

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 535

DATED 6th Febry 99

[Despatch Abstract.]

Stating that Government cannot
express any ~~opinion~~ opinion on the terms of the
draft deed of mortgage ^{proposed} to be executed
by the Sakasamund Gyankhanna Chak
or become in any way a party thereto.

BACK PAPERS.

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

FURTHER PAPERS.

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

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18 4,000—18-10-98.

Revenue (1899) Department.

CURRENT No. 125.

From

*The Govt. Solicitor
Madras.*

Order

No. 16

Dated 6-1-99

Received 6-1-99

Registered 7-1-99.

Enclosures 3.

Spare copies.

SUBJECT.

*Returning the draft deed
of mortgage proposed to be
executed by the Coty Gymkhana
Club and advising Govt in
the matter.*

2 BACK PAPERS.

G.O.	No.	Department.	Date.
	4952	Rev	15-12-98

FURTHER PAPERS.

G.O.	No.	Department.	Date.

No. 16.

Madras 6th January 1899.

From,

Ernest Barclay

Government Solicitor

Madras.

To,

The Secretary to Government

Revenue Department

Madras.

Sir,

I. I beg to acknowledge receipt of Order of Government Revenue Department, dated 15th December 1898 No. 4952 with draft Deed of Mortgage and Trust from The Ootacamund Gymkhana Club to Sir J.F. Price and others, to secure Debentures for Rs 50000, and file of papers relating to the property to be mortgaged.

2. This draft deed was apparently forwarded to Government by the Acting Collector, Nilgiris, with his letter of 14th September 1898 - R.G. No. Petn: 382 and I must admit that I do not quite understand the object with which the deed was forwarded, unless it be, as stated in the last page of the Collector's letter, to warn the debenture holders of the risk they will run in taking up the Club debentures owing to the unsatisfactory title of the Club to the property it is proposed to mortgage. Government is no party to the proposed deed and I do not see why Government should be expected to protect the interests of intending debenture holders.

3. On the other hand, I see various reasons why Government should decline to express any approval of or opinion on the proposed deed. Apparently, the property it is proposed to mortgage to the Trustees consists, as pointed out by the Collector, of two plots, one plot of land which was held by the A.B.C. Club under what the late Advocate General, Mr. Spring Branson, considered an irrevocable license and the other to be held on a lease for 99 years subject to certain conditions which are mentioned by the Collector and the most important of which perhaps are, with reference to the present question, that no portion

of

of the land is to be sublet without the previous sanction of Government and that Government ^{may,} on breach of the conditions, resume at once, without compensation.

4. With regard to the first piece of land, the proposed Deed recites that such piece of land is held under an irrevocable license from the Government of Madras, but I am not aware that Government has ever admitted this to be the case. Upon receipt of Mr. Spring Branson's opinion, what Government did, by its order of 19th December 1890 No. 1976M. Mis, was to direct that the opinion be communicated to the Municipal Council, Ootacamund, and, in view of that opinion, His Excellency the Governor in Council resolved to modify so much of G. O. dated 23rd September 1890 No. 1411-A Municipal, as directed the Municipal Council to give notice to the A B C Club to remove its barriers and to leave to the Council to enter into negotiations with the A. B. C. Club as to the terms on which it would vacate its premises. What those premises were is an open question, whether the land or only the buildings thereon. I certainly do not read this as an admission by Government that the A. B. C. Club, now represented by the incorporated Ootacamund Gymkhana Club, held the land in its occupation under an irrevocable license with power of alienation and I am not aware that Government has ever recognised the absolute title of either the A. B. C. Club or the Gymkhana Club to this first mentioned piece of land.

5. As regards the second piece of land mentioned by the Collector, the proposed deed recites that the Club is possessed of or otherwise well and sufficiently entitled to such piece of land under an agreement or lease from Government. So far as I am aware this lease has never been executed, the Collector, in his letter of 14th September 1898, refers to this piece of land as to be held on a lease for 99 years and I see that, on the 1st April 1897, I returned the draft lease to the Collector at his request and it has not been returned to me for engrossment. If therefore the lease has not been completed, the Club has no title to this second piece of land and it can hardly be said that there has ever been

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an agreement between Government and the Club for such lease, as the terms of same do not appear to have been finally agreed upon.

6. The effect of Government approving of the proposed Trust Deed would be that Government would thereby admit the recitals therein contained of the Club's title to the lands and, for the reasons stated above, I do not understand that Government is prepared to go this length as regards either piece of land. I would point out also that there is a recital in the proposed deed that Government has assented to the Club entering into that deed, so that, if Government did express any such assent, it would assent to and admit the Club's title to and right of alienation of both pieces of land.

7. With regard to the terms of the proposed deed and referred to by the Collector in his letter of 14th September 1898, I think it is quite immaterial what terms are inserted in the deed provided Government does not approve of or assent to it. The Club can give the Trustees no better title to the lands comprised in the deed and can give the Trustees no greater rights over those lands than the Club itself has, so that it is of no consequence really what the deed contains provided it be not assented to by Government.

8. As to the covenant for further assurance referred to in para 10 of the Collector's letter, viz the covenant by the Club that any other person claiming any interest in the property, (a description which the Collector says could cover Government) will do everything which the trustees require for more perfectly assuring the premises unto the trustees, I need hardly say that such a covenant by the Club cannot affect Government in any way, provided, of course, that Government does not express its approval of the Deed. If the Club chooses to enter into such a covenant it will do so on its own responsibility.

