

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 2933

Confidential

DATED 11th June

[Despatch Abstract.]

Comm^d to the P. W. D. of opinion of the
Hon. the Advocate General on notification
submitted by the Col^o of South Arcot for
the acq^y of land required for the diversion
of Nham Salub Canal in the limits of
C. Northampdy. Chidambaram Taluk.

BACK PAPERS.

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

FURTHER PAPERS.

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

Revenue (1897) Department.

CURRENT No. 4426

From

The Govt. Solicitor,
Madras

Order

No. 320

Dated 25th May 1897

Received 26.5.97

Registered 27.5.97

Enclosures 5

Spare copies

SUBJECT.

Forwarding opinion re.
Notifer. Submitted by the
Colr. of South Arcot for
the diversion of Khan
Sahib Canal.

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27/5

G.O.	No.	Department.	Date.
	492 2269		10-3-1) 5-5-57

FURTHER PAPERS.

G.O.	No.	Department.	Date.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following letters

from the Collector of Godavari, d/s^d April 1895,
Ref: No: 2286/Eng. of 1894:—

About 40 Cents of Carnam Service Inam in the Village of Magam, Amalapur Taluk, was taken up in 1889 for a Local Fund road by private negotiation. Racharla Ramayya, the owner of the land, misrepresented it to be a personal Inam and received a money compensation of Rs 120/-. Therefor. His brother, Subbarazadu, having subsequently brought this to light, the Sub Collector recovered the amount from Ramayya and proposed compensation in the form of a fresh grant of land. But Ramayya is not willing to accept compensation in any form other than money, and contends that the Inam is personal and threatens the Collector with a suit. The case has therefor, to be referred to the Civil Court for the determination of the question whether the land is a personal or Service Inam. As no declaration has been published in respect of this land, I have the honour to request that the Enclosed draft declaration may be published.

Order

Order No. 775 L. Mis., dt 3^d May 1895.

The Government does not consider that a Notification under Act I of 1894 can have retrospective effect so as to validate the irregular procedure of acquiring the land before any such notification issued. Nor would it be right to insert in this notification, the name of the original owner of the land who has already parted with his rights as being still in possession of such land. The proposed notification cannot therefore be published. The result of the suit which Ramayya proposes to file against the Collector should be awaited.

(True Extract)

[Sd.] J. F. Price,
Chief Secretary.

(True copy)

G. L. S. S.

Asst. Secy. to Govt.



Proceedings of the Board of Revenue

(Land Revenue),

Dated 25th March 1897,

No. 1135 Vis:

READ

G. O. Revenue Department, No. 492, dated 10th March

1897.

Resolution:- The Board is of opinion that there is no objection to the acquisition of the land under Act I of 94 or to compensation being given in the shape of other land under Section 31 (4) of that Act. It would be highly inconvenient if every occupation of land in anticipation of proceedings under the Act were treated as an irregular acquisition and brought under the ruling in G. O. No. 775 L. dated 3rd May 1895. Government officers have often to enter on land with the permission of the owner and on the understanding that it is to be eventually acquired under the Act. Such an occupation does not amount to acquisition of the land, but is merely an occupation by license, falling under the provision

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as to Licenses contained in the Easements Act, 1882. In accordance with Section 62 of that Act, a license is terminated either by the will of the grantor or by the operation of law. The passing of an award under Section 11 of Act I of 1894 and the taking of possession under Section 16 are legal acts the effect of which is to merge the license in the absolute ownership acquired by the State. It would thus appear that proceedings under the Act are a legitimate sequel of the occupation of land by license of the owner, when it is understood from the beginning that the land is required for the State.

/ True extract /

Deen
Secretary.

To
The Secretary to Government,
Revenue Department, with
enclosures returned.

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OPINION
Land Acquisition Act.
S. No. 2433 Rev. D. 11 June 1897
Notification submitted by the Collector of South Arcot,
for the diversion of Khan Sahib Canal, in the limits
of C. Kothangudy, Chidambaram Taluq (vide G. O. dated
5th May 1897, No. 2269 Mis Revenue Department)

I concur in the opinion expressed by the Board of Revenue, that the fact of an officer of Government having entered on land, with the permission of its owner (or supposed owner) on the understanding, that such land is to be eventually acquired, under the Land Acquisition Act, is no bar to the issue of a notification under section 6 of the Land Acquisition Act, 1894. In such a case, in order that the land may vest absolutely in Government, free from all encumbrances, as provided in Section 16 of the Act, it will be necessary to take the proceedings prescribed by the Act. It is immaterial, whether the occupation of the land, pending its acquisition under the Act, is "by license, falling under the provisions as to licenses contained in the Easements Act, 1882," or otherwise. If the meaning of G. O. No. 775 - L. Mis, d/3rd May 1895, be, that no proceedings could legally be taken under the Land Acquisition Act, for the acquisition of a land of which possession had already been irregularly obtained by Officer of Government, I am unable to concur in that view. The fact of Officers of Government being already in defacto possession of such land, whether such possession be permissive, precarious or unlawful, cannot disable the Collector from converting the same at the time of his award under section 11 into a Statutory possession under section 16 and thereby securing to Government an indefeasible title to the land. It is true as stated in the said G. O., that proceedings under the Act will have no retrospective effect, so as to validate any irregular procedure in relation to the land, prior to the issue of notification under the Act. The object of applying the provisions of the Act is not to validate any prior act of an officer of Government but to acquire the land absolutely for Government, free of all encumbrances, as against all persons having any interest therein,

Copy attached,
p. 3 & 4
above.

