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[Despatch Abstract.]

Malabar Compensation for Tenant Improvements Bill.

Comm. to the Select Committee on
the — a memorial from the
Kerala Mahajana Sabha, ^{balicut,} ~~offering~~
Certain remarks on the Bill protesting
against the principles & details of the —
as introduced.

114/10/98

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G.O., No. 33, 14th March 1899.

MARCH.

Malabar Compensation for Tenants' Improvements Bill.

Communicating to the Select Committee on the — a memorial from the Kerala Mahajana Sabha, Calicut, protesting against the principles and details of the — as introduced.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper:—

Memorial from M.R.Ry. K. C. MANAVIKRAMAN RAJAH, Honorary Secretary, Kerala Mahajana Sabha, to His Excellency the Governor of Fort St. George, dated Calicut, 23rd February 1899.

MAY IT PLEASE YOUR EXCELLENCY,—We, the members of the “Kerala Mahajana Sabha,” an Association chiefly representative of the landed interest in Malabar and whose views have always received a generous consideration at the hands of the Government of Madras, beg to take this opportunity of offering an earnest and emphatic protest, in the interests of landlords and tenants alike, against the principles and details of the Malabar Compensation for Tenants’ Improvements Bill which the Hon’ble Mr. H. M. Winterbotham has introduced into the Madras Legislative Council.

2. We feel it our duty to voice the feeling of anxiety and insecurity widely prevalent throughout the district at the prospect of so imperfect a measure being hastily passed into law. We understand that the Government of India is anxious for its speedy enactment, because it is of opinion that such a law would prevent the recurrence of those bloody outbreaks of lawlessness which have been the bane of this district for more than half a century. On this subject, we have submitted our views more than once before, and we may be permitted once more to assure your Excellency that these outbreaks, occurring as they do generally during the *ramzan* month, are traceable almost entirely to religious fanaticism and ignorance and that, though their edge is no doubt sharpened by destitution and starvation, they are never provoked by agrarian discontent, by unjust eviction, or by *janmi* oppression,—as seen also from the fact that Hindu tenants never join in these outbreaks nor have Mappilla *janmis* been the victims of them. We may take this opportunity to suggest that the real remedy for Mappilla riots should be sought, not in the enactment of an ill-considered law which upsets all existing relations between the landlord and the tenant and annuls all existing contracts, and which both parties will take long to understand, but in steady efforts for the amelioration and education of the Mappilla community itself, in the opening up of roads and a railway through the jungles of the congested taluks of Ernad and Walavanad, and in the relaxing of the Forest Laws in those taluks where their rigour is keenly felt by the poorest classes.

3. We beg humbly to protest against the policy of introducing hasty changes in a law which has not been tried for even a dozen years. Madras Act I of 1887 has no doubt proved very imperfect in the working. But its imperfection is in its vagueness, and not in the inadequacy of the compensation awarded. It provides a sufficient rate of compensation, a rate which tenants have invariably accepted with satisfaction, except where indefiniteness in a language employed has led to Munsifs granting in rare cases very small compensations. Malabar is essentially an agricultural district and here, more than in many other districts, land is considered by the people as the only safe investment. The effect, therefore, upon the Malabar popular mind which accepts custom as sacred and divine, of frequent changes in land legislation, can easily be imagined. It is our honest opinion that the question of Tenants’ Improvements will not be ripe for consideration and cannot be rightly handled until the existing law has been given a sufficient trial and its defect precisely gauged from a close study of its working.

4. Apart from the numerous imperfections and inaccuracies which are patent to every superficial reader and which we shall not endeavour to detail, the present Bill is characterised by a pronounced and emphatic tendency to benefit the tenants at the expense of the landlord. A prosperous landlordry is as much a necessity for the well-being of an agricultural country as a contented tenantry. But the result of the present Bill, if passed into law, would be to place the landlord entirely at the mercy of his tenant. We shall make a few observations to illustrate our position.

