

Public Works (1897) Department.

G.O., No. 588R

DATED 20 August 1897

[Despatch Abstract.]

Compensation for Land: Letter to the Govt of India
for forwarding copy of Board's Resolution No 2972
dtd. 27.10.8.97 regarding payment of — acquired
and handed over to the old quarantined
Railway Companies for excavating materials.

D.C.
24/8

27/8/97

[illegible]

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Land acquired for the purpose
of a ballast quarry.
Enquiring whether Govt or Ry
Co^s are liable for the payment
of royalty claimed on the
material excavated in —

BACK PAPERS.

RAILWAY CONSTRUCTION.

The Joint Secretary to the Government of Madras,
Public Works Department, Railway Branch.

Sir,

I am directed to inform you that certain lands situate in the Punjab have been acquired under the Land Acquisition Act of 1894 for the purposes of a ballast quarry, the proprietors of which claim compensation or royalty on the broken bricks which are being excavated therefrom for ballast purposes, and the Civil Authorities having pointed out that the proprietors are entitled to such compensation under section 42 (2) of the Punjab Revenue Act of 1897, the question has arisen as to whether the Government of India or the Railway Company are liable for the payment of this compensation or royalty, the Railway Company under their contract being provided with land free of cost for quarrying ballast.

2. When land is acquired for quarrying purposes in the North Western Provinces and the Punjab it is customary to take up the surface rights and to pay a royalty on the materials excavated but elsewhere in India it is understood that all underground rights belong, as a rule, to Government so that when land is taken up for quarrying purposes,

purposes, no question of this sort can arise.

3. I am therefore to enquire what the practice has been in the case of the old guaranteed Railway Companies under your control in such cases and whether Government, having taken up and handed over land for quarrying purposes, charged any royalty for the Material excavated.

I have the honour to be,

Sir,

Your most obedient servant,

G. A. Anderson

Under Secretary.

Documents accompanying:-

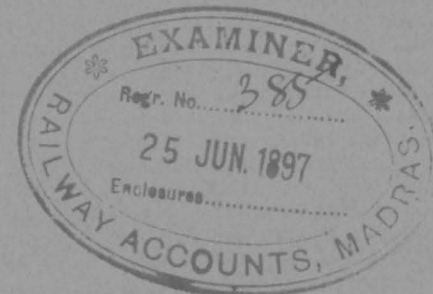
Nil.

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OFFICE OF THE CONSULTING ENGINEER FOR RAILWAYS,

Madras, 24th June

1897.



No. 2090.

OFFICE NOTE.

Letter from the *Governor of India, P. W. D.* Agent, dated 4th June 1897, forwarded to the Examiner of Railway Accounts, *for favour of remarks.* Railway, No. 923, R.C.

CM

for E. R.

EXAMINER'S REPLY.

The Board of Revenue is best able to reply to the question put by the Govt of India, and I would suggest that the letter be sent to the Board for report.

G. Waller
C.R. 30/6/97

30.6.97

Form No. 10.

Railway Department.

OFFICE OF THE CONSULTING ENGINEER FOR RAILWAYS,

Madras, 1st July 1897.

To

The Secretary
to the Board of Revenue
(Land Revenue)

No. 2189 Reply No.

, dated

SIR.

I have the honour
to forward herewith copy of
a letter from the Govt of India
No 923 R. C. of 16th June 1897,
and to request that I may
be favoured with a report
thereon, on the question raised
therein.

C. V. M. 30/6

Reminders.

Despatched on 1-7-97

1897

Public works (1897) Department.

Current No. 8038

No. 923 R.C. -

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

RAILWAY Construction

To

THE Joint Secy to the Govt of
Madras, P. W. D. Ry Branch

Simla, the 6th August 1897.

Ans: 11.8.97

The undersigned is directed to invite attention
to the letter noted below, and to request that the
reply may be expedited.

C. H. P. 4/8.

Assistant Secretary.

P. W. D. No. 923 R.C. dated 4th June 1897.

Enquiring what the practice
is for acquiring land for
quarrying purposes on the
old guaranteed railways
whose contracts contain a
clause providing land
free of cost for quarrying
purposes

Government {1897} of Madras.
REVENUE.

Recd.

} 1897.

Enclosures

Regd.

Spare copies

G.O., No. 379, 25th May 1897.

MAY.

Quarrying and Mining.

Approving, subject to certain modifications and remarks, the draft Standing Order embodying rules for —, and addressing the Government of India on the subject of the reservation by the State of full rights to minerals in unoccupied ryotwari lands.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following Proceedings of the Board of Revenue (Land Revenue), No. 475, dated 19th December 1896:—

Read—again Proceedings of the Board of Revenue (Land Revenue), No. 66, dated 19th February 1896.

