of the contract was expressly laid down by the Secretary of State in his Despatch to the Government of Madras, dated London, 12th January 1860, and acknowledged by the Consulting Engineer for Railways to the Madras Government in his letter to the Chief Secretary, No. 95, dated 14th May 1860, extracts from both of which are appended. The Board, therefore, consider that you were quite right in the view you took of the liabilities of the Company, and they trust that, on your bringing the above circumstances to the notice of the Government, they will not fail to record their concurrence.

As to claim made by Consulting Engineer for rent for land.

(True Extract.) (Signed) R. B. ELWIN,
Agent and Manager.

Extracts referred to in paragraph 17.

Despatch from the Right Honourable the Secretary of State for India, to His Excellency the Honourable the Governor in Council, Fort St. George, dated London, 12th January 1860, No. 1.

* * * * * * *

3. While, under Clause 3 of the Contract, the Government is bound to provide "land which may be required for the Railway and the works connected therewith, and proper stations, offices, warehouses, and other conveniences," it is reserved to them, under Clause 4, to state what conveniences are necessary or expedient.

4. But, if the Government approve of the execution of any works as conveniences properly appertaining to the Railway, they cannot, as I am advised, avoid providing the land necessary for the same. If, for instance, the Government sanction the construction of an hotel on the ground of its being a convenience to the Railway, the land on which it is built must be provided at the expense of Government. If, therefore, in any case they think that the Railway Company should pay a rent for land, they ought carefully to avoid using the word convenience as applicable to it, and make a separate bargain for the rent.

* * * * *

From the Consulting Engineer for Railways, to the Chief Secretary to Government, Fort St. George, dated 14th May 1860, No. 95.

24. An engine-driver's house, in common with a station-master's, is obviously one of the "conveniences" contemplated by Clause 3 of the Contract between the Government and the Railway Company.

* * * * * * *

No. 197. ORDER THEREON, 12th November 1872, No. 2,667.

RAILWAY, No. 41.

THE Government of India will be addressed on the subject of the above letter from the Consulting Engineer.

2. His Excellency the Governor in Council has no doubt but that the Directors of the Madras Railway Company will accept the interpretation of their contract acquiesced in by other Guaranteed Railway Companies in whose interest the question has probably been already raised.

3. His Excellency concurs in the view expressed by the Consulting Engineer that an early revision of the classification of land already handed over to the Railway Companies is advisable.

(Here enter No. 2,668, dated 12th November 1872.)

(True Extract.)

Colonel, R.E.,
Secretary to Government.

To the Consulting Engineer for Railways.

Exd. J. Wright.

PUBLIC WORKS DEPARTMENT,
FORT ST. GEORGE, 12*th November* 1872.

No. 198.

No. 2,668.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
PUBLIC WORKS DEPARTMENT.

RAILWAY, No. 42.

SIR,—I am directed to forward, for the consideration of the Government of India, the accompanying letter from the Consulting Engineer for Railways with its enclosures and the orders passed thereon by this Government, and to request the favour of an early decision in the matter.

I have the honour to be,
Sir,
Your most obedient servant,

Colonel, R.E.,
Secretary to Government.

Exd. J. Wright.

RAILWAY DEPARTMENT. CONSULTING ENGINEER'S OFFICE.

No. 537.

From Lieut.-Col. J. H. M. Shaw Stewart, R.E.,
Consulting Engineer for Railways,

To Colonel G. W. Walker, R.E.,
Secretary to Government,
Public Works Department,
Fort Saint George.

SIR,

A question has been started by the Government of Mysore as to whether such buildings as dwelling-houses for engine-drivers and other employees of a guaranteed Railway Company may properly be erected upon land which was originally taken up under Class A for station purposes; or whether, in the event of any portion of Class A land being utilised for the erection of such buildings, the land so utilised should be at once removed from

from class A, and entered under Class C.

2. Clause 3 of the Madras Railway Company's Contract places the Government under an obligation to provide the land which shall be required for the said Railway and the works connected therewith and proper stations Offices Warehouses and other conveniences. There was at first some doubt as to what were included under the term "conveniences"; and the Consulting Engineer, in his letter of the 14th May 1860, * N:95 reported that engine-drivers' houses had been built upon Class A land, and gave his opinion that "an engine-driver's house, in common with a station-master's, is obviously one of the conveniences contemplated by Clause 3 of the Contract between the Government and the Railway Company."

