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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

RN DEPARTMENT

G.O. No.	1671 (W)	Press.
B.P. No.		Mis.
Dated 3-7-1882 ~~187~~		

Not to be folded or roughly handled

Copy

1621
1
3RD JULY 1882, No. 1671 W., PUBLIC WORKS.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Account.

No. 18.

READ—the following papers :—

From Lieutenant-Colonel H. E. MEAD, R.E., Superintending Engineer, Fourth Circle, to the Chief Engineer, Public Works Department, dated Ootacamund, 8th June 1882, No. 214.

I have the honor to point out that the new printed forms of schedule contracts lately supplied differ from the former ones, inasmuch that the latter portion of paragraph 14 and paragraph 20 are omitted.

2. The first empowers the Executive Engineer to enforce as penalty the forfeiture of the guarantee fund or other security deposited by the contractor in case of the contract being cancelled, and the second makes the decision of the Executive Engineer final. Both these conditions I consider are of great importance, and they are, I believe, legal; and should there be no special reason against them, I would urge that they be not omitted.

3. I have also to bring to notice that on a reference made to Mr. Stokes, Collector of Salem, under Section 30 of the Stamp Act, he has given his opinion* that an eight-anna stamp is sufficient for all these contracts, as they are agreements and not bonds; and as this is the case, I have ordered them all to be stamped with eight-anna stamps.

4. I would urge that the Government Solicitor should be asked to give his opinion on this point, because, although Mr. Stokes' opinion according to the Act is final as regards the individual case sent to him, it is not binding on similar cases, and it is possible that some of the low Courts may take a different view of the matter.

5. I need not point out that it is not practicable to refer each case to a Collector, to whom, under Section 30 of the Act, a fee has to be paid, and therefore it would be as well for an authoritative decision to be given, and I suppose the best decision we can obtain is that of the Government law officers.

ENCLOSURE.

From H. E. STOKES, Esq., Collector of Salem, to the Executive Engineer, Salem Division, dated 8th April 1882, No. 754.

In reply to your letter, No. 2, dated 3rd instant, I have the honor to state that in my judgment the schedule contract submitted to me for adjudication under Section 30 of the Stamp Act is liable to stamp-duty of eight annas under Article 5 (c), Schedule I, as an agreement not otherwise provided for. Paragraph 10 of the conditions refers to materials mortgaged to Government, but no mortgage is effected by this instrument. If there were, the matter would affect the stamp-duty.

2. If the executed instrument stamped as above stated is brought to me within a month from its execution, I shall be prepared to certify on it under Section 31 that it is duly stamped.

No. 1290 C.

Referred to the Government Solicitor for opinion.

(By Order.)

(Signed) A. S. RUSSELL,
Under Secy. to Govt., P.W.D.

23rd June 1882.

No. 18-A.

From E. BARCLAY, Esq., Government Solicitor, to the Secretary to Government, Public Works Department, dated Madras, 24th June 1882, No. 273.

With reference to the docket, No. 1290 C., dated 23rd June 1882, of the Under Secretary to Government, Public Works Department, upon a letter from the Superintending Engineer, Fourth Division, dated 8th June 1882, No. 214, I have to inform you that in my opinion contracts in the form of the schedule contract sent to me with such letter require to be stamped as mortgages with possession (No. 44 A, Schedule I of Stamp Act) and not as agreements.

2. A mortgage deed, according to the Stamp Act, includes every instrument whereby, for the purpose of securing, *inter alia*, the performance of an engagement, one person transfers or creates to or in favor of another a right over specified property. By Clause 3 of the contract it is provided that to allow of a guarantee fund being formed (for the purpose, as the contract shows, of securing the performance of the engagements thereby entered into by the contractor) on the part of Government, a deduction of 5 per cent. from all payments is to be made by the Executive Engineer at the time of payment; or, in other words, the contractor creates in favor of Government a right over that specified 5 per cent. deducted from payments made to him. Clause 14 of the contract authorises the application by Government of the mortgaged property, the guarantee fund, to the purposes for which it was mortgaged, viz., towards satisfaction of any loss sustained by Government by a breach of the contract.

3. With regard to the first and second paragraphs of the Superintending Engineer's letter, I would remark that Clause 14 of the contract was altered in accordance with Government endorsement No. 352, dated 12th February 1881, and that Clause 20 remains the same in the old and the new forms of contract.