5. Section 4 (1) of the present Bill lays down “any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let” as an “improvement” which has to be paid for at eviction. An explanation is appended to it to the effect that no such work will be deemed an improvement “if it substantially diminishes the value of any other part of the landlord’s property in the tenant’s holding.” The provision in this explanation is very inadequate, unless the words “in the tenant’s holding” are dropped. It is often possible for a tenant to improve his own holding at the expense of other adjoining property of his landlord. Suppose a tenant leases out an area which contains a head of water which irrigates also other lands belonging to his landlord. The tenant cuts off the water entirely from those lands and utilises it entirely for his own holding or diverts it to a neighbouring field which he holds under another landlord. Such an “improvement” would be effected only to the detriment of other property belonging to his landlord, and yet the latter, if, with a desire to save his lands, he endeavours to evict his tenant, will, in addition to the losses already sustained, have to pay the cost of the “improvement.” If at the time the tenant entered upon his lease, the landlord had made any contract with him preventing the latter from having a monopoly of the water, section 16 of the Bill nullifies any such contract and gives the tenant complete freedom of action.

6. This latter section, which robs the landlord of all freedom of contract with his tenant, can in no way be justified. We strongly recommend that this section should be expunged altogether and that the following words be added to the end of section 4 (1): “and which is not inconsistent with the terms of the agreement of letting.” It is also necessary that the burden of proving the suitability or consistency should lie with the tenant.

7. Section 4 (2) (a) tends distinctly to place a poor landlord in the grip of his rich tenant. It will be open to the latter to provoke his landlord to eviction either by declining to pay his dues regularly or by neglecting the holding. The holding may have been leased to him for purely agricultural purposes, but the section enables him to build a costly dwelling-house and buildings appurtenant thereto and thus successfully defy the landlord, who cannot pay the enormous compensation he demands. If this clause is to stand, it should at least be laid down that the dwelling-houses and other buildings should be proportionate to reasonable requirements and the extent for the holding. We submit that agricultural and domestic purposes should not be linked together. If necessary, a special section could be inserted involving documentary permission to build a dwelling-house, its out-houses, tanks, wells, &c., for domestic uses.

8. The unfairness of 4 (2) (i) should be patent. The tenant enjoys the full benefit of the trees referred to therein, though he never planted or reared them. For such trees as have spontaneously grown the landlord gets no rent from his tenant, though the yield of such trees should more properly go to the landlord to whose soil they owe their growth and fertility, than to the tenant who has spent on them no capital or labour. It is therefore unjust to make the landlord pay compensation for such trees. The trifle which the protection and maintenance of those trees may cost is amply compensated by the yield which they bring in the shape of fodder for cattle, material for fencing, roofing, fuel, &c. Moreover while the landlord’s *michavaram* is calculated only on the capacity of the soil to produce fruit or garden crops, every holding always yields much unconsidered return to the tenant in the shape of bamboos, pasturage, &c. It must be remembered that custom has fixed the landlord’s rent very low, and that the capital which his land represents would yield a greater return if invested in any other way. Nor should it be forgotten that, where a holding

consists of a proportion of immature trees, which the tenant must tend and nurture for a time before they come to bearing, there is always a condition in the lease—perhaps an unrecorded condition, but a really existing one—that the landlord must forfeit a portion of his *pūrappad*.

9. Section 5 is, at best, a superfluity and with regard to the words, “notwithstanding any custom to the contrary,” we would only appeal to that judicious policy which Government has always adopted towards the established customs of the people—customs which are so often closely knit to their religious life and feelings.