ABSTRACT.—Communicating to all Collectors, with remarks, Government Order forwarding the standard forms of exploring and prospecting licenses for minerals prescribed by the Government of India, and stating that the revised Standing Order No. 15, printed in Board's Proceedings, No. 464, dated 23rd December 1895, will be modified and issued separately.

Read—again Proceedings of the Board of Revenue (Land Revenue), No. 114, dated 24th March 1896.

ABSTRACT.—Communicating to all Collectors Government Order approving, with remarks, the revised Standing Order No. 15 relating to quarrying and mining, and stating that the revised Standing Order will be issued separately.

Read—again Proceedings of the Board of Revenue (Land Revenue), No. 128, dated 31st March 1896.

ABSTRACT.—Recording Government Order recording, with remarks, Board's Proceedings communicating to Collectors the standard forms of exploring and prospecting licenses for minerals and stating that the revised Standing Order No. 15 will be modified and issued separately.

Read—again Proceedings of the Board of Revenue (Land Revenue), No. 334, dated 3rd September 1896.

ABSTRACT.—Communicating to all Collectors, for information and guidance, Government Order, Revenue Department, accepting Board's recommendation in regard to the free allowances admissible under prospecting licenses for experimental purposes except in the cases of phosphatic nodules and fixing the free allowance under exploring licenses at one-tenth of the quantity allowed under the former; and stating that the necessary alterations will be made in Standing Order No. 15 now under revision.

Resolution—No. 475, dated 19th December 1896.

With reference to the orders read above, the Board submits for the approval of Government the draft of a Standing Order regarding quarrying and mining revised up to date.

2. The Board has taken the opportunity to improve the general arrangement of the Standing Order in regard to typography and the numbering of paragraphs. Slight verbal alterations not involving any change of rule have also been introduced in a few places. In note (4) to paragraph 4 the word "increased" has been substituted for "doubled" as it may be necessary to enforce compliance with conditions by the

imposition of severely penal rates. Attention is also invited to paragraph 10 where Railway Companies were not specifically mentioned in the present order (paragraph V), but as the privilege of free removal was obviously meant to be extended to Railway Companies, as well as to other public bodies, the Board has inserted a provision to this effect.

3. In 1882 Government, after considerable discussion, decided * that it was not

* G.O., No. 1008, dated 21st September 1882, paragraphs 12 (5) and (6).

† Board's Proceedings, No. 3587, dated 26th November 1883, paragraph 3.

necessary to make any exclusive reservation of rights to minerals in pattas to be thereafter issued, and this view was accepted by the Secretary of State, who, in paragraph 5 of his despatch,† No. 49,

dated 12th July 1883, expressed his concurrence in the opinion that it would be well to adopt one rule for all ryotwari lands in Madras, viz., that subjacent minerals belong to the holder of the land subject to special assessment in the event of their being worked.

4. In paragraph 5 of their letter ‡ No. 646-22, dated 28th February 1895, the

‡ Government Order, No. 4218, Revenue, dated 25th October 1895.

Government of India desires a reconsideration of the question on the ground that rights to minerals are not in fact reserved

under this practice, as, if a man has reason to suspect the existence of a valuable mineral in unoccupied Government land, he has only to apply for a patta in order wholly to evade the operation of the mining rules, save as regards the payment of royalty—a patta being apparently given as a matter of course if Government is ignorant of the existence of the mineral.

5. In the first place it is to be observed that a patta would not be given on application as a matter of course, unless the applicant who suspected the existence of the mineral happened to be the ryot who had a preferential claim under the darkhast rules. Moreover, applications presented under the circumstances supposed would probably be for a considerable tract of country, as the suspicion referred to could hardly be located with precision without an exploration which would attract notice, and an applicant of the kind would probably soon find that mining rights over the land desired could be obtained most expeditiously and economically by means of an application under the mining rules.

6. The Government of India, however seems to consider that the position of a holder under a patta would be so superior to that of a holder under the mining rules, that it would be well worth a man's while to secure the position of pattadar even though it were necessary to take much pains and incur considerable expenditure for the purpose. The Board is not prepared to admit the correctness of this view. Under the customary law of the country a special assessment can be levied up to half the net value of the produce, which is more than Government has yet proposed to levy on account of royalty under the mining rules, and under a well-known principle of common law, the utmost possible production would be presumed against any one who worked the minerals and declined to keep accounts on which the demand for special assessment or royalty could be based. The Board, therefore, does not anticipate any serious difficulty in the way of inducing pattadars who work minerals to comply with all the conditions in the mining rules with regard to the accounts to be kept by mining lessees. The question will probably soon come up for practical decision in connection with mica mines in Nellore, and it would certainly be premature now to act on the assumption that it will be found impossible to give effect to the proposals made in paragraph 9 of Board's Proceedings, No. 362, dated 24th September 1896, and approved in Government Order, No. 618, dated 13th November 1896.