9. In G. O. No. 4952 of 15th ultimo it is stated that the only premises which the Trustees or the Gymkhana Club may sell are, at the most, temporary erections on the ground and that it is not proposed to give the Club any right of absolute disposition of the land itself, as the Club will possess only the right to use the land for special purposes and may hold the land only so long as it is so used. This I gathered, from the papers sent to me, was the position taken up by Government

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and it is ^{an} excellent reason for Government declining to approve of the proposed deed.

10. I would suggest therefore that the draft deed be returned to the Collector and that he be directed to inform the Club that - Government declines to approve of it or to express its assent - thereto and that if such a deed be executed and debentures issued, it will be done at the risk of the Club, the Trustees and the - Debenture holders, as Government declines to recognise the right of the Club to deal with the lands comprised in the draft deed.

11. I return the papers sent me and

I have the honor to be
Sir

Your Obedient Servant

Ernest Barclay

Government Solicitor.

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LIST OF ENCLOSURES.

G. O.	No.	1458	Fl	dated	1- 9-1874	(copy)
G. O.	No.	2023	Fl	"	23- 12-1882	(copy)
G. O.	No.	892M	L & M	"	7- 9-1887	(copy)
G. O.	No.	1411A	/ . M	"	23- 9-1890	(copy)
G. O.	No.	1630A	/ . M	"	3- 11-1890	(original)
G. O.	No.	1976	M	"	19- 12-1890	(original)
G. O.	No.	2517	Judl.	"	4- 12-1895	(original)
G. O.	No.	319	Rev:	"	8- 7-1896	(copy)

Letter from the Collector of the Nilgiris d/22nd August 1898
No. R.G.Petn:382/98
(original)

do do do d/14th September 1898
No. R.G. Petn:382/98
(original) with the
enclosure.

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Rec

C No. 125 of 99

From The Government Solicitor
Dated 6th January

1899.

FOR ORDERS.

Para 2 of the current

With G.O. 4952 of 15th December 1898, the draft deed of mortgage and trust proposed to be executed by the Pokamund Gyanthana Club was forwarded to the Government Solicitor for favour of opinion and the current read above contains his advice on the matter. He states that he does not quite understand the purpose for which the deed was forwarded to Government. It will be seen from the note under G.O. 3229 of 4.8.98 that the Honorary Secretary to the Club has forwarded the deed for obtaining the assent of Government mentioned in the recital of the deed referred to in para 6 of the current.

2. The Government Solicitor, however, is of opinion that there are various reasons why Government should decline to express any approval of or opinion on the proposed deed.

He says that the absolute title of either the A.B.C club or the Gymkhana club to the plot of land formerly held by the former, has not ever been recognised by Government and that the Gymkhana club has no title to the piece of land to be held on a ninety-nine years' lease till the terms of the lease are finally agreed upon. The execution of the lease deed is, however, ^{only} pending the determination of the extent of land to be included in the lease.

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3. The Government solicitor suggests that the deed may be returned to the club and the club informed that the Government declines to approve of it or to express its assent thereto and that if such a deed be executed and debentures issued it will be done at the risk of the club, the trustees and the debenture holders, as Government declines to recognize the right of the club to deal with the lands comprised in the draft deed.

Para 10 of the current.

G.O. 3029 put up with the file as Malabar Park

Orders are requested. accd
~~Relate to the Government solicitor~~
 17.1.99

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Hm.

I think we sh^d write to the club in the sense of our solicitor's advice.

A.B. 18/1/99

I have no objection to offer, but I think His Excellency & the Hon. Mr. Arundel sh^d. see this as I am almost a stranger to duty H.S.
 20-1-99-

offici

Have draft from H.S. approval

Please see draft below.

CD 12/1/99

Rey please 21/1

Levy

Rough draft for approval

28/1/99

Type the draft & return to me

20/1/99

Submitted below.

CD 1.2.99

Issue as revised after H.S. has handed it

20/1/99

19.1.99 20.1.99

P. Read again G.O. 3229, d/4th Aug: '98.

P. " " 4952, d/15th Dec: '98.

P. also letter from the Govt: Solicitor, d/6th January 1899 (C.No: 125 of '99)

G.O. (Mis) No: 535 d/6th *Feb* 1899

The Honorary Secretary to the Ootacamund Gymkhana Club will be informed that neither the "A-B-C" club nor the Gymkhana club to which the charge of land mentioned in the first schedule of the draft deed of "mortgage and trust" forwarded with his letter was transferred, has an absolute title to it, nor ~~does~~ *does* the *that it was occupied under an irrevocable* Government admit ~~that the Gymkhana~~ *license with power of alienation; nor with reference to the land described in the second* Club ~~has~~ *at present until the 99 years'*

2 schedule has the Gymkhana

title. Moreover lease is executed any ~~right to the land~~ *under the contemplated lease* described in the second schedule of the draft deed. ~~Even after the execution of~~ *the lease* the Gymkhana club will have *no right of absolute disposition of the land* ~~only the right to use the land referred~~

to

H & the Governor

*A. 9H
3.2.99*

*40 3/9
57 99*

*E
June 15 - day
6-2-99*

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to for special purposes and ~~may~~ ^{do} hold
them only so long as ~~they~~ ^{do} are so used.

In these circumstances, the Government

regrets to be unable to express any

opinion upon the terms of the draft deed

or to become in any way a party thereto.

~~But should the deed be executed and the~~
~~debentures issued, it will be done at~~

Any action taken by the Club must be
the risk of the club, the trustees and
entirely up to their own responsibility
the Debenture holders.

The copy of the Draft deed
forwarded with the collector's letter
will be returned.

8/2
1/4/9

To the Honorary Secretary,

Ootacamund Gymkhana club.

Copy to the Collector of the Nilgiris

(with the Solicitor's letter in full) &

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

READ AGAIN G.O., No.
189 ,

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DETAIL.

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

N.B.—

A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.