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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

P.W.D. DEPARTMENT

G.O. No.	140 W	Press.
B.P. No.		Mis.
Dated	17. 1. 1884	197.

Not to be folded or roughly handled

En. 9

17TH JANUARY 1884, No. 140 W., PUBLIC WORKS.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

General.
Account.

Read—the following paper:—

G.O., dated 14th January 1884, Mis. No. 75, Judicial.

Read—the following Proceedings of the Board of Revenue, dated 7th December 1883,
No. 3707:—

Read—the following paper:—

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Tuesday, the 9th day of October 1883.

PRESENT:—

The Honorable Sir Charles A. Turner, *Kt.*, C.I.E., Chief Justice.
The Honorable Mr. Justice Kernan.
The Honorable Mr. Justice Kindersley.
The Honorable Mr. Justice Muttusami Aiyar, C.I.E.
The Honorable Mr. Justice Hutchins.

Referred Case No. 4 of 1883.

Case referred, under section 46 of Act I of 1879, for decision as to the nature of stamping certain contract agreements, by the Board of Revenue, Madras.

Judgment.

We do not understand that, as is contemplated by the Government, a percentage is actually set apart for the contractor and retained.

We understand the terms of the contract, on which the question arises, to amount to this, that the contractor waives the prompt payment of a percentage of the sum to accrue due to him, and agrees that the Government may set off against it what sums it may be entitled to recover from him by reason of breach of contract. It is not, as has been suggested, a mortgage of the percentage of which present payment is postponed; for the property remains in the Government till the sum necessary to pay the amount retained is paid to the contractor, or at least severed from bulk and assigned for such payment. The contract is an agreement and chargeable with stamp duty as an agreement.

Resolution—dated 7th December 1883, No. 3707.

The decision of the High Court will be submitted to Government with reference to G.O., Revenue Department, No. 984, dated 15th September 1882, and G.O., Judicial Department, No. 1702, dated 27th June 1883.

(A true Copy and Extract.)

(Signed)

G. MACKENZIE,
Acting Sub-Secretary.

ENCLOSURE.

Proceedings of the Board of Revenue, dated 15th September 1883, No. 2774.

Read—the following G.O., dated 14th August 1883, Mis. No. 2148, Judicial:—

Read—the following Proceedings of the Board of Revenue, dated 31st July 1883, No. 2195:—

Read—Endorsement of the Public Works Department, dated 19th June 1883, No. 1148-C, on letter from the Superintending Engineer, VI Circle, dated 13th June 1883, No. 516-T. J., forwarding copies of certain correspondence for opinion as to the nature of stamp to be affixed to the contract agreements.

Order—dated 27th June 1883, Mis. No. 1702, Judicial.

Considering the difference of opinion between the Government Solicitor and the Board of Revenue as to the proper stamp in this case, the Board are requested to refer the case, with their own opinion thereon, to the High Court for decision.

(True Extract.)

To the Board of Revenue, with all papers.

(Signed) C. G. MASTER,
Chief Secretary.

Resolution—dated 31st July 1883, No. 2195.

The Board beg to point out that their view as to the amount of stamp duty leviable on documents of the description referred to was accepted by Government (having the views of the Government Solicitor before them) in the Revenue Department, in their order, dated 15th September 1882, No. 984, and that this order appears to have been overlooked by the Judicial Department, from which the present reference has been made. The Board have no doubt but that the Government Solicitor is incorrect in holding these contracts to be mortgages. Clause 4 of the "Conditions" given in a separate sheet of paper attached to the document now forwarded simply authorises the Executive Engineer to withhold payments for a portion of the work done, from time to time, until the entire work is finished, with a view to secure good work and provide against default; and this provision to withhold payments for work to be done in the future, and which may not after all be executed, cannot be regarded as creating a right over "specified property" as security for the performance of an engagement within the meaning of the definition of "mortgage," given in clause 13, section 3 of the Stamp Act. The "specified property" referred to in the section must clearly be property having actual existence at the time when the contract is made, and cannot refer to a mere right to demand payment for work done. In these circumstances, the Board beg to be informed whether the reference to the High Court should be made.