7. There remains the question of areas, but as already pointed out, it is very unlikely that any one would be successful in surreptitiously obtaining under the darkhast rules mineral rights over a larger area than he could obtain under a mining lease. These areas vary in extent from 160 to 1,280 acres under ordinary circumstances, but the extent may be increased indefinitely in special cases, and it is probable that a very large area, indeed, would be granted in a case such as that assumed by the Government of India, in which the existence of a valuable mineral was not suspected.

by any one but the applicant. It is not usual to grant large areas on patta under the darkhast rules without very careful enquiries as to the object for which the land is sought.

8. For the reasons given above, the Board is of opinion that there is no reason to ask the Secretary of State to reconsider his decision in the matter.

(True Copy and Extract.)

(Signed) R. C. C. CARR,
Secretary.

To the Secretary to Government, Revenue Department,
with copy of the draft Standing Order.

Copy to all Collectors.

ORDER—No. 379, Revenue, dated 25th May 1897.

Miscellaneous.

With the proceedings read above the Board of Revenue submits for approval a draft revised standing order embodying rules for quarrying and mining, and submits its views regarding the right of the state to the subjacent minerals in unoccupied ryotwari lands which may hereafter be granted on patta for cultivation.

2. The draft standing order is approved subject to the following modifications and remarks:—

(i) In Note (4) to paragraph 4, the words "if the conditions of working are not complied with" should be substituted for the words "if mining operations are carried on without giving notice to the Collector."

(ii) In paragraph 10 in lieu of the words "other public bodies, e.g., Railway Companies, as well as to the contractors employed by them," the words "with the previous sanction of Government in each case, to other public bodies" should be substituted.

(iii) (a) There are clerical errors or misprints in paragraphs 1 (d) and 5 ("mineral" for "minerals"), paragraph 10 ("domestic purposes" in line 4), and paragraph 11 ("to statu quo" for "to the status in quo ante").

(b) Rules 12 to 15 do not appear to form part of the major head "State quarries of building stone, gravel, &c.," and the printing should be revised in order to make this clear, rule No. 12 being placed immediately after rule No. 15 with a separate heading in order that there may be no doubt as to the applicability of rule 12 to the case of "shared mines and quarries."

(c) The wording of clause 6 of appendix I at page 20 requires slight amplification; for the words "subject to the following restrictions," should be substituted "subject to the restriction that nothing shall be removed in excess of the under-mentioned quantities."

(d) The schedules appended to the general prospecting license should be designated schedule I and schedule II in order to avoid confusion with the schedules A and B printed on pages 16 and 17. Consequential alterations will be necessary in pages 22 and 23 in the standard form of prospecting license.

3. There remains the question of reserving to the state in future full rights to minerals in unoccupied lands. The views of this Government were set forth in G.O., No. 1003, Revenue, dated 21st September 1882. They were to the effect that such a reservation would introduce a new condition into the well known and long established land tenure of this Presidency and would consequently engender distrust and suspicion in the minds of the ryots, and that, further, it would, in the case of the vast bulk of land likely to be occupied for cultivation, be objectless.

4. These views were concurred in by the Right Honourable the Secretary of State in his Despatch No. 49, Revenue, dated 12th July 1883. The Government of India ask for a reconsideration of the question on the ground set forth in paragraph 4 of the Board's Proceedings read above.

5. The Board points out that in this Presidency it is very improbable that a patta could be obtained for a tract of land containing a valuable mineral without the existence of such mineral being suspected by the local authorities. In the circumstances the applicant would hardly be a ryot of the village or other person having a privileged claim under the darkhast rules; the presence of any valuable mineral could hardly be ascertained with sufficient precision without an exploration, and the application would probably be for a considerable tract of land. All these circumstances would attract notice and initiate enquiry.

6. Moreover, as pointed out by the Board, under a patta the State's claim to a share of the subjacent minerals may extend to as much as half the net produce which is more than Government has yet proposed to levy on account of royalty under the mining rules. Lastly, under the sanction afforded by the rule contained in Note (4) to paragraph 4 of the rules as amended by Government, nearly all the conditions of working as set forth in the general mining rules may be enforced in the case of a pattadar.

7. In these circumstances His Excellency the Governor in Council has no doubt that any advantage that might accrue to the State by the reservation of full rights to subjacent minerals in unoccupied lands would be more than counterbalanced by the evil which would ensue from the consequent disturbance of the public faith in the completeness and permanency of the title conferred by a Government patta.

8. The following letter will be despatched to the Government of India.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

To the Board of Revenue (Land Revenue).

Exd. W. D' Moss.



Proceedings of the Board of Revenue

(Land Revenue),

Dated 10th August 1897.

No. 2972 Miscellaneous.

