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Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 4952

DATED 15th Dec 1898.

[Despatch Abstract.]

Forwarding to the Government Solicitor the draft deed of mortgage & trust proposed to be executed by the Secunderabad Gymkhana Club and requesting him to examine the terms of the deed & advise the Govt. in the matter.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
292	12/7/99						

Revenue (1898) Department.

CURRENT No. 5934

Order

From The Secretary Collector of the Nilgiris

Rly. Petn. **No.** 382/98

Dated 22nd August 1898.

Received 24 "

Registered 24 "

Enclosures

Spare copies

SUBJECT.

Gymkhana Club

Proposed Mortgage.

Informing that the Secretary's Remarks on the — by — will be submitted on consultation with the Honorary Secretary.

BACK PAPERS.

G.O.	No.	Department.	Date.
Mis	3229		4-8-98

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Ex Dy Tels. No. 382/98.

Nilgiris Collector's Office,
Dated, 22nd August 1898.

From

A. Butterworth Esquire
Ag Collector of the
Nilgiris,

To

The Secretary to Government,
Revenue Department.
Madras.

Sir,

Stone House Hill

With reference to Government proceedings dated 4th August 1898 No 3229 Government forwarded to me for remarks a draft indenture between the Ootacamund Gymkhana Club of the one part and Sir Frederick Price K. C. S. I., Col C. A Lindsell & Sir A. C. Bannerman of the other part relating to certain properties now or hereafter to be vested in the said Club.

2. At the present stage I find it impossible to make any observations on this document because, apart

from questions as to its exact legal Effect, I am in doubt as to the property to which it applies, seeing that the second Schedule of the document which should contain a description of the property dealt with has been left blank. I gather too, that a difference of opinion is not unlikely to arise among the members of the Committee of the Gymkhana as to how the second Schedule should be filled in. I am therefore asking the Honorary Secretary of the Gymkhana Club to furnish me with information as to the property to be entered in the second Schedule and until he replies I must defer the remarks called for by Government.

3. A Conversation with one of the Trustees who fully understands

the difficulties has raised a doubt in my mind as to the acceptability of the indenture in its present form to Government and that gentleman has suggested that a private Conference between some of the Members of Government and the Members of the Gymkhana Committee would be the best mode of determining the Conditions under which Government would assent to the mortgaging of the Club properties to the Trustees on behalf of the debenture holders.

I have the honor to be
Sir
Your most obedient Servant

A Butterworth
Asst Collector

Copy L
Encl III

1899
REVENUE DEPT.
No. 1
125

Revenue (1898) Department.

CURRENT No. 6483

From Deputy Collector of the Magisterial

Order R.G. No. 3882 of 1898.

No. SECRETARIAT DEPARTMENT

Dated 14th September 1898

Received 20th —

Registered 20th —

Enclosures 1. (Indenture of 47 pages).

Spare copies

SUBJECT.

Land

Gymkhana Club

Deed of trust & mortgage.

Returning with remarks the draft of —— to be executed by —— in respect of the A.B.C. Club premises, & the land decided to be leased to the Gymkhana

Received 26/9/98

BACK PAPERS.

G.O.	No.	Department.	Date.
	C No 5937		

FURTHER PAPERS.

G.O.	No.	Department.	Date.

R.G. No. Pcls 382/98

COLLECTOR'S OFFICE,

Dated, 14 September 1898.

FROM

A. Butterworth Esquire, Acr.

a/c COLLECTOR OF

the Nilgiris,

To

THE SECRETARY TO GOVERNMENT,

Revenue DEPARTMENT.

Stonehouse Hill.

~~Madras.~~

SIR,

I have the honor to address Government in continuation of my letter dated 22nd August 1898 No. R.G. Pcls 382/98 on the subject of the enclosed indenture.

2. I have ascertained from the Honorary Secretary Ootacamund Gymkhana Club that the document is intended to apply to two plots of land, namely,

(a) the land formerly held by the A.B.C Club, and

(b) the land which Government agreed to lease to the club in G.O. dated 8th July 1896, No. 319 Revenue

The question of the connection of the club with Hobart Park & the newly reclaimed upper Lake are distinct, and the Honorary Secretary requests that they may

Encl 1.
C.No. 5937

be dealt with separately.

3. The first plot of land was held by the A.B.C. club under an irrevocable license. The second piece is to be held on a lease for ninety nine years subject to certain Conditions, namely:—

(a) that rent be paid therefor;

(b) that the land be used exclusively as a Gymkhana ground;

(c) that no portion be sublet without the previous sanction of Government

(d) that Government may on breach of the Conditions, resume at once without Compensation.

