

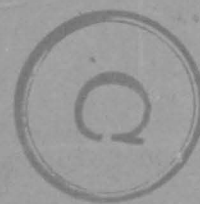
Legislative (1899) Department.

ORDINARY PRINTED.

G.O., No. 30

DATED 11.3.98

INDEXED.



[Despatch Abstract.]

Madabar Compensation for Servants' Improvement Bill

Communicating to the Select Committee
on the — Memorial from the Landowners
of Calicut on the subject of that bill

VE 15 Copies of the bill alone by Monday noon.

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Government {1899} of Madras. LEGISLATIVE.

Order complete. 35
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Recd.

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} 1899.

Enclosures

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G.O., No. 30, 11th March 1899.

Malabar Compensation for Tenants' Improvements Bill.

Communicating to the Select Committee on the — memorial from the Zamorin of Calicut on the subject of that Bill.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper:—

From the Zamorin of Calicut, to His Excellency the Governor of Fort St. George,
dated Kottakal, 27th February 1899.

MAY IT PLEASE YOUR EXCELLENCY,—I solicit your Excellency's permission to briefly state my objections to the Bill now before the Legislative Council to amend the Malabar Compensation for Tenants' Improvements Act, I of 1887. The litigation which I have been obliged to institute from time to time since the present Act came into force has taught me that so far from being a defective protector of the rights and privileges of the tenantry, the present law has helped this class at the expense of the landlords and has in many ways proved a successful agency in helping tenants to defy and even harass the landlords and fritter away the interests of the latter without fear of being legally brought to book for so doing. I do not at all intend to assert that the condition of the tenant in the present state of the law is all that could be desired, but I am most confident that if Malabar public opinion is deferred to and the present Bill is placed for a more reasonable length of time on the anvil of discussion, the Government will obtain the most convincing proof that in its present shape the Bill would be a most harmful and partial instrument to put into operation. I shall without further generalisations ask leave to record a few of the more serious objections to which some of the sections of the Bill are open.

To begin with, I do not think that section 4 (1) sufficiently safe-guards the interests of the landlord, though its purpose seems to be such. In the explanation those works which substantially diminish the value of any other part of the landlord's property in the tenant's holding have been excluded from the list of "improvements." But a work executed by a tenant may cause damage to his landlord's property leased out to other tenants. He may, for instance, construct an aqueduct and divert water which used to irrigate many holdings under his landlord, and employ it either entirely to enrich his own holding or for irrigating, along with his own, plots of land adjoining his but belonging to other landlords. The damage thus done to the landlord's property would be heavy, and it would be unfair to make him suffer losses on the one hand and on the other pay compensation for the so-called "improvements."

Section 4 (2) (a) and (b) are also, I think, open to serious objection, for it would only have the effect of adding to the opportunities which tenants now enjoy of putting up the most inconsistent buildings or constructing practically useless tanks, reservoirs, &c., and then defying the landlord who either cannot or on principle will not pay prohibitive compensation for improvements for which the janmi or subtenant would find absolutely no use and obtain little if any price. Under the present law many landlords are thus imposed upon by tenants who entertain reasonable apprehension of being sued for eviction because they do not choose to act fairly by their janmis. I submit that it is most difficult to see how clause (c) in the same section can be justified. What possible claim could a tenant have to be compensated for trees that have grown spontaneously? I can understand his being entitled to the use of the produce of those trees during his lease, but since he had no hand whatever

in growing the trees, he should not be allowed compensation for them. After his lease has run out, the subsequent tenant will enjoy the produce of those trees and thus, though it was the janmi's land that spontaneously gave those trees, the real owner actually gets a most trivial return from them. I venture to submit that the entire question of maintenance and improvements requires to be most carefully threshed out before the proposed legislation is put into effect. Such important matters as the deterioration of the janmi's property, the inevitable decrease in the yield of old and decaying trees, and various other important details have plainly not been made the subject of impartial treatment in the Bill.

Section 6 (2) is most objectionable. The legislature should not forget that a large proportion of Malabar landlords are really poor save for the possession of their lands. Even in the case of the rich minority it is only in the rarest of cases that they can pay ready cash. To give the tenant power to distrain the janmi's belongings in satisfaction of a decree for improvements would in the first place result in placing poor landlords at the mercy of influential and rich tenants. In the second place, the operation of the section would mean the slow but certain extinction of a large proportion of the landlord population, for, with strong inducements to provoke suits for eviction, and with a law giving generous compensation and furnishing the best means for recovering that compensation, the result would be that the relation between landlord and tenant would become very unpleasant driving both sides to resort to all possible devices to protect themselves and accomplish the ruin of the other side.

