14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1524	Press ~~Mis.~~
92-93	
Dated 9 - 11 - 1859	

Not to be folded or roughly handled

No. 92. Read the following letter from W. HUDLESTON, Esq., Acting Secretary to the Board of Revenue; to T. PYCROFT, Esq., Chief Secretary to Government dated 18th October 1859, No. 4224.

I am directed by the Board of Revenue to call the attention of Government to the fact that no provision is made in the revised forms of Title Deeds recceived with Extract from Minutes of Consultation, dated 21st September 1859, for maintaining the control of Government over springs and running water.

In Con 22d Sept. 1859, *No.* 4751.

2. The correspondence which has already passed on this subject is printed at pages 73-6 of the Board's Circular Orders of 1856. The Act for the protection of works of irrigation therein alluded to has since been laid aside, but it is contemplated to make sufficient provision in the new penal Code for the punishment of offences relating to works of irrigation. That Code has not yet been enacted, and the course prescribed by Government in Extract fom Minutes of Consultation, dated 26th July 1856, Revenue Department, No. 772, is therefore still followed.

E. M. C. 20th Jan. 1857, *P. W. D. No.* 139, *in Con. 3d Feb.* 1857, *No.* 357.

In Con. 1st August 1856, *No.* 2836.

3. In accordance with the instructions of Government contained in paragraph 3 of the abovementioned Extract from Minutes of Consultation, the Government Pleader Sudder Udalut with the enclosed letter, dated 31st August 1858, furnished the Board with a form of reservation and covenant which he is of opinion should be introduced into leases of lands by or through which springs and streams of water pass.

In Con. 28th December 1858, *No.* 3938.

4. The Board, however, think that the draft clauses furnished by Mr. Dale are quite unsuited to the forms recently approved of by Government. Covenants are now dispensed with, and the clause proposed for insertion in the Title Deed, contains so much legal phraseology that it could not well be introduced in the new forms, which consist of a few simple phrases. Under these circumstances the Board are of opinion that it will be sufficient if Government distinctly notify that the reservations regarding rights of way, and springs, streams, &c., minerals, and land required for new roads, water channels, &c., as well as the rule requiring the grantee to construct and maintain boundary marks round his property, which are contained in paragraphs XIII. to XVIII, inclusive of the Manual sanctioned for adoption by Government on 19th December 1849, continue in full force, and are no way affected by the change in the nature of the title granted.

C. O. Book 1st vol. page 583.

5. The Board have retained minerals in the above list, but they are by no means sure that the development of such resources will not be retarded rather than advanced by such a reservation and would suggest its abandonment.

6. The Board are of opinion that the above plan is preferable to the insertion in the body of the Title Deed of any one of the these conditions to the exclusion of the rest, whereby their relinquishment might be with good reason assumed to have been made by Government, and to insert the whole might render the Title Deeds cumbrous, but should Government object to the plan proposed, the Board think that the insertion of *all* the points reserved is absolutely necessary to secure the rights of Government, if any one right is particularised.

No. 93. ORDER THEREON, 9th November 1859, No. 1524.

The Board call attention to the fact that the new forms of Title Deeds for land granted under the order of August 5th 1859, contain no provision for securing the control of Government over springs and running water. They lay before Government a letter from the Government Pleader dated August 31st 1858, with a form of reservation of that and other rights of Government, to be inserted in future leases; but in place of that form, which they consider too long, the Board advise that Government should notify that the provisions of Rules 13 to 18 of the "Manual" of the 19th December 1849 still continue in force.

2. The Government have carefully considered this recommendation but it does not appear to them that even the addition to the Title Deeds proposed by the Board is necessary. Five particulars are enumerated as requiring to be maintained; first, the grantee's obligation to erect and maintain boundary marks round his land; second, his obligation to respect roads, foot paths, and rights of way; third, the full control of Government over springs and streams; fourth, the right of Government to all minerals; fifth, the right of Government to take land for roads or for other public purposes.

