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[Despatch Abstract.]

Malabar Compensation for Servants' Improve-
ment Bill. Communicating to
the Select Committee on the Bill
Memorial from the Jannis of
Kottayam protesting against the
passing of the Bill in its present
form.

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Legislative (1899) Department.

CURRENT No. 105

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Order No. 44 d/13-4-99
PS.

Communicated to the Select
Committee on the Malabar
Compensation for Tenants'
Improvements Bill

also
10/4/99

12-4-99

From The Jananis,
Kottayam
Malabar

No.

Dated 29-3-99

Received }
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SUBJECT.

The Select Committee on the Malabar Compensation
for Tenants' Improvements Bill

10/4/99

Recd.
21-4-99

Issue
12/4/99

Protesting against the
passing of the Compensa-
tion for Tenants' Improve-
ments Bill "in its
present form."

G.O.	No.	Department	Date.

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Government (1899) of Madras. LEGISLATIVE.

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G.O., No. 44, 13th April 1899.

APRIL.

Malabar Compensation for Tenants' Improvements Bill.

Communicating to the Select Committee on the — memorial from certain janmis of Kottayam protesting against the passing of the Bill in its present form.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper:—

Petition from the Janmis of Kóttayam, Malabar, to His Excellency the Governor of Fort St. George, dated 29th March 1899.

We, the undersigned Janmis, the members of Kóttayam meeting, take this opportunity of forwarding this humble petition to your Excellency in connection with "The Malabar Compensation for Tenants' Improvements Bill" now pending before the Council, hoping that it will receive that consideration in the hands of your Excellency which the gravity and importance of the subject require.

2. While fully appreciating the benevolent intentions of the Government in introducing the above Bill in the Council, we cannot but express our apprehension that your Excellency's Government do not seem to have fully appreciated the effect of the measure, the changes it introduces in the relationship of landlord and tenant, the impression it creates in the minds of the people about the attitude of the Government towards vested interests and private rights and the disquietude consequent thereon.

3. We have no desire to dispute with the Hon'ble Mover of the Bill about the original import of the term janmi, whether it is a counterpart of the Roman Plenum Dominium, and the English Freehold, thinking that it will serve no useful purpose. To dispute about the conclusions arrived at by antiquarian researches, to question the etymology and the meaning of a word, is not, in our opinion, the proper way to handle such a grave and momentous measure as the one your Excellency has now before the Council.

4. We think that it will be conceded on all hands that, whatever may have been the original nature and limitation of jenm right, it has now got a settled import understood by all, that its significance has been understood by the people concerned, in a particular way, at least since the beginning of this century, and many lakhs of rupees have been invested in land on the security of this jenm right in recent years on the strength of this understanding. Purchasers of these jenm rights would not have paid half the value they have paid for these properties had this Bill been passed into law on the date of their purchases. We therefore bring to your Excellency's notice that this measure invades vested interests and private rights of the subjects for which they have very heavily paid, and makes the janmis poorer by at least more than half their present wealth.

5. We beg leave to assure your Excellency that the Mappilla riots in certain localities in South Malabar have nothing to do with the present rate of compensation awarded to the tenants and the present legislation is not likely to accomplish the political purpose which it is intended to effect, namely, "avoiding future bloodshed and ruin." We beg leave also to suggest that it is not at all advisable for the Government to make the people understand that fanaticism, crime and outrages are paying legislation is professedly Mappilla outbreaks, and it is not pretended that for the interest of agriculture the present Bill is necessary. No case is and can be made out on behalf of this Bill on this count, and if it were so it would have been some justification for this legislation.

6. With regard to the argument that there is no uniformity in the working of the Madras Act 1 of 1887, we beg to state that the cost of making the improvements and the yield of the trees vary according to the nature of the soil and consequently it is unreasonable to expect uniformity against the course of nature.

7. We understand that your Excellency's Government have under contemplation to pass a Malabar Tenancy Bill, and that, but for the suggestion of the Government of India, your Excellency would have considered the improvement question along with the Tenancy Bill. We beg leave to suggest that the course your Excellency's Government thought of adopting would be more satisfactory to the people concerned, for this Bill is an integral portion of the other and all the questions connected with the subject can be fully discussed when the whole subject is before the Council; otherwise, the subsequent Tenancy Bill must have to be so framed as to fit in with the present Bill, at some sacrifice and with great difficulty.

8. This measure, under the guise of giving tenants adequate compensation, is intended to check evictions and promote renewals, but this measure, as is usual with similar measures professing one thing and trying to attain another thing, accomplishes the purpose imperfectly, creating at the same time untold evils and hardships which the Government never anticipated and against which the Government have not provided for.