2. Court-fee labels cannot, of course, be used to denote stamps liable to duty under Act I of 1879.

(A true Copy and Extract.)

(Signed) J. A. DAVIES,
Acting Secretary.

To the Chief Secretary to Government, Judicial Department,
with all papers returned.

Order—dated 14th August 1883, Mis. No. 2148, Judicial.

The reference to the High Court should be made as directed.

(True Extract.)

To the Board of Revenue, with all papers.

(Signed) E. S. LAFFAN,
Acting Under Secretary.

Resolution—dated 15th September 1883, No. 2774.

Under instructions from Government, the Board resolve to refer for the decision of the High Court, under section 46 of Act I of 1879, the question as to whether deeds of contract for

work to be executed by contractors, drawn up in the form of which a specimen is enclosed, should be stamped as mortgages with possession under article 44 (a) of Schedule I of the Stamp Act, or as agreements not otherwise provided for under article 5 (c) of the same schedule.

2. The Government Solicitor, whom the Government consulted, was of opinion that the documents should be stamped as mortgages with possession, because the provision in the "Conditions" attached to the contract to the effect that the engineer may withhold payment for a certain percentage of the value of work executed to cover compensation for default on the part of the contractor, and as security for the proper performance of the contract, amounted to the creation of a guarantee fund, and a deed of mortgage is defined in the Stamp Act to include every instrument whereby, for the purpose of securing the performance of an engagement, one person transfers or creates to or in favor of another a right over specified property.

3. The Board, however, consider that the provision to withhold payment for a portion of the work to be done in future, and which may not after all be executed, cannot be regarded as creating a right over "specified property" within the meaning of the definition of mortgage given in section 3, clause 13 of the Stamp Act, as "the specified property" must be property having actual existence at the time the contract is made and cannot refer to a mere right to demand payment for work done; and they are of opinion that the document falls under article 5 (c) of Schedule I of the Stamp Act.

(A true Copy and Extract.)

(Signed) J. A. DAVIES,
Acting Secretary.

Order—dated 14th January 1884, Mis. No. 75, Judicial.

Communicated to the Public Works Department in continuation of G.O., 27th June 1883, No. 1702.

(True Extract.)

(Signed) M. HAMMICK,
Ag. Assistant Secretary.

ORDER—dated 17th January 1884, No. 140 W., Public Works.

Communicated to the officers of the Public Works Department for information and guidance.

(True Extract.)

(Signed) J. SHAW-STEWART, Colonel, R.E.,
Secretary to Govt., P.W.D.

To Superintending Engineers.
To the Consulting Architect to Government.
General Superintendent, Public Works Workshops.
Superintendent, Madras Harbour Works.
Examiner, Public Works Accounts.
Chief Engineer for Irrigation.
Consulting Engineer for Railways.
Examiner, Railway Accounts.

Exd. E. Fernandez.
Spare Copies

GENERAL
ACCOUNT.

Govt. of (1884) Madras.

PUBLIC WORKS.

Dated January, 17th.

Recd.

Encl

G.O., 17th Jan. 1884, No. 140 W.

JANUARY.

Contract Agreements

Re nature of stamp to be affixed to cer-
tain —.

BOARD OF REVENUE, 7TH DECEMBER 1883, No. 3707.

PROCEEDINGS OF THE BOARD OF REVENUE.

READ—the following paper:—

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Tuesday, the 9th day of October 1883.

PRESENT:—

The Honorable Sir Charles A. Turner, *Kt.*, C.I.E., Chief Justice.
The Honorable Mr. Justice Kernan.
The Honorable Mr. Justice Kindersley.
The Honorable Mr. Justice Muttusami Aiyar, C.I.E.
The Honorable Mr. Justice Hutchins.

Referred Case No. 4 of 1883.