4. I return the papers sent me.

No. 19.

ORDER—dated 3rd July 1882, No. 1671 W., Public Works.

The alteration in Clause 14 of the schedule contract, referred to by the Superintending Engineer, was ordered after due consideration, and with the express object of eliminating from the forms the provision naming a fixed sum to be forfeited in case of breach of contract. The Government see no reason to alter their decision.

2. The allusion of the Superintending Engineer to the latter portion of Clause 20 being omitted is not understood, no change having been made in that paragraph.

3. The question relative to the stamp-duty leviable on contracts in the form of the schedule contract will be remitted for consideration in the Revenue Department.

(True Extract.)

Under Secy. to Govt., P.W.D.,
Irrigation Branch.

To the Superintending Engineer, Fourth Circle.
„ other Superintending Engineers.
„ the Consulting Architect to Government.
„ the General Superintendent, Public Works Work shops and Stores.
„ the Superintendent, Madras Harbour Works.
„ the Examiner of Public Works Accounts.
„ the Government Solicitor.
„ the Revenue Department with two Enclosures.

Exd. A. F. Goodall.

Spare Copies

GENERAL
ACCOUNT.

Govt. of (1882) Madras.
PUBLIC WORKS.

Dated July, 3rd.

Recd.

Encl.

G.O., 3rd July 1882, No. 1671 W.

JULY.
Nos, 18-19.

Schedule of Contract.

Forms of —. Orders on correspondence
relative to the —.

No. 214

SUPERINTENDING ENGINEER'S OFFICE,

4th Circle.

Camp Coy. 8 June 1882.

1671/3

From,

THE SUPERINTENDING ENGINEER,

4th Circle.

To

The Chief Engineer
D. W. D. Madras.

Sir,

ENCLOSURES 1

Copy of letter.

I have the honor to point out
that in the new printed forms of
Schedule Contracts lately supplied
differ from the former ones inasmuch
that the latter portion of para 14 and
para 20 are omitted.

The 1st empowers the Executive Engineer
to enforce as penalty the forfeiture
of the guarantee fund or other
security deposited by the Contractor
in case of the Contract being cancelled
and the 2nd makes the decision
of

of the Executive Engineer
final. Both these conditions,
I consider ~~are~~ of great importance
and they are, I believe, legal
and should there be no special
reason against them I would
urge that they be not omitted.

2. I have also to bring to notice
that on a reference made to Mr. Stokes
Collector of Salem under Section 30
of the Stamp Act he has given
his opinion that an Eight anna
Stamp is sufficient for all these
Contracts as they are agreement
and not bonds and as this is the
case I have ordered them all to
be stamped with Eight anna
stamps.

Copy enclosed

167/18
I would urge that the Government
Solicitor should be asked to give
his opinion on this point because
although Mr. Stokes' opinion according
to the Act is final as regards the
individual case sent to him it is not
binding on similar cases and it
is possible that some of the Law
Courts may take a different view
of the matter.

I need not point out that it is not
practicable to refer each case to a
Collector to whom under Section 30
of the Act a fee has to be paid and
therefore it would as well for an
authoritative decision to be given
and I suppose the best decision we
can obtain is that of the Government
Law Officers.

I have the honor to be
Sir,
Yours most Obedt Servt.
M. M. M. — Lt Col. H. B.
Supg. Engineer, to Circle

A. K. 207 7/13.6.82
No 749 D 2/12/6/82.
To C.

For remarks with
reference to para 1.
Please forward with
your reply, copies of both
the forms referred to.
ASR

For D. W.
No 240 21 June 1882
The alterations in
Schedule were made by
the Solicitor. Below
are copies of the amendments
attached.
Copies of the old and
new forms are also
forwarded.

No 1290 C 2/23/6/82
Referred to the forl.
Solicitor for opinion.
(B. W. D.)
A. S. Russell
SECRET
As. Under Secy. D. W. D.

FROM
THE SUPERINTENDING ENGINEER,
4TH CIRCLE
To
The Chief Engineer
Dated 8th
Received } June 1882.
Answered }
No. 214

Enclosures 1
SUBJECT.
Schedule of contracts.
Forms:—
Suggesting that
the conditions of paras 14
and 20 of the — should
be retained & not omit-
ted for the reasons
stated.