The

N:801 - 16th March 1861.

question was referred to Calcutta, and in reply it was stated that "the Government of India cannot admit that dwelling-houses for engine-drivers or station-masters, and still less for general workmen, are 'conveniences' under the terms of the contract. This sort of accommodation being given or refused is merely a question of wages".

3. Upon the lines of railway in this Presidency the land taken up under Class A for station purposes has proved to be in many cases in excess of the actual requirements for the buildings, &c., connected with the stations, for which the Government, under Clause 3 of the Contracts, were obliged to provide land. This arose probably from a liberal construction of the rule laid down by

the

the Court of Directors* to the effect that "the full quantity of land likely "to be required must be taken at once." And three years later the Secretary of State, in a* despatch to the Government of India, said that "with regard to "the land (for stations) it has fre-"-quently been urged by the Home "Authorities that the best policy is "to purchase as much as can possibly "be required for future accommodation. "Even if more is taken than is "ultimately used, the excess can "always be disposed of at enhanced "rates." These instructions have been liberally carried out and, as men-tioned above, the land taken up for stations under Class A has often proved to be considerably in excess of what, according to the construction placed by the Government of India on

* No. 46. 16th December 1857.

* No. 98-30th November 1860.

Clause 3 of the Contracts, the Govern-ment were bound to provide. In no case that I am aware of has a proposal been made by one of the Companies to give up any of the sur-plus land; but in many cases it has been utilised by the erection of engine-drivers' houses and other build-ings, which, in the opinion of the Government of India, are not "conveniences" under the terms of the Contract.

4. The question was mooted, during 1871, by the Government of Mysore, with reference to the Madras Railway Company's station ground at Bangalore, which is un-usually extensive, covering nearly 101 acres. Dwelling-houses for the Company's employees have been built within the station ground; and the Superintendent

Superintendent of the Nundidroog Division, under instructions from the Chief Commissioner of Mysore, requested to be informed how much of the land within the fixed boundaries of the station enclosure had been utilised under Classes A, B, and C, respectively; making at the same time a claim for rent for such portions of the land as had been utilised under Class C.

5. In requesting that the matter may be referred for the decision of the Government of India, I have the honour to submit three letters which have lately passed between this Office and the Agent of the Madras Railway Company. It will be seen that the Railway Agent bases the claim to exemption from rent upon the fact that the Company

× From Agent No. 339 - 22nd May 1872.
To — do — No. 399 - 28th May 1872.
From — do — No. 602 - 20th August 1872.
with Enclosure.

4

Company has been allowed to retain the land on which the houses referred to stand under Class A and without being asked until late in last year to pay any rent. But if the claim is in other respects valid, and if the land, upon the erection of the buildings in question, ought to have been transferred to Class C, the fact of the claim not having been brought forward until now cannot render it invalid, inasmuch as the Agent is himself responsible for promptly reporting to this Office all contemplated changes in the land in the Company's possession. The Board of Directors also resist the claim for rent; but they do so upon the ground that dwelling-houses for engine-drivers, and other of the Company's employees,

employees, properly come within the scope of the term "conveniences" for which the Government, under clause 3 of the Contract, are bound to provide land free of charge.

6. It would in my opinion be advisable to take an early opportunity of revising the grants of land which have been made under Class A for station purposes to the Railway Companies in this Presidency. Experience has shewn that the land so taken up has been often far in excess of actual requirements; and in many cases, as for instance in Malabar, the surplus land, now lying useless in the possession of the Railway Company, is of very great value. The Secretary of State, when

when ordering that all possible requirements should be provided for, suggested that any excess in the quantity of land so purchased should always be disposed of at enhanced rates; and it seems to me that the time has come for giving effect in some measure to that suggestion.

I have the honour to be

Sir

Your most obedient servant

Madras
October 1872

Lieut. Col.
Cons. Engineer for Railways.

Extract from a letter from the Secretary,
M. R. Co. dated Madras the 19th July 1872.

Re Telegram
sanctioning
Engineer's Journey
to Coimbatore.

Para 17. The Board have had under their attention the correspondence noted in the margin regarding the journey of the Consulting Engineer to Coimbatore for the purpose of inspecting the Madras Railway Company's land at Podanur required for the Railway, and they have now before them your letter No. 49 of 7th instant, in which you claim credit for the sum of Rupees 1004, as the amount of travelling expenses incurred by you in proceeding to Coimbatore for the above purpose.

2. The Board will be prepared to allow the charges claimed by you to the extent of Rupees 800, as detailed in the margin, but they do not consider that the Madras Railway Company should be charged with any portion of the expenses incurred by you in connection with the Podanur land question.