Case referred, under section 46 of Act I of 1879, for decision as to the nature of stamping certain contract agreements by the Board of Revenue, Madras.

Judgment.

We do not understand that, as is contemplated by the Government, a percentage is actually set apart for the contractor and retained.

We understand the terms of the contract, on which the question arises, to amount to this, that the contractor waives the prompt payment of a percentage of the sum to accrue due to him, and agrees that the Government may set off against it what sums it may be entitled to recover from him by reason of breach of contract. It is not, as has been suggested, a mortgage of the percentage of which present payment is postponed; for the property remains in the Government till the sum necessary to pay the amount retained is paid to the contractor, or at least severed from bulk and assigned for such payment. The contract is an agreement and chargeable with stamp duty as an agreement.

RESOLUTION—dated 7th December 1883, No. 3707.

The decision of the High Court will be submitted to Government with reference to G.O., Revenue Department, No. 984, dated 15th September 1882, and G.O., Judicial Department, No. 1702, dated 27th June 1883.

(A true Copy and Extract.)

from MacKensie
Acting Sub-Secretary.

To the Chief Secretary to Government, Judicial Department,
" Secretary to Government, Revenue Department, } with copy of Board's Proceed-
" " Public Works Department, } ings, 15th September 1883,
" " " } No. 2774.

Exd. W. J. Lewis.

Mr. Ch. 11301

JUDICIAL DEPARTMENT.
1883.
Board of Revenue,
MADRAS.

Printed December th.

81
Sept 17/83
Ansist pencil
orders in the Judge's
19/12
11/12

Proceedings, 7th Dec. 1883, No. 3707.

Submitting to Government decision of the
High Court as to the nature of stamp to be
affixed to certain contract agreements.

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BOARD OF REVENUE, 15TH SEPTEMBER 1883, No. 2774.

Enclosure

PROCEEDINGS OF THE BOARD OF REVENUE.

Read—the following G.O., dated 14th August 1883, Mis. No. 2148, Judicial:—

Read—the following Proceedings of the Board of Revenue, dated 31st July 1883, No. 2195:—

Read—the following G.O., dated 27th June 1883, Mis. No. 1702, Judicial:—

Read—Endorsement of the Public Works Department, dated 19th June 1883, No. 1148-C, on letter from the Superintending Engineer, Sixth Circle, dated 13th June 1883, No. 516-T. J., forwarding copies of certain correspondence for opinion as to the nature of stamp to be affixed to the contract agreements.

Order—dated 27th June 1883, Mis. No. 1702, Judicial.

Considering the difference of opinion between the Government Solicitor and the Board of Revenue as to the proper stamp in this case, the Board are requested to refer the case, with their own opinion thereon, to the High Court for decision.

(True Extract.)

(Signed) C. G. MASTER,
Chief Secretary.

To the Board of Revenue, with all papers.

Résolution—dated 31st July 1883, No. 2195.

The Board beg to point out that their view as to the amount of stamp duty leviable on documents of the description referred to was accepted by Government (having the views of the Government Solicitor before them) in the Revenue Department, in their Order, dated 15th September 1882, No. 984, and that this order appears to have been overlooked by the Judicial Department, from which the present reference has been made. The Board have no doubt but that the Government Solicitor is incorrect in holding these contracts to be mortgages. Clause 4 of the "Conditions" given in a separate sheet of paper attached to the document now forwarded simply authorizes the Executive Engineer to withhold payments for a portion of the work done, from time to time, until the entire work is finished, with a view to secure good work and provide against default; and this provision to withhold payments for work to be done in the future, and which may not after all be executed, cannot be regarded as creating a right over "specified property," as security for the performance of an engagement within the meaning of the definition of "mortgage," given in Clause 13, Section 3, of the Stamp Act. The "specified property" referred to in the section must clearly be property having actual existence at the time when the contract is made, and cannot refer to a mere right to demand payment for work done. In these circumstances, the Board beg to be informed whether the reference to the High Court should be made.

