

have ready.

D.W.L. No 7916

A

No 1087R

PUBLIC WORKS DEPARTMENT,
RAILWAY BRANCH.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Under date the 29th July 1890

again
Read the following

Progs. of the Madras } A.C. No. 1003R of 12th July 1890
Govt. P.W. Deptt. —

Do — Do — " — " 1034-35R of 18th do —

Read also the following:

Telegram from Engr. in- } of 17th July 90
Chief East Coast Ry. Svy. }

Telegram to — do — of 19th do —

Telegram from the } No. 9332 of 19th do —
Govt. of India P.W. D. —

Telegram to do — of 22nd do —

Letter from — do — No. 647R.C. of 21st do —

30 B

Ordered that the
following telegram be despatched
to the Engineer in- Chief East Coast
Railway Survey.

A.S.
29/7/90

Telegram despt 29-7-90

Please proceed to
Simla sometime next month
taking with you such preliminary
plans

plans connected with the
East Coast Railway Scheme
generally as you may have
ready by them & Your services
are required by India in
addition to Mr. Spring to
discuss matters in connection
with the examination of the
main project.

2. A copy of these Progs.
will be forwarded for the in-
formation of the Govt. of India
with reference to its letter No.
647 R.C. dated 21st July 1890.

Mr. No 1088 R 27 29th July 1890

Forwarded.

For

29/7/90 For No. R

D. 14/8

To The Cons. Genl. for R 20
- Exr P. W. Aceto

Mr. J. H. Barstow Esq

Special

Very urgent
Print 20/10

A

No. 1087. 88 R & 29th July/90.

Oct. 24/7
H. 29/7 R 29/7

7216.

Govt. of Madras.

PUBLIC WORKS.

Very urgent
Dated 29/7/90
Recd. Encl.

G.O., 29 July 1890, No. 1087-82.

Mr. F. B. Walker
Superintendent
East Coast Ry Survey.

Drawing — to present
to Civils to discuss
matters in connection
with the examination
of the main project.
do do do.

For: Copy of Rep.
Drawing — to present
to Civils.

cc: 18/1
M

29TH JULY 1890, No. 1086 R., PUBLIC WORKS.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Railway.

Read the following paper:—

Office note from the Examiner, Public Works Accounts, dated Madras, 25th June 1890, No. 3730.

- I beg to forward herewith the marginally noted papers, in original (to be returned), relating to a claim for interest on compensation paid in May 1889 for land acquired in June 1887 for additional accommodation and diversion of road at Egmore station, South Indian Railway, and request that you will obtain the orders of Government on the following points:—
1. Receipt for Rs. 1,115-0-7.
 2. Letter No. 1177, dated 25th April 1890, from Collector of Madras, to the Secretary to the Commissioners of Land Revenue.
 3. Proceedings of the Board of Revenue (Land Revenue), Mis. No. 3280 of 28th May 1890.
 4. Bill for contingent charges, dated 13th June 1890, for Rs. 1,115-0-7, from Collector of Madras.
 5. Letter No. 1917, dated 16th June 1890, from the Accountant-General, Madras, to the Examiner of Public Works Accounts, Madras.
- (1) Whether any interest is payable.
 - (2) Whether the interest, if payable, is chargeable to Public Works Department.

2. As regards the first point, as far as can be gathered from the papers, the opinions of the Government Solicitor and of the present Collector are merely opinions, and are not based on any decided cases. The late Collector was of a different opinion, and the question certainly seems open to argument. The second clause of section 42 of Act X of 1870 must presumably be read with due regard to the second proviso to the same section, according to which apparently the compensation and the percentage are not legally due until after disposal of the appeal; and if this is so, the Government Solicitor's construction of the Act requires the Act to mean that interest is to be paid on a debt for a period prior to the date on which the debt becomes due.

3. Moreover if the Act is meant to be construed as the Government Solicitor construes it, the second proviso would presumably have said that "the Collector shall not pay the amount of compensation, or the percentage on any part thereof, or any interest thereon, &c., and the omission of any reference to interest apparently goes to show that it was not contemplated that any interest would be payable in such cases; and if interest is payable, then, since the Act does not authorize the Collector to defer payment of interest, it must apparently be payable day by day, which is absurd because, *ex hypothesi*, there is nobody to whom it can be paid. If the intention had been that the amount though not payable should be deemed to be due, the natural course would have been to direct that it be paid into court or invested for the benefit of the claimants, instead of requiring Government to pay penal interest (50 per cent. above the rate for Government paper) for no fault of its own.