3. The Board will be prepared to allow you to draw the further sum of Rupees 200 on account of the travelling expenses incurred by you in connection with the Podanur land question, provided you can satisfy the Collector of Coimbatore that the Madras Railway Company have no further claim against the Government in connection with the land in question.

4. The Board will be prepared to allow you to draw the further sum of Rupees 200 on account of the travelling expenses incurred by you in connection with the Podanur land question, provided you can satisfy the Collector of Coimbatore that the Madras Railway Company have no further claim against the Government in connection with the land in question.

5. The Board have had under consideration the correspondence noted in the margin regarding the application of the Madras Railway Company for permission to erect temporary sheds for the accommodation of their employés at Podanur, and they have now before them your letter No. 49 of 7th instant, in which you claim credit for the sum of Rupees 1004, as the amount of travelling expenses incurred by you in proceeding to Coimbatore for the above purpose.

2. The Board will be prepared to allow the charges claimed by you to the extent of Rupees 800, as detailed in the margin, but they do not consider that the Madras Railway Company should be charged with any portion of the expenses incurred by you in connection with the Podanur land question.

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2. The Board will be prepared to allow the charges claimed by you to the extent of Rupees 800, as detailed in the margin, but they do not consider that the Madras Railway Company should be charged with any portion of the expenses incurred by you in connection with the Podanur land question.

3. The Board will be prepared to allow you to draw the further sum of Rupees 200 on account of the travelling expenses incurred by you in connection with the Podanur land question, provided you can satisfy the Collector of Coimbatore that the Madras Railway Company have no further claim against the Government in connection with the land in question.

4. The Board will be prepared to allow you to draw the further sum of Rupees 200 on account of the travelling expenses incurred by you in connection with the Podanur land question, provided you can satisfy the Collector of Coimbatore that the Madras Railway Company have no further claim against the Government in connection with the land in question.

No 196
Ltr from Bd to Govt with Retyn

P. W. 1872 Depart.
P.W. of Govt for Mad.
No. 4898.

RAILWAY DEPARTMENT.

1872. Mad Sec

From

The Consulting Engineer
for Railways,

To

The Secretary to Government,
P. W. Department,
Fort Saint George.

Dated 8th } October 1872.
Recd. 9 }

Ens. No. 4267. 2668. 12th Oct
No. 637.

Submitting for orders correspondence that has passed relative to the construction of houses for the accommodation of the Company's employés upon lands taken up under class A for station purposes.

of land under Clause 3, and are not subject to any claim for rent; and this interpretation of the Contract was expressly laid down by the Secretary of State in his Despatch to the Government of Madras, dated London 12th January 1860, and acknowledged by the Consulting Engineer for Railways to the Madras Government in his letter to the Chief Secretary, No. 95, dated 14th May 1860, extracts from both of which are appended. The Board, therefore, consider that you were quite right in the view you took of the liabilities of the Company, and they trust that on your bringing the above circumstances to the notice of the Government they will not fail to record their concurrence.

I have &c.

(Sd) W. F. Smith

Agent & Manager.

Encl

Extracts referred to in Para 17.

Despatch from the Right Honorable the Secretary of State for India to His Excellency the Honorable the Governor in Council, Fort Saint George, London, 12th January 1860, No. 1.

x x x x x x x

3. While, under Clause 3 of the Contract, the Government is bound to provide "land which may be required for the Railway and the works connected therewith, and proper stations, offices, warehouses and other conveniences," it is reserved to them under Clause 4 to state what conveniences are necessary or expedient.

4. But if the Government approve of the execution of any works or conveniences properly appertaining to the Railway, they cannot, as I am advised, avoid providing the land necessary for the same. If, for instance, the Government sanction the construction of an hotel on the ground of its being a convenience to the Railway, the land on which it is built must be provided at the expense of Government. If, therefore, in any case they think that the Railway Company should pay a rent for land, they ought carefully to avoid using the word convenience as applicable to it, and make a separate bargain for the rent.

x x x x x

From the Consulting Engineer for Railways
to the Chief Secretary to Government,
Fort Saint George, c/o. 95, 14th May 1860.

24. An Engine-drivers House, in common with a Station-master's, is obviously one of the "conveniences" contemplated by Clause 3 of the Contract between the Government and the Railway Company.

x x x x x x x

No. 339

MADRAS RAILWAY.

AGENT AND MANAGER'S OFFICE.

Madras, 22nd May 1872

From

Robert D. Elwin Esqre

Agent and Manager. M. R. Co.