2. Court-fee labels cannot, of course, be used to denote stamps liable to duty under Act I of 1879.

(A true Copy and Extract.)

(Signed) J. A. DAVIES,
Acting Secretary.

To the Chief Secretary to Government, Judicial Department,
with all papers returned.

Order—dated 14th August 1883, Mis. No. 2148, Judicial.

The reference to the High Court should be made as directed.

(True Extract.)

(Signed) E. S. LAFFAN,
Acting Under Secretary.

To the Board of Revenue, with all papers.

RESOLUTION—dated 15th September 1883, No. 2774.

Under instructions from Government, the Board resolve to refer for the decision of the High Court, under Section 46 of Act 1 of 1879, the question as to whether deeds of contract for work to be executed by contractors, drawn up in the form of which a specimen is enclosed, should be stamped as mortgages with possession under Article 44 (a) of Schedule I of the Stamp Act, or as agreements not otherwise provided for under Article 5 (c) of the same schedule.

2. The Government Solicitor whom the Government consulted was of opinion that the documents should be stamped as mortgages with possession, because the provision in the "Conditions" attached to the contract to the effect that the Engineer may withhold payment for a certain percentage of the value of work executed to cover compensation for default on the part of the contractor, and as security for the proper performance of the contract, amounted to the creation of a guarantee fund, and a deed of mortgage is defined in the Stamp Act to include every instrument whereby, for the purpose of securing the performance of an engagement, one person transfers or creates to or in favor of another a right over specified property.

3. The Board, however, consider that the provision to withhold payment for a portion of the work to be done in future, and which may not after all be executed, cannot be regarded as creating a right over "specified property" within the meaning of the definition of mortgage given in Section 3, Clause 13, of the Stamp Act, as "the specified property" must be property having actual existence at the time the contract is made and cannot refer to a mere right to demand payment for work done; and they are of opinion that the document falls under Article 5 (c) of Schedule I of the Stamp Act.

(A true Copy and Extract.)

(Signed) J. A. DAVIES,
Acting Secretary.

To the Registrar, High Court, Appellate Side, with all papers.

Exd. W. J. Lewis.

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1883.
Board of Revenue,
MADRAS.

SV 11301/83

Printed September 28th.

Proceedings, 15th Sept. 1883, No. 2774.

Referring to the High Court for decision as to the nature of stamp to be affixed to certain contract agreements.

Judicial Department.
PROCEEDINGS OF THE MADRAS GOVERNMENT.

100/6

Read the following

Proceedings of the Board of Revenue, dated 7th December 1883. N° 3707, regarding the nature of stamp to be affixed to certain contract agreements.

Order of 14 January 1884. In 75 this communicated to the Public Works Department in continuation of G. O. 27 June 1883. N° 1702.

(Spec Extract)

Warrant

N° 100/6

The Public Works Department

28

[6]

Govt. of (188) Madras.

To

The P.W. Dept

Ch. 160/84

Dec 16/1/84

Proceedings, dated 14/1/ 1884
No. 75
Subject.

Regarding the nature
of Stamp to be
affixed to certain
Contract Agreements

No 140W

PUBLIC WORKS DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Under date the 17th Jan/84

Read the following

Proc. of the Board of Revenue H.E. No. 3707 of 7th Dec/83
Judicial Dept - 75. Ins of 14 Jan/84

5

Communicated
to the officers of the
Public Works Department
for information and
guidance.

Cy
16-1-84

W.
16.1.84-

Suptg. Engineers
Consy. Archt. to Govt.
Genl. Supt. P.W. W
Supt. M. H. Works
Ex. P.W. accts.
Chief. Engr. for Orgn.
Consy. Engr. for Ry.
Sec. Ry. Accounts.

LS

330-

Govt. of (1883) Madras.

PUBLIC WORKS.

(9)

Dated

Recd

Enc

17th June 1884 No 145 W.

Contract Agreement

Re the return of
stamp to be affixed
to certain Contract
Ag —

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190

42C