4. As regards the second point, there seems to be no reason why the Public Works Department should pay for a delay from which it derives no benefit. The department which benefits by the delay is the Financial Department, and apparently that department should bear the charge if any.

From the Joint Secretary to the Government of Madras, Public Works Department, Railway Branch, to the Government Solicitor, Madras, dated 1st July 1890, No. 2863 C.

I am directed to forward, for favor of further opinion, the accompanying file relating to the payment of interest on compensation for land acquired for the South Indian Railway at Egmore with reference to the remarks thereon by the Examiner, Public Works Accounts, contained in his office note No. 3730, dated 25th June 1890.

1. Receipt for Rs. 1,115-0-7.
2. Letter No. 1177, dated 25th April 1890, from Collector of Madras, to the Secretary to the Commissioners of Land Revenue.
3. Proceedings, Board of Revenue (Land Revenue), Mis. No. 3280, dated 28th May 1890.
4. Bill for contingent charges, dated 13th June 1890, for Rs. 1,115-0-7, from Collector of Madras.
5. Letter No. 1917, dated 16th June 1890, from the Accountant-General, Madras, to the Examiner, Public Works Accounts, Madras.
6. Office note No. 3730, dated 25th June 1890, from the Examiner, Public Works Accounts, to the Joint Secretary to Government, Public Works Department, Railway Branch.

From E. BARCLAY, Esq., Government Solicitor, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 11th July 1890, No. 330.

I beg to acknowledge receipt of your letter, dated 1st instant, No. 2863 C., with its enclosures, which I return herewith.

2. I see nothing in the papers now sent me to cause me to alter the opinion given in my letter of 14th October last, No. 527, to the Deputy Collector of Madras. Section 42 of Act X of 1870 is perfectly clear on the subject of the payment of 6 per cent. interest on the amount awarded as compensation for land taken up under the Act and on the percentage allowed thereon (15 per cent.) from the time the land is taken possession of.

3. The Examiner of Public Works Accounts is hardly correct in saying that the opinions of the Collector of Madras and myself are "merely opinions," for the section of the Act is so clear that the matter can hardly be one of opinion. The clause of the section referred to is as follows: "When the amount of compensation is not paid on taking possession, the Collector *shall* pay the amount awarded and the said percentage (the 15 per cent. for the compulsory nature of the acquisition) with interest on such amount and percentage at the rate of 6 per cent. per annum *from the time of so taking possession.*" It is true the opinions of the Collector and myself are not based on any decided cases, though how the Examiner happens to know that I am not aware; but, as a matter of fact, there are, so far as I can find, no decided cases on the point, nor is it likely that there would be on a provision of law so excessively plain and simple. It is on more complicated questions than this that decisions of the courts are reported.

4. I altogether fail to see the connection between the second proviso to section 42 of the Act and the second clause of the section. The second clause I have quoted above, and the second proviso is merely to the effect that in cases where the decision of the court under part III or part IV of the Act is liable to appeal, the Collector shall not pay the amount of compensation or the percentage or any part thereof until the time for appealing against such decision has expired, and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of. In the case under reference the land was taken up under the Act in June 1887, and, soon after, the Deputy Collector made his award; but payment of the compensation was not made until May 1889, the delay being caused by a dispute amongst the sharers in the compensation as to the amount each was to receive. The Deputy Collector referred the matter to the Small Cause Court under section 38 of the Act; and, in April 1888, the Chief Judge of the Court held that he had no power to deal with the matter, and suggested a reference to the High Court. I do not therefore see how any

appeal could come in question, for the court came to no decision, and if the Examiner had referred to sections 35 and 39 of the Act, he would have ascertained the circumstances under which an appeal would lie. Under these circumstances it is perhaps hardly necessary for me to say anything as to the Examiner's remark that my construction requires the Act to mean that interest is to be paid on a debt for a period prior to the date on which the debt becomes due; but I would only again refer to the express terms of the second clause of section 42 of the Act and point out that the second proviso to that section merely postpones the payment under the circumstances therein mentioned. Interest is not unfrequently payable on a debt for a period prior to the date on which the debt becomes due, as where a man borrows Rs. 1,000 payable in 6 months with interest in the meantime. The Examiner seems to have overlooked the fact that Government had taken possession of the land and that therefore the debt had been incurred though its payment might, under the circumstances mentioned in the second proviso of section 42 (which however did not arise), have been postponed.