To

Lt Col J. Hell. Shaw Stewart, R.E

Consulting Engineer for Railways.

SIR,

With reference to your
c/o. 540 - 31st Augt 1871.
" 776 - 16th Decr "
" 15 - 9th Jany 1872
" 53 - 26th " "
Office letters noted in the margin,
I have the honour to inform you
with reference to letter c/o 53 of the
26th of January last that some of the
land within the Station Compound at
Bangalore is occupied by Dwelling houses
which were built for the use of employés.

2. This as also other land on
various parts of the line similarly occu-
pied was applied for under Class A and
has always been held under that head
no rent having ever been paid for it.

3. In the despatch from the
Government of India c/o 801 of the
16th of March 1861, with which was
enclosed Circular c/o 55 of 1861 to
which allusion is made in the Corres-
pondence marginally noted, it is
observed that the Engine Drivers
Houses built at Madras Perambore
and Beypore are on land permanently

transferred to the Railway Company, and that it had been argued that an Engine Driver's House in common with a Station Master's is obviously one of the conveniences contemplated by Clause 3 of the Contract between the Government and the Railway Company.

4. It is true that the Government of India do not admit that Dwelling Houses for Engine Drivers or Station Masters, and still less for general workmen, are "conveniences" under the terms of the Contract, but I contend that the question which at the time the Despatch under notice was written in 1861 may have been an open one, has since then been conclusively settled by the fact that the Company has been allowed to retain the land on which the houses referred to stand under Class A and without being asked until late in last year to pay any rent.

5. Copies of your office letters on this subject have from time to time been forwarded to the Board, and I will if you desire it apply for the instructions of my Directors as to their interpretation of the Contract. In the meantime however I am not prepared to admit the liability of the Company to the claim advanced.

6. I must apologise for the

delay which has occurred in replying to the letters under noted.

I have the honour to be
Sir
Your most obedient Servant

Agent & Manager.

MADRAS RAILWAY.

From

The Agent and Manager.

To

The Consulting Engineer

for Railways,

Dated 186

Read,

No,

Railway Department. Consulting Engineer's Office

No. 399

To

The Agent and Manager,
Madras Railway Company.

Sir,

In reply to your letter of the 22 inst. instant, No. 339, I have the honour to state that I am unable to admit the conclusiveness of your argument, that the question of the liability of the Madras Railway Company to pay rent for lands at Bangalore occupied by Staff quarters, is "settled by the fact that the "Company has been allowed to retain the land on which the houses "referred to stand under Class A "and without being asked until "late in last year to pay any rent".

2. The

MADRAS RAILWAY.

From

The Agent and Manager.

To

The Consulting Engineer
for Railways.

Vide letter to Agent No. 399 & 28 May/72

Dated 22nd May 1872.
Read 23rd May 1872.
No. 339

Regarding the circumstances of Horses for the allowances for the Engineers Staff in Camp.
Engineer in Camp.
Engineer
P. D. 4898/72.

22361

2. The lands in question were originally made over to the Madras Railway Company as class A lands; and, supposing that houses for employés are not "conveniences" within the meaning of the contract, it is clear that the utilization of these lands as building sites for Staff quarters was equivalent to a "change in the land in the possession of a Railway Company."

3. I need scarcely remind you that under the orders of the Government of India such a change should, when contemplated, have been reported to this office, for the information of Government: proper steps would then have been taken to inform the Revenue Authorities with a view to their entering such changes in their records and carrying out all further proceedings that are requisite in such an occurrence.

× vide Madras Railway Orders Part I page 107 and Part II page 15.—

4. No such report having been submitted by your predecessor, the Revenue Authorities were left in ignorance of the fact that lands made over as Class A lands were occupied as Class C lands; these registers were not altered; and they did not, of course, make any claim for rents on account of these lands.

5. If then the Revenue Authorities ever had any claim to rent for the lands in question, it seems clear that the omission, on their part, to press that claim, arose from no negligence on their part, but from failure on the part of your predecessor to comply with the prescribed course of procedure.

6. Apart altogether from these

these considerations I would point out that in acknowledging* the claim for the rent due for lands taken up in the Kolar District, – a claim, first forward at the same time as, and in fact of longer standing than, the claim now under discussion, you virtually admitted that this claim, if originally valid, was not barred by lapse of time.

*vide your letter of 5th August 1871, No. 446.