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either as owners or otherwise. The possession of the land by officers of Government until the making of an award under Section 11 of the Act, may or may not be lawful, according to the circumstances under which such possession commenced. But the continuance of such possession from and after the making of the award and all acts done thereafter - by Government on such land will, under section 16, be perfectly valid and unimpeachable. If the prior possession of the land and any acts done thereon were unlawful, the officers of Government concerned, - would not be exonerated from liability to pay damages for such unlawful possession or act, simply by reason of the subsequent acquisition of the land under the Act.

2. In the present case, I find, from the letter of the Collector of South Arcot d/27th January 1897, that the Executive Engineer, with the sanction of Government, (vide G.O. 646 J) entered into a transaction with one Kandasami Pillai, the person believed to be the owner of the land in question, which transaction was in fact one of exchange - between the Crown and the said Kandasami Pillai (vide section 118 of the Transfer of Property Act). The latter transferred possession of the land, for the purpose of enabling the Executive Engineer to divert the Khan Sahib Canal, and also bore the cost of such diversion, in consideration of the Government transferring to him the portion of the said Channel replaced by the diversion, and this exchange seems to have been effected without the execution of any formal documents. If Government be satisfied that Kandasami Pillai is the absolute owner of the land and that there are no encumbrances on it, it will not be necessary to take proceedings under the Act, and legal effect may be given to the transaction by the execution of the necessary instrument. Under the Transfer of Property Act, transfers of immoveable property in completion of an exchange have to be effected in the same manner as sales of real property under section 54 of that Act. The exchange may be effected by means of mutual conveyances each in consideration of the other by the execution of one instrument or by the execution of two instruments of even date. (vide Davidsons Precedents in conveyancing 3rd Edition Vol V Part 11 pp: 77, 80 & 82). In the present case so far as the completion of the exchange involves the

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transfer by the Crown (vide 21 & 22 Victoria Chap 106. S, 40 and 22 & 23 Vict Chap 41, S 1 & 2) of property (that is the portion of the Channel replaced by the diversion) such transfer is exempted from the operation of the Transfer of Property Act, by "the Crown Grants Act - 1895" and also from compulsory registration by section 90, clause (d) of the Indian Registration Act, 1877. But so far as the completion of the exchange involves the transfer by Kandasami Pillai of the land in question, the value of which is stated in the draft notification to be Rs 190, such transfer is governed by the Transfer of Property Act (S. 118 & 54), and by the Registration Act; and therefore the Crown could acquire no valid title to it, until the execution of a registered instrument; and until then, the legal estate therein will continue with Kandasami Pillai. If the Government prefer to acquire the land under the Act, and the local authorities are satisfied that Kandasami Pillai will not complicate matters by claiming payment of the compensation that will have to be formally fixed under Section 11 or by demanding a reference to the Court under Section 18, but would, instead agree with the Collector under sub section 4 of Section 31 to take the portion of the Channel replaced by the diversion, without claiming a refund of the cost of the diversion, there can be no objection to the issue of the notification submitted by the Collector under section 6 of the Act. I may mention that under sub section 2 of Section 6 there is no necessity to mention the name of the owner or occupier in such notification, for the purpose of securing from Government, the portion of the Channel replaced by the diversion; it would seem to be to the interest of Kandasami Pillai, that effect should be given under Sub section 4 of section 31 to the transaction of exchange already arranged though not yet legally completed, and it seems therefore unlikely that he will claim the amount of compensation that may be fixed under Section 11 or demand a reference to the Court under Section 18.

Madras
25th May 1897

V. Bhashyam Iyengar
Acting Advocate General

(True Copy)

Ernest Barclay
Government Solicitor.

(1897) Department

Ernest Barclay
Government Solicitor
Madras



Secretary to Government
Revenue Department
Colacacummo

11°320.

dated. 25th May 1897 }
Recd

Enclos 2

Forwarded with enclosures
with reference to the Order
of Government dated 5th
May 1897 11°2269. His
Revenue Department

Ernest Barclay
H. H. Morgan
Government Solicitor

11/6/97
11/6/97

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The Hon. Mr. Croze C.S.

The Hon. Mr. Balis C.S.

(as Hon. Mr. Balis might wish to see the opinion)

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See

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Read again L.O. 2269 11/5/97

also. Ch. 4426 4/97

L.O. (Min). no. 2933 of 11th June '97

communicated

to the Public

Works Department (Irrigation

Branch), with reference to

order no. 18 W d. 20.2.97.

11/6/97

11°320

So

The P.W. D. (Encl. 2) 11/5/97

Copy to the Local & Municipal Dept.

" " Board of Rev. (A.R.)

11/6/97

31 May 97

When given for copying _____
When copied _____ } 189
When examined _____
When signed _____

READ AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—

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