5. The arguments set forth in para. 3 of the Examiner's letter need not be met because they are based upon an erroneous state of facts; but I would point out that the Examiner seems to have failed to draw the distinction between a debt being incurred and its payment. It is hardly necessary to say that if the payment of the principal debt is postponed, whether by law or by contract of the parties, payment of the interest is also postponed unless it is expressly provided that the interest shall be paid in the mean time; but that postponement of the payment of the principal does not imply that the interest is not to be paid at all. I should be very sorry to advise that in a case coming under the second proviso to section 42, Government is not liable to pay any interest. Interest may accrue day by day without being payable day by day, a fact that the Examiner appears to have overlooked.

6. The legislature has not thought fit to adopt the course suggested by the Examiner and, by the Act, to direct that the amount should be paid into court or invested for the benefit of the claimants; but the legislature has, very clearly, provided in the Act that Government shall pay interest at 6 per cent. on the amount of compensation awarded *plus* the 15 per cent. thereon; and, possibly, for this reason, that Government has obtained possession of the land and has also the benefit of the money and has therefore valued those advantages at 6 per cent. on the amount payable.

ORDER—dated 29th July 1890, No. 1086 R., Public Works.

His Excellency the Governor in Council concurs with the Government Solicitor and sanctions the payment of the bill amounting to Rs. 1,115-0-7, which sum should be debited to the Public Works Department.

(True Extract.)

Major, R.E.,
Under-Secy. to Govt., P.W.D.,
Railway Branch.

To the Consulting Engineer for Railways.
" Government Solicitor.
" Examiner, Public Works Accounts, with five enclosures.
Copy to Judicial Department, with copy of note by Honorable Member.

Exd. J. Moses.
Spare Copies

RAILWAY.

Govt. of {1890} Madras.
PUBLIC WORKS.

Dated July, 29th.

Recd.

Encl.

G.O., 29th July 1890, No. 1086 R.

JULY.

Interest

The payment of Rs. 1,115-0-7 claimed as — on compensation paid for land acquired for additional accommodation and diversion of road at Egmore station, South Indian Railway, sanctioned.

KEEP-WITH

CURRENT No.

dated

189 .

1. Receipt for Rs 1,115-0-7
2. Letter N^o 1177 dated 25th April 1890 from Collector of Madras to the Secretary to the Commissioner of Land Revenue.
3. Proceedings of the Board of Revenue (Land Revenue) N^o 3280 Abs. of 28th May 1890.
4. Bill for contingent charges dated 13th June 1890 for Rs 1,115-0-7 from Collector of Madras.
5. Letter N^o 1917 dated 16th June 1890 from the Accountant General Madras to the Examiner of P. W. Accounts, Madras.

GOVT. OF MADRAS.

1890.

P. W. DEPT.

EXAMINER, P. W. ACCOUNTS.

Madras, 25th June 1890.

OFFICE NOTE No. 3730.

To R.

I beg to forward herewith the marginally noted papers in original (to be returned) relating to a claim for interest on compensation paid in May 1889 for land acquired in June 1887 for additional accommodation and diversion of road at Egmore station, South Indian Railway, and request that you will obtain the orders of Government on the following points.

- (1) Whether any interest is payable.
- (2) Whether the interest if payable, is chargeable to P. W. Department.

2. As regards the first point, as far as can be gathered from the papers, the opinions of the Government Solicitor, and of the present Collector, are merely opinions, and are not based on any decided cases. The late Collector was of a different opinion

opinion and the question certainly seems open to argument. The second clause of Section 42 of Act X of 1870 must presumably be read with due regard to the second proviso to the same ~~action~~ section, according to which apparently the compensation and the percentage are not legally due until after disposal of the appeal, and if this is so, the Government Solicitor's construction of the act requires the act to mean that interest is to be paid on a debt for a period prior to the date on which the debt becomes due.