10. Section 6 (2) will, we are afraid, be productive of incalculable mischief. It tends to convert the privileges of a landlord into a curse. Many of the *janmis* of Malabar are poor and can sell on command much ready cash. The tenants or *kanomdars* are often men of some wealth who advance money to the landlords on the lease of the land. Such a tenant, if he desires to invest his capital in a more paying concern, may wantonly tease his landlord, by neglecting the land or failing to abide by the terms agreed upon or refusing to pay the *michavaram*, or the customary renewal fee, and goad him to seek relief in a civil court. If the court decrees a large amount of compensation to be paid, which the landlord is unable at once to make good, section 6 (2) will enable the tenant to get the decree executed and get the landlord's goods attached and sold in satisfaction of his claims. It is obvious that when the decree for ejection has been passed, it should be the landlord's interest to get it executed. But if he is unable to do so because of his inability to pay the compensation, the tenant is the gainer, for he can remain on the holding, enjoying its produce paying nothing to the landlord and being the landlord himself *de facto*. It is cruel to permit the tenant to harass the landlord and get his goods and property attached, simply because he has no ready money to pay the exorbitant compensation decreed by the court.

11. Section 6 (5) affords another small instance of how the Bill, while scrupulously attentive to the interests of the tenant, deliberately over-rides and disregards those of the landlord. For every so-called “improvement,” even in cases where it is actually detrimental to the landlord's property, the landlord has to pay compensation. But if there are any trees in the holding for which, according to the Bill, compensation cannot be paid, the tenant is empowered to cut them down. The tenant, therefore, is permitted during his tenure of the holding to plant and grow on it as many trees as he pleases—there is absolutely no restriction with regard to overplanting—and cut them down when he surrenders it. We respectfully urge that this would be a case in which compensation is due to the landlord. The tenant alone enjoys the benefit of those trees; but it should be remembered that the landlord's soil has made a very important contribution towards their growth and usefulness. Is the only return to the landlord to be an inevitable prostration and deterioration of roots of the trees removed? Either he should be allowed compensation or the trees should not be removed.

12. In fact throughout the Bill is apparent an entire want of fairness as between the landlord and the tenant. We contend that if the tenant is entitled to compensation for improvements effected the landlord is equally entitled to compensation for deterioration caused. A tenant may, by his carelessness, actually reduce the productiveness of the land and restore it to the landlord much poorer than he received it; but the law allows no compensation to the landlord for the destruction of his property. In the matter of improvements, too, it should be remembered that the tenant's capital and labour would not in themselves suffice: the quality of the soil, of which the landlord is the owner, is a very important factor. If the Government assessment is liable to be increased in consequence of improvements and increased yield, the landlord is equally entitled to an increased rent. But no such increase is claimed. The rent generally in this district, chiefly in *kanom* and *kovilagom* tenure, is fixed very low and during the twelve years' tenure the lessee gets the full benefit of any increased yield from his holding, whether such increase was the spontaneous work of nature, that is, due to the quality of the soil, or the result of his exertions.

It is only when the time for the next renewal comes that the landlord can ask for any higher rent. The unfairness of the existing law itself ought to be apparent on a slight consideration. Suppose a *janmi* leases out a waste land or a one-crop land. If the tenant converts the waste land into arable or the one-crop into a two-crop land within the period of his lease, the profit is shared between him and the Government. The *janmi* gets nothing, and if at the termination of the lease, he claims a renewal fee or a rent which the tenant is unwilling to pay, the only course open to him is to evict the tenant and in doing so pay him a compensation which would in many cases, according to the rates prescribed in the schedules, amount to the purchase value of the land and in some cases actually exceed it, thereby rendering his *janmam* title valueless. Even as the law stands at present, if the tenant is prosperous, the landlord has no means of participating in his prosperity; while if he is not prosperous or if he hopes to prosper better by leaving the land, he has it in his power to court an eviction, for example, by refusing to pay the usual *michavaram*, and then making the landlord pay him an amount as high as if he were purchasing the land from his tenant. The extreme unfairness of the situation must be apparent to all, especially in the light of the Proclamation of 1803 which adjudges to the landlord a third of the produce equally with the *sircar*. The *sircar* seldom fails to get its third, but too often all that the *janmi* now gets for his land, especially where the tenant is learned in the law, is the necessity to go to a court of law and the demand of compensation to his evicted tenant. Custom has fixed the rent very low; but if the law recognised the *janmi's* just title to a third of the produce, eviction suits would rarely exist.

