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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue. DEPARTMENT

G.O. No. / B.P. No.	1341.	Press / Mis.

Dated 17-10-1874 ~~196~~ .

Not to be folded or roughly handled

No. 242. Read the following Extract fr the Advo e-General's opinion, dated 25th September 1874 :—

"My advice, therefore, is that the Co lector be instructed to arrange with Dr. Tissot in an amicable manner for the sur nder of the rest of the term of years, leaving the question of the fulfilment or nonfulfilment of the conditions of this grant in abeyance, and proceeding on the ground that the Government considered that the reclamation was proving detrimental to the port.

"Compensation should be tendered for all actual outlay, with interest thereon, labor bestowed, crops, groves, and other increment of a like nature, attributable to the Bishop's exertions. The Collector should point out to the Bishop that the grant having been asked and made on philanthrop unds, and the public interests now necessitating its abandonment, he cannot, w y sort of propriety, claim more than the actual loss involved; and that, moreover, he will, in all probability, get more under friendly compromise than if, by a rigid assertion of his rights, he drove the Government to take up the tract under the Land Acquisition Act."

No. 242A. ORDER THEREON, 17th October 1874, No. 1,341.

Miscellaneous.

HIS EXCELLENCY the Governor in Council resolves, with reference to the foregoing extract, to inform the Board, for communication to the Right Reverend Dr. Tissot, that the order of the 8th May last, No. 567, so far as it directs the resumption of the grant, will be held in abeyance. Before, however, authorising the Board to act on the Advocate-General's advice, His Excellency in Council considers it desirable to refer for the opinion of the Master Attendant at Madras the question how far the reclamation (1) as already carried out and (2) as proposed will injuriously affect the proposed harbor at Vizagapatam.

2. Captain Taylor will take an early opportunity of visiting the locality, and, with reference to the marginally noted correspondence, will submit his views after consulting the local officials of all departments on the subject.

G. O., 25th Feb. 1873, No. 603, P.W.D.
„ 8th May 1874, „ 567, R.D.
„ 6th Aug. „ „ 991, „

(True Extr gue) C. G. MASTER,
Acting Secretary to Government.

To the Master Attendant at Madras.
„ the Board of Revenue.
„ the Government Solicitor.
„ the Public Works Department.
„ the Marine Department.

Exd. F. R. Bantleman.

13-12-92
19-10-93 ✓
4-1-94 ✓
11-2-04 ✓
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2/16

Govt. of Ceylon.

REVENUE.

To MASTER ATTENDANT at

MADRAS.

Dated October 1871.

Sir,

ROBERTS

Ag. Principal Collector of Customs.

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134

Memorandum

In my former memorandum, of the 8th Sept. 1871, I pointed out the two points in which the legal position of the Government, as regards the conception of Breakwater Depot, was uncertain. The permit to erect that depot, was uncertain. The permit to erect that depot, was uncertain. The terms on which the land conception, the free grant for 21 years, was made, (Govt order 1169A of 7th July 1871.) were that a certain portion of the ground, to be fixed by the Collector with the sanction of the Board, should be reclaimed forthwith by default the grant to lapse to Government. That, as no portion had been so fixed by the Collector, the land had not been reclaimed and the contingency

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as which the grant was to lapse, had not occurred.

2d. Second point was that by their Proceedings of Oct 28th 1871 (No 4535) the Board had (contrary to understood practice) the Inspection, provided in the Govt. Order of 7th July 1871, would not be enforced until 1876, if it could be shown, at each triennial inspection, "that the British land done had" from para 1 of Dr Dupuis letter to the Collector, 9 June 1874, it appears that it is upon them to prove that he is now entitled to a grant. As to 2d para 2 he contends that he has simply fulfilled the condition of the grant as to the extent of reclamation, a view of the case which is of course in absolute conflict with that enunciated in Mr Daniels letter No 56 of 20 Jan 1874 & Major Beatty's Report of 24 Dec 1873; but which is to some extent favored by the previous Correspondence, contained in the Records Proceedings of 17th Feb 1868: in which he found that in Dr Dupuis' Letter of 11 Nov 1868, what he undertakes is to drain the swamp at the rate of 200 acres a year; & in the Collectors Letter, forwarding Dr

Sir Webster, dated respectively 9th & 16th June 1874 & in his Mem.m of 1st July 1874.

From these various documents it is apparent that the position so confidently assumed by Mr. Daniel is, at least, not unassailable & that the materials for a troublesome suit are at hand, if the Case is allowed to go to Court.

So impressed was the Board by Mr. Richards' letter, that, though the proceedings of 10th March, they condemned as "of supreme importance" & the Port had Dr. Tripp's attempts to reclaim the ground should be abandoned, yet, after perusal

I spoke application, the word "reclaim" was used, apparently, in relation with "drain". This is the sense in which the Bishop has contended that the word must, with a reasonable expense & the circumstances of the case, be used, & if this be so, the Bishop's position seems, of course, extremely strong.

