

Revenue (1897) Department.

MISCELLANEOUS.

G.O., No. 7/8

DATED 8th Feb'y 1897

[Despatch Abstract.]

Recording B.D. Pro. Commr. to all Commrs.
Ls. O. Commr. the resolution of the Govt. of India
regarding the disposal of lands compulsorily
acquired under the Land Acquisition Act
of 1894 but no longer needed for public purposes.

BACK PAPERS.

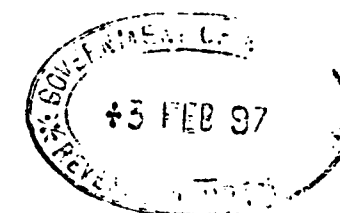
G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

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Revenue (1897) Department.

CURRENT No. 1039



8/2/97

From Board of Revenue
Land Revenue

Order No. 71848 dated 28 Feb 1897

Recorded

18/2/97

No. 22

Dated 18-1-97

Received 3-2-97

Registered 4-2-97

Enclosures

Spare copies

SUBJECT.

Coming to all collectors G.O. coming the Resolution of the Govt of India regarding the disposal of lands compulsorily acquired under the Land Acquisition Act (I of 1894) but no longer needed for public purposes.

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G.O.	No.	Department.	Date.

BOARD OF REVENUE (LAND REVENUE), No. 22, 18TH JANUARY 1897.

PROCEEDINGS OF THE BOARD OF REVENUE (LAND REVENUE).

Read—the following Government Order, No. 665, Revenue, dated 24th November 1896 :—

Read—the following extract from the Proceedings of the Government of India, in the Department of Revenue and Agriculture, No. 13—44—13, dated Simla, the 30th October 1896 :—

Read—

Circular No. 2—44—1, dated 23rd January 1895, asking for the opinion of Local Governments and Administrations on certain proposals regarding the disposal of lands compulsorily acquired under the Land Acquisition Act (I of 1894) for some public purpose but no longer required for such purpose.

Read—also the following replies to the above Circular :—

From the Chief Commissioner of Burma, No. 574—1-A-10, dated 27th February 1895.
 From the Chief Commissioner of Coorg, No. 363—18—95, dated 7th March 1895.
 From the Government of Madras, No. 1426, dated 5th April 1895.
 From the Chief Commissioner of Ajmere-Merwara, No. 475, dated 30th April 1895.
 From the Government of the North-Western Provinces and Oudh, No. 1088, dated 3rd May 1895.
 From the Chief Commissioner of Assam, No. 204, Revenue—1612-R., dated 14th May 1895.
 From the Resident at Hyderabad, No. 154, dated 4th June 1895.
 From the Chief Commissioner of Central Provinces, No. 3475, dated 8th August 1895.
 From the Government of Bombay, No. 7012, dated 11th September 1895.
 From the Government of the Punjab, No. 667, dated 31st October 1895.
 From the Government of Bengal, No. 861-T.R., dated 2nd November 1895.

Observations.—In the Circular cited in the preamble, the Government of India stated the principles which they suggested should govern the disposal of lands which, having been compulsorily acquired for public purposes, are no longer required for those purposes, and asked for the views of the Local Governments and Administrations on the subject. They pointed out that when agricultural or pastoral land was thus acquired, an injury was in most cases inflicted upon the persons who owned and cultivated the land; that public necessity justified the infliction of the injury; but that so soon as that necessity ceased to exist, considerations of equity and good policy demanded that, so far as might be possible, the injured persons should be replaced in the position which they formerly occupied. They therefore proposed that whenever land that had been compulsorily acquired for public purposes was released from occupation, the rights either of property or of occupancy which had been extinguished by the acquisition should first be offered to the persons from whom they had been acquired, or to their representatives; and that they should be so offered at the price at which they had been originally purchased, modified only on account of any change in the fitness of the land for agricultural or pastoral purposes that might have taken place during the term of Government occupation.

The replies received show that the views of the Government of India meet with general approval. Objections have however been raised on points of detail, and additions have been suggested, the more important of which will be briefly noticed.