13. It is true that in some cases the compensation awarded was by no means high. The proposed legislation will no doubt obviate the possibility of it, but in doing so it will reduce the landlord's title to nothing. It will effectually deter him from leasing out waste lands and as to lands already leased out for cultivation, it will induce him to sell them away at the earliest opportunity and invest their capital in any other concern. The present class of *janmis* will thus have been annihilated by an act of the legislature and a severe blow will have been dealt to the agrarian prosperity of Malabar. That we do not exaggerate the disastrous consequences of the Bill will be apparent from a consideration of the rates of compensation and the methods to be employed in ascertaining them.

14. The rate of compensation allowed for garden or crop lands is three-fourths of the profits. This means that at the termination of a lease, the landlord must allow the tenant not only the benefit he has already been enjoying from the increased yield and pay him the cost of any improvements supposed to have been effected, but pay him also in advance three-fourths of the profits *expected* in succeeding years. It is still harder to make the landlord pay the tenant one-half the amount expected to be realised by the sale of even those trees which the landlord himself planted and for which the tenant has perhaps done nothing. Planting a timber tree costs the tenant hardly anything, much depending on the soil; and yet the landlord is called upon to pay him three-fourths of the price for which it would sell. The one-half allowed on trees which the tenant did not even plant is still more unfair. The tenant is also to be paid the cost of buildings, &c., erected by him and in cases where the landlord believes that the “improvement” has been effected in a very expensive way, the burden of proving it is thrown on him—which is manifestly unfair, for it should be the business of the party who claims compensation to prove that his demand is not excessive. Again, the court is allowed the discretion of allowing the tenant 6 per cent. interest on certain improvements, viz., those which are not directly productive and most likely to have been done in a very expensive way.

15. We now come to the Schedules. We beg most respectfully to point out that these Schedules constitute the most unsatisfactory part of the present Bill. We particularly refer to schedule IV. Compensation for a cocoanut tree is made payable up to Rs. 21-8-11. Seldom is any cocoanut tree in Malabar valued at more than Rs. 5 or 6. The rates which Government itself has recently paid for gardens of cocoanut trees, while acquiring land for railway construction, have been about the same; and including the *janmam* value of the land on which the trees stood the price came to

less than Rs. 12 per tree. It is most unjust to make the *janmi* pay nearly double this rate for trees planted on his own land. Again we notice that for a cocoanut tree which has not yet come into bearing, compensation is prescribed up to Rs. 3-6-0 (Schedule IV: Table I) though absolutely nothing is known of its future bearing capacity. This rate corresponds, according to Schedule IV, Table II, to what is prescribed for a tree in bearing, expected to yield an annual produce of 25 nuts through a period of 50 years! This would be a terrible speculation to the landlord who is so unfortunate as to have cocoanut trees planted on his land by a tenant. If a tree yields less than 12 nuts no compensation is due, and if it yields 12 cocoanuts through a period of 50 years, only As. 1-4 has to be paid. We would respectfully urge the extreme unfairness of compelling the landlord to pay at the rate of Rs. 3-6-0 for trees whose fruit-bearing capacity is absolutely unknown, merely because the tenant has allowed it to grow for 15 years. Again, though the annual cost of cultivating a cocoanut tree is put down at As. 2-6, As. 8 is fixed as compensation for plants of a year old. This will enable the tenant to wantonly harass the landlord by extensively planting his holding with cocoanut seedlings which he can procure at 6 pies each. The tables, if carefully analysed, will betray many similar features and anomalies which will weigh oppressively on the landlord. Above all, the cost of cultivation in interior taluks is widely different from what it is on the coast line where cocoanut trees need no watering and no tending.

16. We beg to enter our humble protest against section 14. The legality of it apart, we are afraid that any such provision for changes in the schedules without the benefit of a discussion in the Legislative Council, will prove still more injurious to the interests of the landlords.

