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MADRAS RECORD OFFICE

Government of Madras

Revenue

DEPARTMENT

G.O. No.	68	Press
B.P. No.		Mis.
Dated 11 th January 1872 195		

Not to be folded or roughly handled

Read the following papers:—

No. 133. From the Secretary to the Government of India, Department of Agriculture, Revenue, and Commerce, (Minerals,) to the Secretary to the Government of Madras, dated Simla, 14th August 1871, No. 40.

It was proposed in a recent case of the grant of a license to mine for Coal to attach to such grant the condition that the licensee should in no way interfere with any rights in or to the surface of the tract included within his license, and should make his own arrangements with the owners and occupiers of the surface soil, in order to obtain access to the Coal and facilities for efficiently working it.

2. Upon this the Secretary of State made the following observations:—

4. "From this it would appear that, although the Government is exclusive owner of all minerals below the surface, and can convey to whom it will the power of working those minerals, still the right so conveyed can be virtually cancelled wherever the surface is private property, and the owner thereof chooses to deny access to what lies below the surface.

5. "If this be really the present state of the law, it plainly requires to be amended to the extent of making it obligatory to owners of surface land, on receipt of adequate compensation from lessees of the minerals below, to afford them full facilities for getting at the minerals.

6. "What, however, is no less essential is, that a native land-owner should not be left to settle as he best may with a European lessee the terms of compensation for the latter's entrance on his property. In such a transaction natives will be at a great disadvantage, unless some direct Government agency interposed first to ascertain and record, and subsequently to defend their rights; and I am anxious that the expediency of making provision for these purposes should be considered."

3. Search among the records of the Government of India has not discovered sufficient to enable the Governor-General in Council to come to a decision on the questions here raised. The cases involving these questions which have actually occurred are few in number and confined to the Central Provinces.

4. I am, therefore, to request that His Excellency the Governor in Council will favour the Government of India with information on the following points:—

(a).—How far, in fact, Government has in Madras acted upon this principle that all mines, when not expressly granted away, belong to the State, and on what grounds Government has so acted?

(b).—What has been the law or practice in regard to access to mines over land which is private property? Does Government theoretically or practically possess such a right, and can it assign such a right to others?

5. The Governor-General in Council will also be glad to receive an expression of His Excellency's opinion as to the necessity of amending the existing law and the direction which such amendment should take.

REFERRED to the Board of Revenue for their remarks.

(Signed) W. HUDLESTON,
Secretary to Government.

24th August 1871.

*Proceedings of the Madras Government, Revenue Department,
11th January 1872.*

No. 134. From the Acting Secretary to the Board of Revenue, to the Secretary to Government, Revenue Department, dated Madras, 24th November 1871, No. 4,837.

In reply to endorsement, Government Order dated 24th August 1871, forwarding a letter from the Secretary to the Government of India in the Department of Agriculture, Revenue, and Commerce, "regarding the law and practice as to mineral rights," etc., I am directed to submit the enclosed précis of correspondence on the subject for the information of Government.

2. From this it may be gathered (a) that the Government of Madras have always acted upon the principle that, except in Government waste to which no classes of the community have, by custom or otherwise, any claim, the State has no right whatever to the produce of mines. The principle has always been affirmed that the grant of land, either under a Zemindari Sanad or an ordinary ryotwari putta, conveys all the right, title, and interest which the Government was itself possessed of in such land, subject only to the payment of assessment; and (b) no reservation has ever been made of a right of access to any supposed mines. Nor is there any reason whatever for considering that Government, either theoretically or practically, possess any right of access to mines not expressly provided for when the land is given on putta.

3. The Board have already laid their views on a cognate subject before Government (by whom they were forwarded to the Government of India) in Proceedings No. 3,183, dated 5th May 1866, and the Government of India at that time expressed their approval of them.

4. The queries (a) and (b) in paragraph 4 of the letter being thus disposed of, the Board pass to the consideration of the question raised in paragraph 5.

5. They gather that the Supreme Government has come to the conclusion (acting, of course, on proper legal advice) that the Crown is the exclusive owner of all minerals below the surface throughout British India. As already observed there has been no such understanding in this Presidency: but owing to the limited extent to which the question has been raised, it cannot be said that a legislative declaration of the Crown's rights in this respect would be attended with any practical inconvenience in Madras. It would be necessary, of course, for the Crown in granting licenses for working its minerals to compensate the surface owners who would be disturbed by the intended operations; but for this the "Lands Acquisition Act" lately past appears to provide, or could easily be shaped so as to provide a suitable procedure. The Board would deprecate litigation between the licensee and the surface owner.

No. 135.

ORDER THEREON, 11th January 1872, No. 68.

Miscellaneous.

THE above papers will be communicated to the Government of India, with reference to Mr. Secretary Hume's

letter dated 14th August 1871, No. 40 (Minerals).

*Proceedings of the Madras Government, Revenue Department,
11th January 1872.*

2. The Government concur in the conclusions at which the Board have arrived, except in so far that they are of opinion that any assertion of an exclusive right by Government in all minerals below the surface would be an invasion of the private rights of landholders, and would excite much dissatisfaction if it ever was acted on beyond the limits of what is termed Government waste.

Ordered that the following letter be despatched:—

(Here enter, No. 69, 11th January 1872.)

(True Extract.)

Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

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Dated January 11th. 1892

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