READ Letter from the Consulting Engineer for Railways,
Madras, No. 2189 dated 1st July 1897.

Resolution

³¹⁰⁸ The Government of India, in its letter No. 923 R.C. (P.W.D.) dated 4th June 1897, enquires whether any royalty for materials excavated is paid, apart from compensation for surface rights, to proprietors of lands acquired by Government under the Land Acquisition Act and handed over to the old guaranteed Railway Companies for quarrying ballast. Information is also called for as to whether Government having taken up and handed over to a Railway Company land for quarrying purposes, charges the Company any royalty for the material excavated.

2. Before furnishing an answer to these questions it is necessary to premise that the presumption in para 2 of the Government of India's letter, that underground rights belong as a rule to Govt is not correct, so far as this Presidency is concerned. The respective rights of the state and the landholder in the various descriptions of land in this Presidency have been exhaustively defined in paras 1 to 3 of Board's Standing Order No. 15 a copy of which is herewith forwarded. Reference is also requested to Government Order No. 379 Revenue dated 25th May 1897 which has been forwarded in another connection by the Government to the Government of India and which deals with the proposed reservation by the State of full rights in minerals subjacent to ryotwari lands. It will be seen from these papers that when the state requires either on its own behalf or on that of a Railway Company the use of any of the quarries distinguished in paras 1 & 2 of S.O. No. 15 as "Private" & "Shared", it has to pay for such use a compensation proportioned to the landholder's interest in such quarries. It is generally found advisable, however, to acquire the landholder's rights in toto, viz. his right in the surface as well as that

4 Vide appen.
- Dir to para
1 of S.O. No 12.

3 log E
Copy put in

that in the sub-soil, rather than to engage to pay him a royalty for an indefinite period, according to the quantity excavated from time to time.

3. Turning now to the terms by which the acquisition of land for quarrying purposes is regulated, as between Government and the old Guaranteed Railway Companies, it will be seen that under para 4 of the Government of India circular (Public Works Department), No. 55 dated 29th June 1860 lands required by a Railway Company for quarrying purposes fall under class C and have to be provided at the cost of the company. In such cases the lands are if occupied permanently acquired by Government at its own cost and then made over to the Company on payment of an annual rental equal to 5 per cent on the total outlay incurred by Government plus the revenue or assessment previously payable to Government in respect of the land. The rent derived from the Railway Company under this arrangement would ipso facto include a charge for excavated material, whether Government has paid separately for it has included it in the interests acquired and paid for under Act I of 1894.

4. As regards unoccupied and unreserved lands belonging to Government as well as unassessed waste, reserved for communal purposes, which is termed gram-bake, the Government has and exercises full right to

to the minerals and quarries in them. When such quarries are made over to Railway Companies, no charge for their use is usually made by Government (vide para 10 of S.O. No. 15). Similarly no charge is made on account of the interest of the State in what are called 'Shared' quarries (vide para 2 of S.O. No. 15) so that when such quarries are acquired in full for Railway Companies, the latter are only debited with the compensation payable for the landholder's share.

(True Extract)

L. Dwamikanu

11 AUG 1897
Asst. Secretary

to

The Consulting Engineer for Railways ✓
with a copy of Board's S.O. No. 15

26/10

3586
C. No. 13717
Recd. 13/11/97

1897.
Board of Revenue
(Land Revenue),
MADRAS.

To
The Consulting Engineer
for Railways
Madras

Proceedings, dated 10th August 1897,
No. 2972, Mis. Routine Enclosures.

Subject.

Forwarding to the Consulting Engineer for Railways a report on the question raised by the Government of India (P. W. D) regarding payment of compensation for lands acquired for the purpose of a ballast quarry and handed over to the old guaranteed Railway Companies for excavating materials.

R. FORM No. 12.

No. 580. R

Government of Madras.

PUBLIC WORKS DEPARTMENT,
RAILWAY BRANCH.

To
THE SECY. TO THE GOVT. OF INDIA,
P. W. DEPARTMENT.
Simla

Copy, the 20th August 1897.

SIR,
With reference to your letter No. 923 R.C. of the 4th June 1897, enquiring whether any royalty for materials excavated is paid, apart from compensation for surface rights, to proprietors of lands acquired by Govt. under the Land Acquisition Act and handed over to the old guaranteed Railway Companies for quarrying ballast, I am directed to forward, herewith, for information, a copy of Resolution of the Board of Revenue, Madras, No. 2972 of Miscellaneous, dated 10th August 1897, and the papers referred to therein.

Documents accompanying.

Copy of Resolution of B.
of Revenue No. 2972 of 10/8/97
with papers therein referred to
+ a copy of B. Standing orders No. 156
+ a copy of G.O. No. 372 of 25/5/97
10/8/97

Y.M. 15/8/97

B/-

No. 580. R dated 20/8/97