The General view taken by Mr. Daniel & Mr. Rapp of the quality of the materials & the results of the work already effected & of the substantial failure on the Bishop's part to carry out the objects for which the Grant was made, & of combination, & not without some ground of claim, in Mr. Richards' letter of 16th Feb. 1874; in the Bishop's two letters to

hin to the June 1874

of the letter; in their proceedings of 9th Oct. 1874, they express a doubt whether the reclamation scheme need be part and parcel, & suggest that the Chairman of the Sanitary Commissioners & Inspecting Engineer of Ports should be called in as the subject. Where so much ground for doubt exists, it appears that the right course is, if possible, to compromise the case, & the suggestion made in pursuance of Mr Webster's Letter of 25th June 1874 seems extremely advisable; nor need any difficulty in carrying it out be anticipated, as Mr Lyster just before he broke his Letter to the Collector

S/1341

has readiness to entertain any reasonable offer as to the terms on which his rights shall be abandoned, & as to the steps to be taken in the negotiation proceedings on the part of the Crown having been conducted throughout his despatch.

By advice, I inform you that the Collector is instructed to arrange with Mr Lyster in an amicable manner for the surrender of the rent of the term of grant, leaving the question of the fulfilment or non-fulfilment of the conditions of the grant in abeyance, & proceeding on the ground that the Government

Considered that the Reclamation was
proving detrimental to the Port.
Compensation should be tendered for
all actual outlay, with interest thereon,
labor performed, crops, grass & other
increment of a like nature attributable
to the Bishop's exertions. The Collector
should point out to Bishop that, the
Grant having been asked & made on
philanthropic grounds, & the public interest
now necessitating its abandonment, he
can not, with any sort of propriety, claim
more than the actual loss incurred,
& that, moreover, he will be ill-

1841

advised if he does not under-
friendly compromise. Then if he
insist upon the exercise of his rights to drive
the Govt to take up the Grant under
the Land Acquisition Act. Then it
may be left to Dr Lopez letter to lead
to expect that he will readily join
us to effect that in a friendly
& courteous manner. In the event,
however, of his proving unreasonable,
the Govt & I believe, cheapest
course will be to proceed as heretofore
which I can recommend as healthy
the case would be settled at

the Commander of the Bishops Lan
under the provisions of the Land
Acquisition Act: the value would
certainly be something quite mere
ludicrous.

[illegible]

[illegible]

95.9.74

13-12-92

No 3366.
Revenue 1874 Department

6 Encls - Stamp

adv General's
Opinion

27-9-74

Dated 25 } September/74
Recd 29 }

Paper

SO No 1341 - 17 October 1874

Further opinion of Advocate Ge-
neral regarding resumption of
Swamp Land in Vizagapatam
granted to Dr Tisot for recla-
mation.

242.

C 30th Sept 74 R 5/10/74

Revenue Department.

8/1341

Proceedings of the Madras Government
Under date the 1874

Read the following extract from
the Advocate General's opinion
dated 25th September 1874.

"My advice, therefore, is that the
Collector be instructed to arrange
with Dr Tisot in an amicable
manner for the surrender of
the pool of the term of years,
leaving the question of the ful-
= filment or non-fulfilment of
the conditions of this grant
abeyance, and proceeding on
the ground that the Governm
considered that the Reclamation
was proving detrimental to the
Port.

Compensation should be or-
= dered for all actual outlay
with interest thereon, labor
bestowed, crops, groves and
other

other increment of a like nature attributable to the Bishop's exertions. The Collector should point out to the Bishop that the grant having been asked and made on plea of a charitable grounds, and the public interests now necessitating its abandonment, he can not, with any part of propriety, claim more than the actual loss involved; and that, moreover, he will be in all probability get more under such a compromise than if by a rigid assertion of his right he drove the Government to take up the tract under the Land Acquisition Act."

His Excellency the Governor in Council resolves to furnish the foregoing Extract to the Board of Revenue in continuation of G.O. 6th August last

last Nº 991. R.D. with instructions to call upon the Collector of Vizagapatam to enter into negotiations with the Right Reverend Dr. Caldwell for the surrender of his grant of the swamp at Vizagapatam. The order passed on the 8th May last Nº 567 is cancelled.

Note. This draft is prepared on the understanding that the decision of Government to stop further reclamation in the interests of the port holds good.

In their Proceedings dated 9th April last Nº 704 recorded in G.O. 8th May 1874 Nº 567) the Board, after reading Mr Richards' letter "were not altogether satisfied as to whether the reclamation scheme must be put aside and to" and they proceed that the Sanitary Commissioner and the Inspecting Engineer for Ports and Communications should be consulted. Again in their Proceedings dated 13th July last Nº 1804 (recorded in G.O. 6th August 1874 Nº 991) they adhere to their opinion as to the desirability of obtaining this information.