2. It has been suggested that the same considerations should be extended to the case of land acquired by Government by private purchase. When the sale has been really voluntary, as when an estate has been purchased in open market, there seems

no reason why Government should be fettered in the disposal of its property if no longer required. But when land is acquired *for a public purpose*, so that the compulsory provisions of the law can be enforced if necessary, this fact must always form an element in the transaction, even if the purchase is concluded by consent; and the Government of India agree that in these cases also the principles supported by them should apply.

3. Some misapprehension seems to have arisen as to what was meant by the "representatives" of the original right-holders to whom the Government of India proposed that the first offer should be made. It is clear that if A owns 50 acres of land, of which Government acquires 20, and A then sells the remaining 30 acres to B, B does not thereby become A's representative in respect of the 20 acres which he never possessed. The representatives of A to whom the 20 acres should be offered when no longer needed are his heirs and successors.

4. There is, however, one case of frequent occurrence which forms an exception to this rule. It is thus stated by the Punjab Government:—

In a considerable proportion of the cases in which Government no longer requires land which it has expropriated, the land would be of so small an area or of such a shape that it would be practically of no value to any one but the owners of the adjoining land, *e.g.*, the site of a small abandoned police post on the side of a road or a stretch of abandoned road extending for a mile or so in length, but of extremely narrow width. If the persons from whom the land was acquired or their representatives are still in possession of the adjoining land, they should of course be given the right of pre-emption; but if they have sold the adjoining land to strangers, it is to those strangers the offer should be made, and in their case there would be no reason for offering them the land at less than the then market value.

These remarks have the entire approval of the Government of India.

5. Objection has been taken to the restoration of occupancy rights on the ground of the difficulties, both legal and practical, which are anticipated in working the rule, and because the permanent acquisition of land must be considered to have extinguished those rights. The latter argument applies with equal force to proprietary rights. As for practical difficulties, no doubt the heirs of the occupancy tenant will more often be undiscoverable than the heirs of the owner. But if they cannot be found, the rule will not be applied. When land is compulsorily acquired, it is often the actual cultivator who suffers the greatest loss; and in most cases the restoration of the occupancy right is quite as important as that of the proprietary right. The Crown Grants Act (XV of 1895) gives Government power to subject its grant of the latter to the revival of the former, and this power should be exercised wherever possible.

6. It has been suggested that the concession should be limited to some prescribed number of years. The native feeling of the persistence of rights in land is very strong, and commonly recognises no limitation in the matter; while a limitation to the second or third generation, as has been proposed in one province, might lead to difficulties in the case of joint ownership. The Government of India are therefore averse to fixing a limit of time, but they think that when the only representatives of the late owners are remote descendants or relations, the market value of the land may fairly be demanded. So, again, it has been pointed out that cases occasionally occur, such as one noted in the Punjab, where an encamping ground originally acquired for a small sum is now worth Rs. 50,000, in which it would be clearly inadvisable to offer the land at the price originally paid for it. On the other hand the cases are much more frequent in which the land that it is proposed to restore has been seriously deteriorated. When land has been acquired for the spoil-banks and brick-fields of railways its agricultural value is almost always impaired very greatly, and it would be unreasonable to ask the price at which it was originally purchased.

7. There is a general consensus of opinion that, in fixing the price at which the land is to be returned to the original right-holder, the 15 per cent. which was paid in addition to the market value should be excluded from consideration. This money represents the price paid for disturbance which no subsequent return of the land can undo.

8. The Government of India agree with many of the Local Governments consulted that there is no good reason for excluding from the operation of the general principles land acquired under section 49 (2) of the Act. The owner's action under this section is only occasionally contumacious; and the greatest hardship is often inflicted by the separation of a portion from the body of a holding.

Resolution—The Government of India desire therefore that whenever agricultural or pastoral land has been acquired for public purposes, whether by private purchase or by compulsory acquisition, and is no longer required for such purposes, the disposal of it may be guided by the following general considerations:—

In the first place all proprietary rights and all rights of occupancy which were extinguished by the acquisition should be first offered to the persons from whom they were acquired, or to their heirs if discoverable; the former (where both kinds of rights co-existed) being made subject to the latter under the provisions of the Crown Grants Act (XV of 1895).

