

906

*Proceedings of the Madras Government, Revenue Department,
27th August 1873.*

No. 214. Read the following Proceedings of the Board of Revenue, dated 1st July 1873, No. 1,151 :—

Read the following letter from B. HORSBRUGH, Esq., Acting Collector of Madras, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 2nd June 1873, No. 135 :—

THE owner of the premises noted in the margin, a part of which the Collector of Madras was directed to acquire for the Municipality by G. O., No. 851 (copy enclosed), of 22nd June 1869, Public Department, under Act VI. of 1857, having refused to accept a compensation of Rupees 230 offered by the Collector, the matter was referred to arbitration.

2. The arbitrators appointed were—

(1.) P. Sambasiva Mudaliar, Acting Superintendent, Cochrane's Canal, *on behalf of Government,*

(2.) J. Howell, Esq., 1st Uncovenanted Assistant to the Director of Revenue Settlement, *on behalf of the party,*

(3.) M. Sadagopa Mudaliar, Merchant, third arbitrator, and they awarded Rupees 1,500, or Rupees 1,270 more than the Collector's offer. Their reasons for doing so are given in their award, a copy of which is enclosed.

3. The amount awarded being high the Municipality have not yet decided upon paying the compensation and taking possession of the land, but they have now remitted to me the fee of Rupees 210 which the arbitrators charged in their award as remuneration for their services. As, however, by Section 21 of the Act, the amount of fees payable to the arbitrators should be fixed by the Collector subject to the orders of the Board, I submit the matter for their orders.

4. There is nothing on record to show how much of the time of the arbitrators was spent on this case. Their appointment took place about the 20th December 1870, and they passed their award on the 17th January following. Considering, however, that the case was not a very complicated one I think that Rupees 50 each would be a fair remuneration, but at the same time I have to submit for the Board's consideration whether the G. O., No. 2,678, of 21st August 1868, Public Works Department (communicated by Board with Proceedings, No. 6,292, of 4th September next) does not preclude any fees being given in this case to the arbitrator on behalf of Government, who was a Government servant. The arbitrators argue that all of them are, without exception, entitled to fees, as, to quote their own words in the award, "The Government is not an interested party in this reference, and the funds from which this award will be satisfied are purely local." They seem to think that the order was not intended to deprive them of fees when the Government does not acquire lands for itself, because the case which gave rise to the above Proceedings of Government was one in which the land acquired was paid for by Government, and the Government of India, in their letter, No. 12, of 27th June 1868, recorded in the above Proceedings, mention this circumstance as a reason for objecting to the payment of any fee to Government officers acting as arbitrators.

Proceedings of the Madras Government, Revenue Department,
27th August 1873.

ENCLOSURE No. 1.—Copy of G. O., dated 22nd June 1869, No. 851, Public Department.

ENCLOSURE No. 2.—Copy of Award of Arbitrators.

SUBMITTED for the orders of Government.

2. The Resolution of Government, dated the 22nd June 1869, No. 851, intimating the acquisition of this land, etc., distinctly states that the lands and buildings are to be taken possession of "on the part of Government," but the land was really required by the Municipality and was to be paid for from Municipal funds. The arbitrators were not selected because they were Government servants possessing any professional fitness for the office. They might just as well have been private persons. The Board think, therefore, that they are entitled to a fee. What they ask is moderate, and the Board would allow it.

No. 215. ORDER THEREON, 27th August 1873, No. 906.

Miscellaneous.

THE Governor in Council sees no objection to those of the arbitrators, who are Government servants, receiving a fee in this case, and sanctions the disbursement of the entire amount of Rs. 210 tendered by the Municipality for an award under Act VI. of 1857.

(True Extract.)

Signed

R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue,
the Accountant-General.

Exd. F. R. Bantleman.

Revenue Dept

Memo. for Orders on No. 1978.

Pro. Board of Revenue.

Remuneration to Arbitrators
appointed for settlement of com-
pensation for a piece of land in
Black Town, Madras, taken up by
Municipality.

1st July 1873, No. 1151.

In 1859 the Collecta of

Madras was directed to acquire

for the Municipality under

Act VI of 1857 certain ground

in Black Town.

As the amount of

compensation he fixed was

not accepted its amount

was left to the determination

of three arbitrators of whom

two were Govt servants.

The Collecta now

asks two questions.