The first plot has come into the possession of the Gymkhana club by voluntary agreement with the A.B.C. club. How far such an agreement was valid I cannot say. The general rule is that a licensee has no power to assign his interest (See 56 Easements Act, 1882). The advocate General in para 8 of the opinion above referred to, has defined the right of the licensee as "a personal right to the land for

* Advocate Generals opinion read in G.O dated 19th December 1890 No 1976 M. Mis.

Should challenge is unless the original purpose of this license is maintained. HM

the purposes of the original license" but has not stated whether a transfer of the land to a Cognate body would be a valid act on the part of the A.B.C. club. I presume, however, that Government has no disposition to challenge the transfer which has taken place.

4. The indenture is a rather Complicated document, but I understand its effect to be as follows:—

(1) The Gymkhana club having raised debentures, certain trustees are to be appointed and certain properly mortgaged to them as security for the debts incurred by the club.

(2) The property to be mortgaged Consists of the two plots of land mentioned in para 2 Supra and of the buildings & race course now or hereafter existing thereon.

(3) The trustees covenant to permit the club to enjoy the mortgaged property & to carry on therein the affairs of the club until certain events happen.

(4) These events are that the club fails to make payment duly on

on the debentures or that the club is insolvent or that distress is levied on the Clubs moveable property or that there is a breach of certain conditions afterwards specified in the document.

(5) Upon the occurrence of any of the said events the trustees are to have power to enter upon the mortgaged premises and to sell the same, and apply the proceeds in payment to the debenture holders.

(6) Further the trustees are to have power after entering as aforesaid upon the premises to carry on the affairs of the club, should they see fit to do so instead of selling the property.

(7) It is then provided that the club may with the consent of the trustees sell, lease or otherwise dispose of any part of the mortgaged premises; the Consideration receiued being either invested or devoted to the improvement of the property.

(8) The Trustees are to consent to the removal or disposal of the buildings on the land formerly belonging to the A.B.C club after the proposed new Race Stand and Pavilion have been erected.

(9) Among the Covenants made by the club is one giving the Trustees power on failure in the respect by the Club to repair and insure the mortgaged premises and to charge the cost upon the property.

(10) There follows a declaration that the Club has full power to grant convey & assign the mortgaged premises in manner aforesaid "with such assent as aforesaid" which I presume means with the assent of Government. The Club also Covenants that any other person claiming any interest in the property (a description which could cover Government) will do everything which the trustees require for more perfectly assuring the premises unto the trustees"

(11) The trustees are given authority to delegate their powers to whomsoever they choose.

5. It will be observed that the documents by means consistent with the conditions upon which the Government agreed to lease a portion of the property dealt with thereby, namely, the property to be specified in the second Schedule. What the powers of the holder of an irrevocable license are in respect of alienation I do not know, but the document constitutes a clear breach of the lease. That being the case the trustees (and the club with the trustees' consent) to have full power to sell, lease or mortgage in the event of a not very improbable contingency arising, but there is nothing in the document indicating that the premises dealt with therein are never to be used for any other purpose than a Gymkhana grounds. On the contrary, the trustees will have full power to sell the two pieces of land for building sites should they see fit to do so, and the interests of the public will thus be sacrificed to those of the Club debenture-holders. It seems essential to supply a clause declaring that every alienation made by the trustees shall be subject to the approval of Government. No doubt this will greatly diminish the value of the security in the eyes of the debenture-holders, but they ought in fairness to be informed of the exact state of affairs, and it does not seem possible for Government, in the public interests, to permit any alienation without its express sanction in each case.

I have the honour to be
Sir,
Your most obedient servant

Copied
Compared 25th
19.9.98

[illegible]
for A. Jaffrey

o

INDIAN TELEGRAPHS. Monthly Number.

Code Class.

To (Office) | From (Office)

Words.	Day.	Hour.	Minute.	Official Instructions.
8				

To (Person) | From (Person)

64 Word Form.

F.C 2.

Read. from | Sent to | I.N.

At Hrs. Mts. by | At Hrs. Mts. by

Telegraph Master.

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Read again G.O. 3229 dt 4.8.98.
" also letter from the Coll.r of Nilgiris dt 22. S. 98 (Cus. 5937/98)

Note.

In the G.O. first read above, the draft deed of mortgage and trust forwarded by the Honorary Secretary to the Ootacamund Gymkhana Club for the approval of Government, was referred to the Collector of Nilgiris for remarks. The Collector reports that he finds it impossible to make any observations at the present stage, because he is in doubt as to the property to which the document applies, the second schedule of the document which should contain a description of the property dealt with having been left blank, and that he is therefore asking the Honorary Secretary to furnish him with information as to the property to be entered thereon and that he must defer his remarks until he gets a reply. The Collector also states that a conversation with

one of the trustees who fully understands the situation, has raised a doubt in his mind as to the acceptability of the indenture in its present form and that that gentleman has suggested that a private conference between some of the Members of Government and the members of the Gymkhana committee would be the best mode of determining the conditions under which Government would assent to the mortgaging of the club properties to the Trustees on behalf of the debenture holders. Orders are solicited.