17. Section 15 is not strong enough to sufficiently safeguard the interests of the landlord against the much too common evil of over-planting. In the first place, the discretion allowed to the courts will constantly be in danger of being misused by commissioners in whom the exercise of it will practically lie. Secondly, the temptation which is often irresistible in a tenant to overplant his holding so as to obtain as much produce as possible during the period of his tenure, thus causing serious detriment to the property of his landlord, will by no means be checked if compensation on a lower scale is liable to be granted for the trees found in excess. The decrease in fertility of the soil of Malabar is a complaint often made, and we are afraid that the existing Act has already had mischievous effects in the same direction. We respectfully submit that the scale laid down in Section 15 is somewhat inconsistent with the agricultural conditions of this district. We pray that the scale submitted by the Sabha in its Memorandum dated 25th August 1894 to the Commissioner of Revenue Settlement *in re* the Settlement of Malabar and which was drawn up in the joint interests of landlords and tenants may be accepted for use.

18. We are afraid that the effect of the present Bill, if passed into law, will be only to aggravate ten-fold an evil which it appears to have been the object of Government to minimise. It will really give larger discretionary powers than are now considered to be "very often neither competent nor trustworthy." The age, the future fruit-bearing capacity, the future fruitful life, and many other data which the Schedules require, can only be obtained by wild and unverifiable guesses. The widest diversities are generally to be found in the reports of two commissioners, and not unoften they are swayed by questionable inducements. We are extremely solicitous that the evils of the existing law should not be accentuated by any fresh hasty legislation. We may take this opportunity to recommend that in 10 per cent. of the cases where commissioners are employed, the Judicial officers should make personal inspection. We consider that such a course would have a great effect in improving the tone of the work of the commissioners. We would also suggest that men of monthly salaries, rather than that this responsible work should be entrusted to men of little or no education.

19. In conclusion, we admit that the present agrarian law in Malabar is not perfect: but it is better to submit to existing evils for a little while longer than to rush to new ones by means of a hasty legislation. Constant evictions are desirable in the interests neither of the landlord nor of the tenant, and it is necessary by all means to reduce the temptations towards them. We respectfully urge that to completely crush the landlord class is not the way to effect this purpose. We have also stated that the tendency of the present Bill would be to discourage landlords from letting out waste lands for cultivation: this, in the face of the growing population, would speedily more and more impoverish the district. The way to promote agricultural prosperity is to encourage equally the landlord and the tenant and to ensure to each his legitimate share in the produce of the land. The landlord's claims are now left entirely in the background. He gets nothing except his nominal rent and periodical renewal fee. The tenant pays his assessment to Government, and if, in the same way, the landlord were entitled to a modest *janmabhogam* or share of the produce as the *janmi* he would have no inducement to evict his tenant. Under the existing law, the *janmi* is so helpless in the hands of his tenant—generally the advantages of education as well as of affluence too weigh on the side of the latter—that he often finds he can get no return for his land except by suing for eviction. In Palghat taluk many waste lands have been reclaimed by tenants who pay *janmabhogam* to their landlords as regularly as they pay assessment to the *sircar*; and these tenants have been enjoying their lands without eviction for more than half a century. We would respectfully suggest that in this direction lies the true remedy to the evil of evictions.

20. We have briefly indicated a few of the objections which this Sabha has to raise against the Bill now in consideration. We most earnestly and loyally entreat Your Excellency to accord your patient and generous consideration to our representations, and we trust that Your Excellency's Government will see the justice of these representations and graciously withdraw for maturer deliberation the Bill now placed before the Legislative Council.

Endt. Mis. No. 1008, Revenue.

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

(By Order.)

Fort St. George,
11th March 1899.

(Signed) N. E. MARJORIBANKS,
Ag. Under Secretary to Government.

ORDER—No. 33, Legislative, dated 14th 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.

Leg
Revenue (1899) Department.

CURRENT No. 84

Memorial
From

The Kerala Mahajana
Sabha, Calicut.

Order No 1008 Mo.

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

(By order)

W. Marjoram,

as Under Secy. to Govt.

Fort St. George, 2

11th March 1899

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Dated 23rd Feby. 1898.

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Criticising the
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over

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