3. It appears to Government that all these rights, so far as it is desirable to maintain them, are sufficiently protected by the general law. The maintenance of boundary marks is a private concern which may safely be left to private interest; and as to minerals, the Government agree with the Board that the reservation of them to Government is inexpedient. The right of Government to take land required for a public purpose is fully established by Act VI. of 1857, and the right of way as well as rights connected with the occupation of running water, may also be safely left, in the opinion of Government, to the general law.

4. The right which the Board seek to uphold or to assert in connection with streams and springs, appears to be not any actual right either of Government or of private persons, but a power on the part of Government to control the distribution of water, with reference mainly to the Nilgiri hills. This power it does not appear necessary or expedient that the Government should exercise; it seems preferable that all rights in running water should be left, like other rights, to be guarded by the general law. If however the Board had any other meaning, the Government will be fully prepared to give consideration to any further representations that they may make on the subject, as it is by no means their wish to pass a final order on this important question without full deliberation.

(Signed) J. D. BOURDILLON,
Secretary to Government.

No. 4224.

From W. HUDLESTON, Esq., Acting Secretary to the Board of Revenue.

To T. PYCROFT, Esq., Chief Secretary to Government.

SIR,

I am directed by the Board of Revenue to call the attention of Government to the fact that no provision is made in the revised forms of Title Deeds received with Extract from
In Con. 22d Sept. 1859, No. 4751. Minutes of Consultation, dated 21st September 1859, for maintaining the control of Government over springs and running water.

2. The correspondence which has already passed on this subject is printed at pages 73-6 of
E. M. C. 20th Jan. 1857, P. W. D., No. 139, in Con. 3d Feb. 1857, No. 357. the Board's Circular Orders of 1856. The Act for the protection of works of irrigation therein alluded to has since been laid aside, but it is contemplated to make sufficient provision in the new penal Code for the punishment of offences relating to works of irrigation. That Code has not yet been enacted, and the course prescribed by Government in Extract from
In Con. 1st Aug. 1856, No 2836. Minutes of Consultation, dated 26th July 1856, R. D., No. 772, is therefore still followed.

3. In accordance with the instructions of Government contained in paragraph 3 of the abovementioned Extract from
In Con. 28th Dec. 1858, No. 3938. Minutes of Consultation, the Government Pleader Sudder Udalut with the enclosed letter, dated 31st August 1858, furnished the Board with a form of reservation and covenant which he is of opinion should be introduced into leases of lands by or through which springs and streams of water pass.

4. The Board, however, think that the draft clauses furnished by Mr. Dale are quite unsuited to the forms recently approved of by Government. Covenants are now dispensed with, and the clause proposed for insertion in the Title Deed, contains so much legal phraseology that it could not well be introduced in the new forms, which consist of a few simple phrases. Under these circumstances the Board are of opinion that it will be sufficient if Government distinctly notify that the reservations regarding rights of way, springs, streams, &c., minerals, and land required for new roads, water channels, &c., as well as the rule requiring the grantee to construct and maintain boundary marks round his property, which are contained in paragraphs
C. O. Book 1st vol. page 583. XIII to XVIII, inclusive of the Manual sanctioned for adoption by Government on 19th December 1849, continue in full force, and are no way affected by the change in the nature of the title granted.

5. The Board have retained minerals in the above list, but they are by no means sure that the development of such resources will not be retarded rather than advanced by such a reservation and would suggest its abandonment.

6. The Board are of opinion that the above plan is preferable to the insertion in the body of the Title Deed of any one of these conditions to the exclusion of the rest, whereby their relinquishment might be with good reason assumed to have been made by Government, and to insert the whole might render the Title Deeds cumbrous, but should Government object to the plan proposed, the Board think that the insertion of *all* the points reserved is absolutely necessary to secure the rights of Government, if any one right is particularised.

REVENUE BOARD OFFICE,
Fort St. George,
18th October 1859.