18/8/98
21.8.98
CS
1/9/98.

Secy
Revenue
6.9.98

D 1,000—8-4-97.

REVENUE DEPARTMENT.

Nos: 5937 & 6483 of '98.

From

The Collector of the Nilgiris

Dated 32nd Aug: and 14th Sep 1898.

FOR ORDERS.

In G.O. 3229, d/4th Aug: '98, the draft deed of mortgage and trust forwarded by the Honorary Secretary to the Ootacamund Gymkhana club for the approval of Govt: was referred to the Collector of the Nilgiris for remarks. The 2nd current read above contains the Collector's remarks.-

2. The deed is intended to apply to two plots of land, viz:-

(1) the land formerly held by the A.B.C. club.

(2) the land leased to the Gymkhana club by Govt: (Vide G.O.319, d/8th July '96 and 3757, d/19th Sept: '96).

As regards the first plot of land, the Advocate-Genl: was of opinion that the A.B.C. club held the land under an irrevocable license and that it acqui

Para 2 of Nos 6483

practically a perpetual right to the land for the purposes of the original license (Vide para 8 of the opinion in G.O.1976 M,d/19th Dec:'90).

It appears that this plot has now come into the possession of the Gymkhana club by voluntary agreement with the A.B.C. club. The Collector states that as no licensee has power to assign his interest, it is not clear whether a transfer of the land to a cognate body would be a valid act on the part of the A.B.C.club but presumes that Govt: has no disposition to challenge the transfer which has taken place.

The second plot of land was granted to the Gymkhana club on a ninety-nine years' lease subject to the following conditions:-

(1) that it shall be held subject to the payment of an annual rent.

(2) that it shall be used exclusively for the purposes of a Gymkhana ground,

(3) that no part of it shall be sublet without the previous sanction of Govt: being obtained in writing; and

FOR ORDERS.

Para 3 of C.No:6483 of '98

Section 56 of the Indian Easements Act V of 1882.

G.O. 3198 8.7.96.

Page 3 of the deed.

Pages 4 to 7 of the deed.

(4) that in the event of all or any of the above conditions being infringed, the Govt shall be at liberty to determine the lease and resume possession of the land without any liability to pay compensation.

3. In order to construct a new building and to improve its property, the Gymkhana club intends to raise a sum of Rs.50,000, on the security of the lands and the buildings thereon, by the issue of 500 mortgage debentures of Rs.100 each bearing interest at the rate of 6 per cent per annum and has therefore drawn up the draft deed of mortgage and trust in question. The provisions of the deed so far as it affects the plots of land referred to above, are as follows:-

(1) The plots of land with the buildings and race-course now existing or hereafter to be erected are to be mortgaged to certain trustees who covenant to permit the club to enjoy the property and carry on therein the affairs of the club but only so long as default is not

not made in the payment of principal money or interest secured by the debentures, or the club is not wound up, or distress is not levied on the club's moveable property, or the conditions entered into by the club are kept up.

(3) In case any of the above events should happen, power is given to the trustees to enter upon and sell the mortgaged premises and to apply the proceeds in payment to the debenture holders provided that previous notice is given to, and default is notwitnstanding made by, the club. It will, however, be noted that the purchasers are not bound to see or enquire whether any notice has been given or default has been made so that in the case of any impropriety or irregularity of sale, the sale will notwithstanding be valid and the club or its assigns will be entitled to damages only.

(3) After the trustees have entered on the mortgaged premises and until the whole of

Pages 7 & 8 of the deed.

Page 12 of the deed.

" 9 "

Pages 10 & 11 of the deed.

The attention of the Solr to the fact that Lot 1 must be found drawn specially to this clause. The premises & the trustees of the Club cd sell are kept for exchange on the ground. The land itself does not pass: only the right to use it for a special purpose may be lost or used

Pages 14 to 16 of the deed

Pages 20 and 21 of the deed.

Ditto - see above

Page 28 of the deed.

They can only assign with the consent of Govt. who will only so consent in case of a transfer to a similar body. But this is not "value" in the hands of the Club or the Trustees. Call for Sol's attention

Page 31 of the deed.

in this reference to this

" 32 "

of the premises are sold, the trustees can carry on the affairs of the club, should they see fit to do so, and conduct the same as they shall, in their discretion, think fit;

(4) The club can, with the concurrence of the trustees, sell, lease or otherwise dispose of any part of the mortgaged premises, the consideration received being either invested and kept as a security for the ultimate payment of the debentures or devoted towards the improvement of the property;

(5) It is declared that the club has full power to assign the mortgaged premises with the assent of Govt: and that all the said premises may therefore be quietly entered into, held and enjoyed by the trustees without any interruption by any person.