Referred

No. 744.
Salem Collector's office
8th April 1882.
From,
The Collector of Salem.
To,
The Executive Engineer
Salem Division.
Sir,

In reply to your letter No. 2
dated 3rd Instant. I have the honor to state
that in my judgement the schedule contract
submitted to me for adjudication under
section 30 of the stamp act, is liable to Stamp
duty of eight annas under art 5 (d) schedule 1.
as an agreement not otherwise provided for. Para
10 of the conditions refers to materials mortgaged
to Government, but no mortgage is effected by
this instrument. If there were the matter would
affect the stamp duty.

2. If the executed instrument
stamped as above stated is brought to me
within a month from its execution I shall be
prepared to certify on it under section 31 that
it is duly stamped.

I have the honor to be,
Sir, Yr. Obedt. Servant.
(True copy)
Collector.

(True copy)

Prof J. M. Ball.
Locree, Engineer.

By order.

Hommanenfan
offg. Head Clerk, Lofg. Engg. Office
IV Cont.

NO. 273.

NADRAS 24TH JUNE 1882.

FROM:

ERNEST BARTLEY.

GOVERNMENT SOLICITOR.

NADRAS.

TO:

THE SECRETARY TO GOVERNMENT.

PUBLIC WORKS DEPARTMENT.

COTACRUED.

SIR,

1. WITH REFERENCE TO THE DOCKET NO. 1290 DATED 23RD JUNE 1882 OF THE UNDER SECRETARY TO GOVERNMENT, PUBLIC WORKS DEPARTMENT OPEN A LETTER FROM THE SUPERINTENDING ENGINEER 4TH DIVISION DATED 8TH JUNE 1882, INFORM YOU THAT IN MY OPINION CONTRACTS IN THE FORM OF THE SCHEDULE CONTRACT SENT TO ME WITH SUCH LETTER, REQUIRE TO BE STAMPED AS MORTGAGES WITH POSSESSION (NO. 44 & SCHEDULE 1 OF STAMP ACT) AND NOT AS AGREEMENTS.

2. A MORTGAGE DEED ACCORDING TO THE STAMP ACT INCLUDES EVERY INSTRUMENT WHEREBY FOR THE PURPOSE OR SECURING INTER ALIA THE PERFORMANCE OF AN ENGAGEMENT, ONE PERSON TRANSFERS OR CREATES TO OR IN FAVOUR OF ANOTHER A RIGHT OVER SPECIFIED PROPERTY. BY CLAUSE 3 OF THE CONTRACT IT IS PROVIDED THAT TO ALICE OF A GUARANTEE FUND BEING FORMED (FOR THE PURPOSE, AS THE CONTRACT SHOWS, OF SECURING THE PERFORMANCE OF THE ENGAGEMENTS THEREBY ENTERED INTO BY THE CONTRACTOR) ON THE PART OF GOVERNMENT, A DEDUCTION OF 5 PER

PER

PER CENT FROM ALL PAYMENTS IS TO BE MADE BY THE
EXECUTIVE ENGINEER AT THE TIME OF PAYMENT, OR, IN
OTHER WORDS, THE CONTRACTOR CREATES IN FAVOUR OF
GOVERNMENT A RIGHT OVER WHAT SPECIFIED 5 PER CENT
DEDUCTED FROM PAYMENTS MADE TO HIM. CLAUSE 14 OF
THE CONTRACT AUTHORIZES THE APPLICATION BY GOV-
ERNMENT OF THE MORTGAGED PROPERTY, THE GUARANTEE
FUND, TO THE PURPOSES FOR WHICH IT WAS MORTGAGED
VIZ TOWARDS SATISFACTION OF ANY LOSS SUSTAINED
BY GOVERNMENT BY A BREACH OF THE CONTRACT.

3. WITH REGARD TO THE FIRST AND TWO PARAS
OF THE SUPERINTENDING ENGINEER'S LETTER I WOULD
REMARK THAT CLAUSE 14 OF THE CONTRACT WAS ALTERED
IN ACCORDANCE WITH *first endorsement* 352
DATED ^{12th} FEBRUARY 1881 AND THAT CLAUSE 20 REMAINS
THE SAME IN THE OLD AND THE NEW FORMS OF CONTRACT.