3. Moreover if the act is meant to be construed as the Government Solicitor construes it, the second proviso would presumably have said that "the Collector shall not pay the amount of compensation, or the percentage on any part thereof, or any interest thereon, &c. &c., and the omission of any reference to interest, apparently goes to show that it was not contemplated that any interest would be payable in such cases: and if interest is payable, then, since the act does not authorize the Collector to defer payment of interest, it

28
it must apparently be payable day by day, which is absurd because, ex hypothesi, there is no body to whom it can be paid. If the intention had been that the amount though not payable should be deemed to be due, the natural course would have been to direct that it be paid into Court or invested for the benefit of the claimants, instead of requiring Government to pay penal interest (50 per cent above the rate for Government paper) for no fault of its own.

4. As regards the second point, there seems to be no reason why the P. W. Department should pay for a delay from which it derives no benefit. The Department which benefits by the delay is the Financial Department and apparently that Department should bear the charge, if any.

[Signature]

b.

OT 25/6

RT 25/6

(Enc. 5)

Enc 1
PW C No. 6177
66/10/90

No. 1-7-90
Enc 5.

Enc 1
The office note from C is addressed
to R. These papers should be sent to W's office for
registering and despatch. 20/6

to A.R.

E. S.
This should go to the Govt
Solicitor again I think with
a request that he will investigate
C's arguments

Roel
27.6.90

To Govt Secy. In favour of
opinion in the light of
C's remarks -

28

No. 2863.C

Government of Madras.

PUBLIC WORKS DEPARTMENT,
RAILWAY BRANCH.

To

The Govt. Solicitor

Madras.

38

1st July 1889

SIR,

1. Receipt for Rs 1115 - - - 4.
2. Letter No 1177 dated 14/6/90 from K. Madhaval
to the Secy. to the Govt. of Public Works.
3. Pro. No. 12 of Secy. (Public Works) No 3280 dated
28.5.90
4. Bill for contingent charges Rs 13/6/90 for
Rs 1115 - - - 7 from K. Madhaval.
5. Letter No 1317 dated 16/6/90 from the Secy. of P.W. to
the Secy. P.W. Madras.
6. Office note No 3730 dated 25/6/90 from the Secy.
P.W. Madras to R.

I am directed to forward for
favour of further opinion the accompanying
file relating to the payment of interest on compensation
for lands acquired for the S. I. R. at Egmore
with reference to the remarks thereon by the Secy.
P.W. Madras contained in his office note No 3730
of 25th June 1890.

28/6/90
SR.

107

A.C. Give details of correspondence
in margin -

No 330.

Madras 11th July 1890

From,

Ernest Barclay,

Government Solicitor,

Madras

To,

The Joint Secretary to Government,

Public Works Department,

Railway Branch,

Madras

Sir,

1 I beg to acknowledge receipt of your letter dated 1st instant No 2863 C with its enclosures, which I return herewith.

2 I see nothing in the papers now sent me to cause me to alter the opinion given in my letter of 14th October last No 527 to the Deputy Collector of Madras. Section 42 of Act X of 1870 is perfectly clear on the subject of the payment of 6% interest on the amount awarded as compensation for land taken up under the Act and on the percentage allowed thereon (15%) from the time the land is taken possession of.

3 The Examiner of Public Works Accounts is hardly correct in saying that the opinions of the Collector of Madras and myself are "merely opinions" for the Section of the Act is so clear that the matter can hardly be one of opinion. The clause of the Section referred to is as follows: "When the amount of compensation is not paid on taking possession the Collector shall pay the amount awarded and the said percentage (the 15% for the compulsory nature of the acquisition) with interest on such amount and percentage at the rate of six per cent per annum from the time of so taking possession." It is true the opinions of the Collector and myself are not based on any decided cases, though how the Examiner happens to know that I am not aware; but, as a matter of fact, there are, so far

as I can find, no decided cases on the point, nor, is it likely - that there would be on a provision of law so excessively plain and simple. It is on more complicated questions than this that decisions of the Courts are reported.