(6) When all the debentures and other charges have been paid off, the premises should be re-conveyed to the club

(7) The trustees may at any time delegate all or any of their powers to whom

whomsoever they choose.

4. The Collr: states that he does not know what the powers of the holder of an irrevocable license, are in respect of alienation-Whatever right the licensee may have to the possession or enjoyment of the land, he cannot have any power of alienation. As regards the land granted on the ninety-nine years' lease, he considers that the document constitutes a clear breach of the lease. He observes as follows:-

" Not only are the trustees(and the club with the trustees' consent) to have full power to sell, lease, or mortgage in the event of a not very improbable contingency arising, but there is nothing in the document indicating that the premises dealt with therein are never to be used for any other purpose than a Gymkhana ground. On the contrary, the trustees will have full power to sell the two pieces of land for building sites, should they see fit to do so, and the interests of the public

public will thus be sacrificed to those of the club-debenture-holders." He therefore considers it essential to supply a clause in the deed declaring that every alienation made by the trustees shall be subject to the approval of Govt:. Though the insertion of this clause will no doubt greatly diminish the value of the security in the eyes of the debenture-holders, it is submitted that in the public interests no alienation should be permitted without the express sanction of Govt: in each case.

Lett. 6322-S-98

5. In the first current read above, the Collector stated that a conversation with one of the trustees who fully understands the situation had raised a doubt in his mind as to the acceptability of the indenture in its present form and that that Gentleman had suggested that a private conference between some of the members of Govt: and the members of the Gymkhana Committee would be the best mode of determining the conditions

conditions under which Govt: would assent to the mortgaging of the club properties to the Trustees on behalf of the debenture-holders. ~~The interests of Govt: will, it is submitted, be sufficiently safeguarded by the insertion of a clause in the deed to the effect that every alienation by sale, gift, lease or otherwise of the property vesting by the trusts of the said deed or any of the assets of the club upon the winding up of the trust~~ ~~ees shall be subject to the approval of Govt:~~

Levy
4
10 x 1s.

C.R.
7/10/98

H.M.

With reference to the terms of the draft deed of mortgage & trust, Mr Winterton has asked me if the representatives of the Gymkhana might be favoured with an interview with the H.Ms before Sat goes down. The time is short. The file came up from Madras only today. Could H.M. arrange to have a few minutes before he goes down. Perhaps Mr Bliss would like the present & I would attend.

The Gymkhana must clearly understand that the Govt is giving them no right to perpetuity but only a license or easement to use the ground for particular purpose

C 10/10/98.

C 10/10/98

Revenue Secretariat,
10/10 1898.

My dear Arundel

Please see my note on file. Do you think you could arrange to give these gentlemen (Col Liardet &) an interview before you go down for Sat

Yours sincerely
A Fuller

conditions under which Govt would

Concession or promise to which Govt ought not to be committed.

It is a mistake to try and rush through delicate legal matters of this sort.

Yours sincerely

A Trumbull

The Syuhkana must clearly understand that the [illegible] case of [illegible]

11

No 137

Revenue Secretariat,

12th October 1898.

Dear Winterton,

I spoke to the Hon. Mr. Arundel about the wish of the Gymkhana representatives to interview him on the subject of the lease. Until the lease is finally revised by the Govt. Solicitor he does not think there would be any advantage in discussing the terms of it with him at present.

If the Committee should desire to offer any further remarks on the subject I shall be very glad to have them.

Yours sincerely,

Sd/ G.S.Forbes.

A. R. Winterton Esq.
Solicitor
Colaccumund.

Recd 13/10/98

To the undersecretary.

No further remarks with reference to the D.O. at page 11 have as yet been received from the Honorary Secretary to the Portcarnan Gymkhana Club on the subject of the draft deed of mortgage & trust proposed to be executed by the club. The provisions of the deed are summarized at pages 3 & 5 of the note.

Orders are solicited as to whether the papers may now be forwarded to the Law Solicitor for an examination of the terms of the deed.

C.P.R. 7/12/98.

Secy

It would perhaps be best to decide first what terms the Govt is prepared to accede to.

Ally 8/12/98

Send all the drafts to the Govt Solrs. Who will advise on the draft & point out the matters noted by me in the margin above

[illegible] 8/12/98

Please see draft submitted below.

C.P.R. 14/12/98

P.C.