(1) Whether the amount

of Rs. 210 demanded

by

I do not think

we need go into

the gross sum of the

legality of the

award. The Mu-

nicipality are

said not to have

determined whether

the land was

the price they will

now have to pay for

it. The other side

by the arbitrators may be paid to them from the funds already placed at his disposal for this purpose by the Municipality; and.

(2) Whether the Govt. arbitrator who was a Govt. servant can be allowed a fee.

3. The Board answer both questions in the affirmative.

The 1st because they consider the sum moderate; the 2^d because the compensation is to be paid from Municipal funds, and the arbitrators were not selected as being Govt. servants.

Some



raises no question
of the award. Under
these circumstances
I would let the ar-
bitrators (the 2 who
are Govt. servants)
receive the fee
allowed by the
Municipality.
D.S.

I think the arbitrators
who are Govt. servants
may be allowed to
receive the fee.
J.R.

4. Some rules on the subject of officers acting as arbitrators have recently (Feb. 1871) been promulgated by the Govt. of India. These arbitrators, however, settled their award as far back as January 1871 and the local Govts. were then guided by the Govt. of India Circular embodied in G.O. No. 2247 dated 28 August 1868. With that Circular before them this Govt. in a case at Cochin in 1867 sanctioned the payment of fees out of Municipal funds to arbitrators appointed under Act VI of 1857, though one of those arbitrators was the Treasury Deputy Collector. Neither the Board

nor

the collector of Madras seems to have been aware of this case, but it was so similar that it might have served as a precedent in this case, but for the following facts which though unnoticed by any one should be considered by Govt.

5. The G.O. directing the acquisition of the land was passed in 1869 under the old Act VI of 1857, but in June of the following year the new Act X of 1870 came into force. Now these arbitrators were not appointed until December 1870 at which time the Act under which they were appointed had ceased to have validity. The new Act provides for a case of disputed compensation being referred

to the Collector, but in 1857

x please see § 2 of 1870 Act

Note ②

I question this, the land was taken possession of under Act VI of 1857. An award was apparently made by the Col^d under that enactment, which was not accepted by the owner and the matter was consequently referred to arbitrators under Sec VI of the Act. As the order for the acquisition of the land was passed in June 1869 it is probable that the case had got this length before 1st June 1870 when the new Act came into operation. If so, it would seem to have been proper to complete the transaction in accordance with the old Act. Perhaps the Bd might be asked to ascertain when the Col^d passed his order referring the matter to arbitrators, for if he did so before 1st June/70, the subsequent proceedings appear to me to be legal.

referred not to arbitrators but to a judge who is to appoint two assessors to assist him in determining the matter. These arbitrators' appointment, proceedings and decision have therefore no legal value, and it seems questionable whether the Municipality if it knew this would care to pay them.

6. The new Act was discussed in all its stages and the public prints were not silent regarding it. Two of the arbitrators moreover being public servants were more especially bound to be acquainted with it, but as far as it appears not a single voice has hitherto been raised to question



question of the legality
of the procedure by arbitra-
tion. It is submitted
however that it was wholly
illegal and that the ^{arbitrators} ig-
norance of this fact was
so inexcusable as to preclude
their being paid
Lu

If his proposed reference
to the Board be made, and
it be found that the Coler
order was passed before
June 1870, it is submitted that
the Bd's recommendation may
be adopted and the fees
sanctioned
MS

MS

Memo. for Orders

Remuneration to arbitrators
for settlement of compensation
for certain land in Black
Town taken up by Municipality

906 -

are

under
order amount of

Rs

Revenue Dept.

No 906.

Pros of the Madras Govt
under date the 27th August 1873

Read the following
Pros of the Board of Revenue

Submitting letter from Collector
of Madras requesting orders regarding
grant of remuneration to
arbitrator appointed for settlement
of compensation for a piece of
land in Black Town, taken up
by Govt for Municipality under
Act VI of 1857.

H.E. 1 July 1873, No 1151

The Governor in
Council sees no objection
to those of the arbitrators
who are Govt servants
receiving a fee in this
case, and sanctions the
disbursement of the entire
amount of Rs 210 - -

tendered

Tendered by the Municipality
for an award under Act
of 1857.



W. H. A.

- 14. In B. of Remembrance
- 6. Asst. Genl - Exp 2/9

List from 1850

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W. H. A.

W. H. A.

G.O.

Remuneration to arbitrator
for settlement of compensation
for certain land in Black
Town taken up by Revenue
-pality-

De Leon

h. 214-215