4 I altogether fail to see the connection between the - second proviso to Section 42 of the Act and the second clause of the Section. The Second clause I have quoted above, and the second proviso is merely to the effect that in cases where the decision of the Court under Part III or Part IV of the Act is liable to appeal, the Collector shall not pay the amount of compensation or the percentage or any part thereof until the time for appealing against such decision has expired, and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of. In the case under reference the land was taken up under the Act in June 1887 and, soon after, the Deputy Collector made his Award; but, payment of the compensation was not made until May 1889, the delay being caused by a dispute amongst the sharers in the compensation as to the amount each was to receive. The Deputy Collector referred the matter to the Small Cause Court under Section 38 of the Act; and, in April 1888, the Chief Judge of the Court held that he had no power to deal with the matter, and suggested a reference to the High Court. I do not therefore see how any appeal could come in question, for the Court came to no decision and, if the Examiner had referred to Sections 35 & 39 of the Act, he would have ascertained the circumstances under which an Appeal would lie. Under these circumstances it is perhaps hardly necessary for me to say anything as to the Examiner's remark that my construction requires the Act to mean that interest is to be paid on a debt for a period prior to - the date on which the debt becomes due; but, I would only again refer to the express terms of the second clause of Section 42 of the Act and point out that the second proviso to that section merely postpones the payment under the circumstances therein mentioned. Interest is not unfrequently payable on a debt for a period prior to the date

5 P
on which the debt becomes due, as where a man borrows Rs 1000 payable in 6 months with interest in the meantime. The Examiner seems to have overlooked the fact that Government had taken possession of the land and that therefore the debt had been incurred though - its payment might, under the circumstances mentioned in the 2nd - Proviso of Section 42 (which however did not arise) have been postponed.

5 The arguments set forth in para 3 of the Examiner's letter need not be met because they are based upon an erroneous state of facts; but, I would point out that the Examiner seems to have failed to draw the distinction between a debt being incurred and its payment. It is hardly necessary to say that if the payment of the - principal debt is postponed, whether by law or by contract of the parties, payment of the interest is also postponed unless it is - expressly provided that the interest shall be paid in the meantime; but, that postponement of the payment of the principal does not - imply that the interest is not to be paid at all. I should be very sorry to advise that in a case coming under the second proviso to Section 42, Government is not liable to pay any interest. Interest may accrue day by day without being payable day by day, a fact that the Examiner appears to have overlooked.

6 The legislature has not thought fit to adopt the course suggested by the Examiner and, by the Act, to direct that the amount should be paid into Court or invested for the benefit of the claimants; but, the legislature has, very clearly, provided in the Act that Government shall pay interest at 6% on the amount of compensation awarded, plus the 15 per cent thereon; and, possibly, for this reason, that Government has obtained possession of the land and has also - the benefit of the money and has therefore valued those advantages at 6% on the amount payable.

I have the honor to be
Sir
Your Obedient Servant,
Edward Barclay
Government Solicitor.

P.W. Co. 6619

RAILWAY BRANCH.

15th July 1890

READ the following:—

Letter from the Govern-
ment Solicitor, Madras, N^o. 330
dated 11th July 1890 with encls.
Surrs.

FOR ORDERS.

If the Genl. Solicitors views are correct
it appears to me that the law which
compels an individual to pay interest
on money which he wishes to ~~not~~ pay
should be altered -

Lucy L. Col. R. C.

Offg: J. H. Seay. to Govt. P. M. D. Rymer

I think the Gov. Solicitor
is right but the Decreted
proviso to Sec. 42 requires
modification to some extent.
Where the Col. affects interest
of ^{the appeal is} ~~the~~ where the other
party affects interest of ~~the~~ only
even if the affected decided
in his ^{favor} ~~favor~~ ~~for the date of the~~
~~decision~~ ~~of the~~ ~~he affected.~~

20/7/90

I suppose there we must refuse
the demands with reference to his
office note that the No 115-0-7
must be paid.

Spicing deck
off front seat W. - " Wood

$\frac{0}{14/7}$ Sch. 10/2 R 21.7.90

FOR ORDERS.

1086 R

1086 R.

PUBLIC WORKS DEPARTMENT,
RAILWAY BRANCH.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

UNDER date the 29th July 1890.

READ the following

Office note from the
Examiner P. W. Beels:
with enclosures

M.E. No 3730 of 25th June 1890

Letter to the Govt.
Solicitor General

2863 C of 1st July 1890

Letter from - do - 330 of 11th - do -

His Excellency the
Governor in Council concurs
with the Government Solicitor
and sanctions the payment
of the bill amounting to
Rs 1,115-0-7 which sum
should be debited to the
Public Works Department.

245
26/7/90

14/6

To the Comptroller for Rs 20

- Govt. Solicitor

- Examiner P. W. Beels: with
5 enclosures

Copy to Judicial Dept with
copy of note by H.M.

11
11/5 R

all. 14/7
again H.M. 22-7-90.
21.7.90