Should the Government be inclined

inclined to reconsider the grant
of possession for harbour purpo
it would be simply necessary
to hold G.O. 8 May. N° 337 in
abeyance pending a report to
be submitted by competent
officers.

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1341.

Cancelled

Ordered in Council
9.10.74 that the
resumption order
shd be held in
abeyance and
that the question
as to how far
the reclamation
wd injuriously
affect the pro-
posed harbours
at Vizagapatam
be referred for
the opinion of
Capt Taylor for
the Master Attend
Dept at Madras

C 30th Sept 74 R 5/10/74

Mr Secretary Forbes
Mr Secretary Forbes

11/1341

An opinion on this question has been
submitted direct to the Chief Secretary
in order to save loss of time – I have
now to request the Officer in charge
of the Secretariat will obtain and
to send this file with a copy of my
opinion to the Govt Colombo in order
to keep the record complete

H. S. C.

2. 10. 74

31st August 1874.

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1341

Re

The swamp land in Vyaga-
patam District granted to
Dr. Tresot for reclamation.

See Written

H. L. C.

The Honorable
Inr. Advocate Genl.

Will be pleased to advise as
requested in the accompanying
Order of Government dated
6 August 1874, No 991, —
Revenue Department. —

Prichard
Government Solr.

13-12-92

10 August 1874.

Re

~~Swamp~~ Land in the Vizagapatam District granted to the Right Revd Dr J. M. Tissot, for reclamation.

Rec'd 17 October 1874
& Dated
Registered
25-5-74.

The Honorable
the Advocate General

Will he please to advise as requested in the accompanying Order of Government dated 6 August 1874, No 991, Revenue Department.

Prichard
Government Solr

Revenue Department

No 1341.

Proceedings of the Madras Government
Under date the 17th October 1874

Read the following extract from the Advocate General's opinion dated 25th September 1874.

"My advice, therefore, is that the Collector be instructed to arrange with Dr Tissot in an amicable manner for the surrender of the rest of the term of years, leaving the question of the fulfilment or non-fulfilment of the conditions of this grant in abeyance, and proceeding on the ground that the Government considered that the Reclamation was proving detrimental to the Port.

Compensation should be tendered for all actual outlay, with interest thereon

Labor

13-12-02

labor bestowed, crops, groves and other increment of a like nature attributable to the Bishop's exertions the Collr. should point out to the Bishop that the grant having been asked and made on philanthropic grounds, and the public interests now necessitating its abandonment, he cannot with any sort of propriety, claim more than the actual loss involved; and that, moreover, he will in all probability get more and friendly compromise than if by a rigid assertion of his rights he drove the Govt. to take up the tract under the Land Acquisition Act.

His Excellency the Governor in Council resolves with reference to the foregoing extract to inform the Board for

Communication

Secr. omit the first part of this Para. - Board recollect the Cancellat. of former orders was determined on in Council - but only after the matter of the opinion of the Conservator of Ports - & pending his report not to proceed further. Secr. Lowndes to depricate a deviation from this direction for the future

13/12 Bd

G.O. 25th February 1873 No 603 P.W.D.
" 8th May 1874 No 567 R.D.
" 6th Augt 1874 " 991 "

Where the Govt. land is

Vide Govt. Order

Refer us to Consult.

Vide letter referred to

Vide Govt. Order Consulted

On that order Consulted

Govt. in the

Ground that the conditions had not been fulfilled

Communication to the Right Reverend Dr. Fisset that the order of the 8th May last No 567 so far as it directs the resumption of the grant will be held in abeyance before however authorizing the Board to act on the Advocate Generals advice His Excellency considers it desirable to refer for the opinion of the Master Attendant at Madras the question how far the reclamation (1) as already carried out and (2) as proposed will injuriously affect the proposed harbour at Vizagapatam.

2. Captain Taylor will have an early opportunity of visiting the locality, and with reference to the marginally noted correspondence will submit his views after consulting

consulting the local officials of all Departments on the subject.

Effd

3 To the Master Attendant & Inspector
14 " the Board of Revenue with Dr. Balfour's Dft. &c.
4 " the Government Solicitor
21 " the Public Works Dept.

[illegible] Value [illegible] are within the [illegible] to Council [illegible] advisable [illegible] to Council the [illegible] of the [illegible] as they [illegible] but to treat with Dr. T. for its abandonment on fair terms.

Ff 14/10

30-7-91

Revenue 1874 Depte

No 1341.

Proceedings of the
Madras Government
Dated 14 October 1874 --

ordered in Council
16th October 1874

c. 10/10/24
v. 15/10/74

242-242A.