4. I RETURN THE PAPERS SENT ME AND

I AM, SIR,

YOUR OBEYIENT SERVANT.

Ernest Harcourt

GOVERNMENT SOLICITOR.

P. N. C. No. 4235

Recd 28th June 1881

Encl. 2

Old 59-6

1671/8

Copy of letter from Ernest Barclay Esq. Government Solicitor, Madras, to the Under Secretary to Government P. W. Department N. 55 dated 5th February 1881.

I return herewith the forms of Contract &c which accompanied your letter of 6 December last N. 2724, and also the list of such forms I have perused those forms and have made in them in red ink such alterations as I have thought necessary.

2. I observe that in some of the forms it is provided that a fixed sum shall be paid or forfeited by the Contractor to Government in case of a breach of the Contract. It is a matter for the consideration of Government whether such a provision should appear in any contract, for, by section 74 of the Indian Contract Act of 1872, it is provided that when a contract has been broken, if a sum is named in the Contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not

not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named. It will thus be seen that though the naming in a contract of a sum to be paid for a breach is perfectly legal the effect of doing so is not to enable the party complaining to recover the sum named, but to prevent his recovering more than that sum.

3. I have not thought it advisable to strike out from the accompanying forms the provision I have alluded to; for, such provision being legal, I should not feel justified in doing so without the orders of Government - but I think it as well to bring to the notice of Government what the effect of such a provision is.

(True copy)

G. B. Patton

Supt. Correspondence Branch

24/6

P. N. Department
from the Government Solicitor, Madras,
No. 55 dated 5th February 1881

For Orders

I certainly think so

(Sig) N. H.

Under the circumstances pointed out by the Government Solicitor it seems desirable to eliminate from the Forms the provision naming a fixed sum to be forfeited in case of breach of Contract.

(Sig) J. Pennycook
Major R. E.
for Secy. to Govt. P. N. D.

No. 352

Forwarded in original to the Secretary to the P. N. Code Committee

(Sig) John Pennycook
Major R. E.
Under Secy. to Govt. P. N. D.

(True Copy)

G. B. Patton

Supt. Correspondence Branch

Examiner, P.W. Accounts.

Madras 15 February 1881

Office Note No 40.

To

W.

I would suggest
that the forms be returned to
the Government Solicitor with
request that he will eliminate
the provision naming a fixed
sum to be forfeited on account
of breach of contract.

This course will ensure
their being perfectly satis-
factory.

(Sd) D. H. J.

No 389

1671 W

16 February 1881

Forwarded to the Government
Solicitor with a view to the
forms being modified as
suggested.

(Sgd) J. Pennington
Major. R. E.

Under Secy to Govt P.W. Dept.

No 234 N.

To

C.

Herewith Forms.

altered as required.

(Id) J. P.

24 W.

3/3

(True copy)

J. P. Patton

Supt. Correspondence P.

97

1671

No 1671 W

PUBLIC WORKS DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Under date the 3rd July 1882
Read the following:—

From the S. S. Fourth Circle

" " Govt. Solicitor

No. 16214 of 8th June 1882

" " 2738/24 " "

The alteration in Clause 14 of the Schedule Contract, referred to by the Supt. Engineer, was ordered after due consideration, and with the express object of eliminating from the form the provision naming a fixed sum to be forfeited in case of breach of contract. The Govt. see no reason to alter their decision.

2. The allusion to the Supt. Eng^r to the letter

latter portion of clause
20 being omitted is
not understood, no
change having been
made in that paragraph.

3. The question relative
to the Stamp duty
leviable on contracts
in the form of the
Schedule contract
will be remitted for
consideration in the
Revenue Department.

C₂

1-7-82

CHH

1-7-82

Recd

11/7

- To the Supty Engr Toronto
(2) Other Supty Engineers
(3) Young Architects to Govt
(4) Revenue Department with
(4) Genl Supt P.W.W. & J.
(5) Supt M. H. Works
(6) Genl P. W. accs
(7) Govt. Solicitor

Vide 57/6
only 27/6 Re 3/7

4235

G.O. of (1882) Madras.
PUBLIC WORKS.

Dated

Recd.

Encl.

4/8/7

G.O. 3 July 1882. No. 1071 W

No.

1071 W

Schedule of Contract

Terms of — Orders in
Correspondence relative to
the —

4/8/7