I also venture to submit that most of the provisions in section 9 have been founded on a basis that has excluded most of the janmi's interests. There is no uniformity in the methods that have been selected for the valuation of different kinds of improvements. There is no finality in them either and if in a question of compensation arising in a court the janmi manages to escape from Seylla it would be only to fall into Charybdis. In the matter of calculating the compensation on immature and old timber trees, too much consideration is attached to the tenant's interests. And as for the provision to give the tenant 6 per cent. interest, it is not at all a defensible arrangement. The tenant already gets more compensation than he ought to get. He derives from the land various benefits for which he pays nothing. This should settle the matter against granting any interest on the value of improvements. I venture to think that it will not fail to strike the present Select Committee that section 9 cannot be allowed to stand without being subjected to a severe process of amendment. I should mention here that even section 8 of the Bill stands in the greatest need of being remoulded on broader principles. One very important fact to be kept in view in determining the actual and future value of a tenant's improvement is the inability of a janmi to obtain an augmentation of his *michavaram* until the lease has expired and is to be renewed. The Government, I may point out, secures its share of any increase in produce, by its annual revision of the assessment demand. The tenant, of course, enjoys the increase unmolested. Only the janmi must forfeit his share of the increase. When regard is had to the fact that the principle of agrarian legislation is that the king, the proprietor, and the tenant should share the profits of cultivation in equitable proportions, this impotency of the landlord to urge his right to share in the increased produce cannot fail to evoke sympathy for him. It is, therefore, more than strange that the law should propose to further fetter an already fettered individual.

I respectfully submit that it would be productive of an incalculable amount of confusion if the annuity schedule in the form drawn up or in any cognate shape is allowed to enter in the Statute Book. The courts would be constantly subjected to much unnecessary trouble in abiding by this schedule. There would be neither uniformity nor finality in judicial decisions. And what is most unsatisfactory is that a tendency to take too generous a view of the amount of prospective compensation is likely to be created, for the schedule provides elaborately for coconut trees that are supposed to keep on bearing for a much longer period than the real maximum bearing life of coconut trees. The Bill itself would appear to be somewhat suspicious of the practical value of this schedule, for the schedule is not made applicable to jack trees

and the question of its amendment from time to time is provided for in the following section. I take the liberty to solicit that these sections which I refer to in the present paragraph may be completely recast and drawn up on a more workable and just basis. Section 15 is also one-sided in the matter of affording compensation for trees planted in excess of the standard. I should think it is axiomatic that compensation should not be given for trees which, being over-planted, have the effect of permanently injuring the soil on which they are grown. In cases of over-planting, equity should suggest not compensation for the excess, but a reduction on the compensation for the standard number of trees. I pray that this unwarranted provision in the Bill may be unconditionally omitted, lest the soil of Malabar should suffer more injury in addition to that which it is now already suffering. Even the present rate of compensation is, without exaggeration, munificent. If the proposed provision is to stand, the tenant would jump at the prospect of being compensated even on a reduced scale for over-planting, for even on that reduced scale, he would make a profit out of the business. I do not think section 16 is fair to the landlord. The contracts which the section has in view are not the result of anything but voluntary action on the part of the tenant and the law should insist on the fulfilment of obligations voluntarily entered into.

I have dealt only with some of the more serious defects in the Bill. I respectfully solicit that the Bill may not be passed as speedily as is proposed and that the interests of the janmis and the views they have to advance may be carefully considered.

Transferred to the Legislative Department for communication to the Select Committee on the Bill.

Endt. Mis. No. 961, Revenue.

FORT ST. GEORGE,
8th March 1899.

(By order.)

(Signed)

N. E. MARJORIBANKS,
Ag. Under Secretary to Govt.

ORDER—No. 30, Legislative, dated 11th March 1899.
Communicated to the Select Committee on the Malabar Compensation for Tenants' Improvements Bill.

(True Extract.)

H. TREMENHEERE,
Secretary to Government.

To the Select Committee on the Malabar Compensation for Tenants' Improvements Bill.

Revenue (1899) Department.

CURRENT No. 1596

From

The Gamonin of Calicut

No.

Endt. Mis. No. 961,
Order

Transferred to the Legislative
Department for Communication
to the Select Committee on the Bill.

(By order)

N. E. Marjoribanks

Ag. Under Secretary to Govt.

Dated 27th February 1899.

Received 5th March 99.

Registered 6th March 99. 9-3-99

Enclosures

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SUBJECT.

Order No. 30 of 11-3-99
P.S.

Raising certain objections to
Communicated to the Select the Bill to amend the Malabar Com-
Committee on the Malabar Compensation for Tenants' Improve-
ment Act I of 1887 soliciting

11/3/99

10/3/99

Select Committee on the Malabar
Compensation for Tenants' Improvements Bill

that it may not be passed into law
as speedily as is proposed and that the
interests of the gamonins and the views
they have to advance, may be care-
fully considered.

Exd. A. Rungasawmy Aiyangar.

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