In the second place the price at which these rights are offered should be the amount of compensation originally paid for them, less the 15 per cent. in excess of the value which will have been paid if the acquisition was compulsory. This price may be reduced, if necessary, on account of any deterioration that may have taken place in the fitness of the land for agricultural or pastoral purposes while it was in the occupation of Government, but it should not be increased, except in the case stated below, on account of any rise in its market value during that period.

In the case of plots which by reason of their size or shape are practically of no value to any one but the owners of the adjoining land, if those owners are not entitled to the first offer as above, they ought nevertheless to receive the first offer; but in that case there is no objection to asking the market value, though the reasonable offer of a neighbouring holder should always have the preference over that of an outsider.

The Superior Revenue authority will, of course, always retain and exercise discretion in the application of the general rule about the charge of cost price. Special cases will occur, and exceptions will be justifiable, as for example when the persons first entitled are remote descendants or relations of the original holders, or when the rise in the market value of the land has been so exceptionally great as to take the case out of the general rule. The Government of India lay down no hard-and-fast rule, but only a principle for general guidance.

It will be observed that the above principles apply to agricultural and pastoral land only, and not to building sites or town lands.

2. It will be for Local Governments and Administrations to issue instructions adapted to local circumstances in general conformity with the above considerations. Those instructions will be mere executive instructions; and the greatest care should be taken to avoid anything which might have the semblance of conferring a right, or of affording a basis for any claim either as against Government or as between private parties and to make it clear that the concessions in question are made as an act of grace, and are wholly within the pleasure of Government to grant or to refuse in any particular case.

Order.—Ordered, that a copy of the foregoing Resolution be forwarded to the Local Governments and Administrations noted on the margin for information and guidance.

Ordered also, that a copy of the Resolution be forwarded to the Finance and Public Works Departments.

The Government of Madras.
 " " of Bombay.
 " " of Bengal.
 " " of North-Western Provinces and Oudh.
 " " of Punjab.
 " Chief Commissioner of the Central Provinces.
 " " of Burma.
 " " of Assam.
 " " of Coorg.
 " Resident at Hyderabad.

Ordered also, that a copy of the Resolution, together with a copy of the Circular No. 2-44, dated the 2nd January 1895, be forwarded to the Foreign Department for communication to the Chief Commissioner, Ajmere-Merwara, and to the Agent Governor-General, Baluchistan.

(Signed) DENZIL IBBETSON,
Offg. Secy. to the Govt. of India.

Order—No. 665, Revenue, dated 24th November 1896.

Miscellaneous.

Communicated to the Board of Revenue for information and guidance.

2. The necessary amendments to the Standing Orders on the subject should be submitted for the approval of Government.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

To the Board of Revenue (Land Revenue).

RESOLUTION—No. 22, dated 18th January 1897.

Communicated to all Collectors.

2. Standing Order No. 11 is now under revision and a draft of the revised Standing Order will be submitted to Government shortly.

(True Copy and Extract.)

P. Seetharam
Secretary.

Final
To all Collectors (~~District~~ Officers—Tahsildars.)
„ Conservators of Forests.
„ Special Forest Settlement-officers.
„ the Forest Section.

Copy to the Secretary to Government, Revenue Department. ✓

REVENUE DEPARTMENT.

1897.

Board of Revenue

(Land Revenue),

MADRAS.

Printed January 30th.

Proceedings, No. 22, 18th January 1897.

Communicating to all Collectors Government Order communicating the Resolution of the Government of India regarding the disposal of lands compulsorily acquired under the Land Acquisition Act (I of 1894) but no longer needed for public purposes.

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Signed _____ } 189.

IN G.O., No. _____ DATED _____
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No. _____

IN TO O. No. _____

GOVERNMENT

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OF GOVERNMENT

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NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL

N.B.—

A = Copy in full.
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