With regard to the interpretation which is to be put upon the word "conveniences" in the third clause of the contract, without claiming on behalf of the Government, the right of declaring authoritatively what meaning shall, or shall not, be held to attach to any word, or words, in the contract; I would remind you that the Government of India, as far back as the 21st January 1859, put forward their interpretation of the contract; and although that interpretation may not have been formally accepted by your predecessor, it would appear, at any rate, to have been received without protest. All lands which have, since that date, been made over to the Madras Railway Company, including the lands in question, have been transferred with the declared understanding, so far as the Government of India is concerned, that rent must be paid for building sites for Staff quarters, and it appears to me that, in accepting without protest the transfer of these lands, you and your predecessors virtually expressed concurrence in the views of the Government of India.

8. As the Chief Commissioner of Mysore is pressing for a settlement of the question, I shall be glad to receive an early reply.

I have &c.

Madras
28th May 1872

(sd) J. H. M. Shaw Stewart, Lieut. R.E.,
Cons. Engineer for Railways.

True

13 15

/True Copy/

J. Marshall Stewart Lieut.-Colo. R.E.,

Cons. Engineer for Railways.

No. 602.

MADRAS RAILWAY.

AGENT AND MANAGER'S OFFICE.

Madras, 20th August 1872.

From

R. D. Elwin Esqre,

Agent and Manager of the M R Co

To

Lieut.-Col J H M Shaw Stewart R E.

Consulting Engineer for Railways.

Sir,

With reference to the Correspondence noted in the margin, I have the honour to enclose for the information of Government a copy of Paragraph 17 of a letter from the Secretary No 495 dated the 19th ultimo in which the views of my Directors are expressed with regard to the question which has been recently raised as to the liability of the Company to payment for certain lands upon which houses for the use of servants of the Company have been built.

2. I have also the honour to enclose a copy of the Extracts

From Cons Engr to 540 - 31st/11 August 1871
To —"— "— 726 - 30th/11 " —"—
From —"— "— 776 - 16th/12 " —"—
From —"— "— 15 - 9th/1 January 1872
From —"— "— 53 - 26th —"—
To —"— "— 339 - 22nd/4 May —"—
From —"— "— 399 - 28th —"—

referred to, upon which the opinion of the Board of Directors is based, and I trust that after His Excellency the Governor in Council has perused the Despatch from the Secretary of State dated the 12th of January 1860 etc. the claim for rent will be withdrawn.

I have the honour to be,
Sir,
Your most Obedient Servant

Agent and Manager.

MADRAS RAILWAY.

From

The Agent and Manager.

To

The Consulting Engineer

for Railways.

Dated 20th August 1872.

Recd. 21st

P.W. 4898/72. No. 602

Forwarding a copy paragraph 17 of letter from the Secretary No 495 regarding the liability of the Company to pay rent for certain lands upon which houses for the use of servants of the Company have been built

Public Works Department.

Proceedings of the Madras Government

Dated the 7th March 1872

Read the following letter from the Secretary to the Government of India, No. 53 of 6th February 1872

2667

The Government of India will be addressed on the subject of the above letter from the Committee of Inquiry.

His Excellency the Governor in Council has no doubt but that the Directors of the Madras Railway Company will accept the interpretation of their contract

acquiesced in by other guaranteed Railway Companies in whose interest the question has probably been already raised.

His Excellency concurs in the view expressed by the Consulting Engineer that an early revision of the classification of land already handed over to the Railway Companies is advisable.

H. E. No. 2668

To

The Secy: to the Govt. of India

Sir,

I am directed to

70
2

To
The Consulting Engineer for Railways
Dept 13-11-72

forward for the consideration of the Govt of India the accompanying letter from the Consulting Engineer for Railways with its enclosures and the orders passed thereon by this Government and to request the favor of an early decision in the matter.

I have the honor to be
Sir
Your most obedient servant
Secretary to the Govt of Bombay
P.W.D.

25

Dept 13-11-72

No 4898.

Govt. of (1872) Madras.

PUBLIC WORKS.

To The Consulting Engr for Railways
&
To the Secretary to the Govt of India

Dated

Recd. Encl. 4

G. O. 12 Nov 1872 No 2667 2668

Nos. 196-197 & 198

Land. Passing orders on letters from the Engrs. regarding orders on the subject of the classification of land originally taken up for Station purposes but subsequently utilized for erecting buildings for Railway employés.

Forwarding Correspondence regarding the classification of land originally taken up for Station purposes but subsequently utilized for erecting buildings for Railway employés and soliciting orders on the subject.

dr 18 Govt