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

Acting Secretary.

Revenue Dept.

No. 1524 Government

Proceedings of the Madras Government

Under date the 9th November 1859.

Read the following

letter from the Acting Secretary

to the Board of Revenue.

Submitting a letter from the Government Pleader Sudder Adalut furnishing the Board with a form of reservation and covenant to be introduced into leases of lands by or through which springs and streams of water pass, and suggesting that provision may be made in the new forms of title deeds received from Govt. for maintaining the control of Govt. over springs and running water.

Here enter 18th October 1859 No 4224

The Board call attention to the fact that the new Forms of title deeds for land granted under the order of August 5th 1859, contain no provision for securing the control of Government over springs and running water. They lay before Government a letter from the Government Pleader dated

Rec. 1859 Dept.
Resp. Sept. 10th Nov.
No 1914

From
The Sec. Secretary to the
Board of Revenue
To
The Chief Secretary to
Government

Dated 18th Oct. 1859
Rec. 20 Oct. 1859
Rec. 21
Ex. Regular
2 Encl. Returned 4224/59
No 1524 - Q. Nov. 1859

Submitting a letter from the Government Pleader Sudder Adalut furnishing the Board with a form of reservation and covenant to be introduced into Leases of Lands by or through which Springs and Streams of water pass, and suggesting that provision may be made in the new forms of Title Deeds received from Government for maintaining the control of Govt. over Springs and running water.

Encl. 23 Sept. 1859. No 33-34

Copy in a Letter to G
Sec. to Govt. dated 19th Oct. 1859

1892.

31 Collation [illegible]

dated August 31st 1858, with a form of reservation of that and other rights of Government to be inserted in future leases; but in place of that Form, which they consider too long, the Board advise that Government should notify that the provisions of Rules 13 to 18 of the "Manual" of the 19th Dec. 1849 still continue in force.

2. The Government have carefully considered this recommendation but it does not appear to them that even the addition to the title deeds proposed by the Board is necessary. Five particulars are enumerated as requiring to be maintained; First, the granted obligation to erect and maintain boundary marks round his land;

Second

Second, his obligation to respect roads, footpaths, and rights of way; Third, the full control of Government over Springs and Streams; Fourth the right of Government to all minerals; Fifth, the right of Government to take land for roads or for other public purposes.

3 It appears to Government that all these rights, so far as it is desirable to maintain them, are sufficiently protected by the general law. The maintenance of boundary marks is a private concern which may safely be left to private interest; and as to minerals, the Government agree with the Board that the reservation of them to Government is inexpedient

inexpedient. The right of Govt
to take land required for
a public purpose is fully
established by Act VI of
1857 and the right of
way as well as rights con-
nected with the occupation
of running water, may
also be safely left, in
the opinion of Government,
to the general law.

4. The right which
the Board seek to uphold
or to assert in connection
with streams and springs,
appears to be not any
actual rights either of
Government or of private
persons, but a power
on the part of Governme
to control the distribution
of water, with reference
mainly to the Nilgiri
hills. This power it does
not appear necessary or
expedient that the Govt should
exercise; it seems preferable
that all rights in running
water should be left, like
other rights, to be guarded
by the general law. If
however the Board had
any other meaning, the
Government will be fully
prepared to give consideration
to any further representa-
tions that they may make
on the subject, as it is
by no means their wish
to pass a final order on
this important question
without full deliberation.

6 Copies - Board of Revenue - Cypher 10
2 Enclosures Returned - 7th March 60.

Copy in a letter to C
dy 10th February 1860 No 11.

22-8-06

18-2-10

Revenue 1859 Dep.tt
Pro: of Govt 10th Nov.

No 1524.

Pro: of the Madras Govt
D.y 9th November 1859.

Provision for securing
the title of Government over
Springs and running water,
not necessary in the title deed
for land granted under the order
of 5th August 1859.

No 92+98-

31st October 1859 4th Nov.