9. It is our opinion that the present measure is an unwarrantable and unjust interference with the much-prized and dearly-paid-for rights of the janmis and the freedom of contract, spreading dismay, discontent and misery amongst the owners of property and creating more evil than good.

10. It is a great pity that, not only in the Bill itself, but also in the speech of the Hon'ble Mover, by which he introduced the Bill in the Council, not a word or trace of sympathy or condolence with the janmis is found whose properties the Government is now transferring to the tenants without paying for the same.

11. It is also to be much regretted that the weighty opinion of persons like Sir George Parker and the Hon'ble Mr. C. S. Crole should be disposed of by the Hon'ble Mover with this dry remark that this difference must be settled by hard voting.

With these observations on the general aspect of the Bill, we beg leave to bring to your Excellency's notice the glaring defects and injustice in the main provisions of the Bill:—

1. The definitions of Landlord and Tenant are not clear and they are imperfect. There is no justifiable reason why mortgagees under clauses (c), (d) and (e) of the Transfer of Property Act should be excluded. If these improve the property of the landlord, they also should share the advantages the Bill gives to the tenants.
2. The Act contemplates payment of improvements to the tenant by the landlord (*vide* section 6, clause 2). It does not take in account suits brought by the Maleharth-holder and in cases of sub-leases by the paramount landlord and redemption suits brought by the janmi against mortgagees under clauses (c), (d) and (e) of the Transfer of Property Act who in their turn have leased the property to the tenants.
3. The definition of the term "Rent" is not comprehensive enough to include service tenures.
4. In section 4 explanation the last four words should be dropped. The improvement made by the tenant may diminish the value of the adjoining property of the janmi, though not in that tenant's holding. To cover such cases, "In the tenant's holding" should be dropped from the explanation.
5. In clause (g), section 4, allowance is not made to cases where reconstruction or alteration is rendered necessary by the act or omission of the tenant. This is a defect which must be remedied.

6. In clauses (h) and (i) protection and maintenance of trees are constituted improvements and treated like other improvements for the purpose of paying compensation, and the definition of improvement as given in section 4 is work, &c. It is doing violence to the language to regard protection and maintenance as work done by the tenant. Another reason to exclude protection and maintenance from the category of improvements is this. Take the case of a landlord paying compensation to the tenant and ejecting him from the property. Suppose he leases the property to another tenant. Though under section 5, the landlord need not pay compensation for improvements which have already been paid for, the new tenant protects and maintains the trees let into his possession by the landlord, and as protection and maintenance are improvements under the definition, the second tenant must be paid compensation for his improvements. And thus in spite of section 5, the landlord will have to pay improvements twice over. This is very hard.

7. Section 5 and the explanation are wide enough to include cases where the tenants' interests have been sold by court for his debts. This is a defect which must be remedied.

8. Section 6, clause 2, is objectionable. This gives the tenant power to execute the decree and does not restrict his right to the sale of the tenant's interest. The tenant under this can bring to sale, not only the improvements and the soil on which those improvements are effected, but the other properties of the janmi, in cases where he does not realise the compensation awarded to him by the sale of the property leased out to him. This is very hard upon the landlord.

In cases where the malcharth holder brings the suit against the tenant, not making the janmi a party to the suit, there is the danger of the janmi's property being sold behind his back, if this clause is retained. This clause in the section, on account of the peculiar Law of Inheritance in Malabar, is sure to encourage eviction suits. It is the interest of every karavan who has not in his heart the welfare of his Tarwad to convert Tarwad Immoveable property into money; for with money he can do anything, whereas immoveable property he can dispose of only under certain conditions. Take the instance of a tenant karavan making improvements and dying, his successor will be desirous of converting it into money; so he will force or bribe the janmi to bring ejectment suit against him and when the janmi karavan also sees that by the sale of the property after paying the tenant, the balance he can take, he also will only be too willing to bring eviction suits. For these reasons, this clause must be omitted.

9. In clause 3, section 6, the word *may* must be substituted by the word *shall*.

10. In clause 5. The words "the removal of the tree" must be omitted. The tree grown on the soil must have to some extent diminished the fertility of the soil and so the tree must be retained in the soil as a compensation to the landlord for the deterioration so caused.

With regard to clause 6, we think it would have been more satisfactory if the qualifications of the assessors and the mode of selecting them were laid down in the Act itself.

We have no objection to clause (d), section 8, of the Bill; but we have very serious objections to clause (e) of the same section. We do not see on what principle the tenant is denied the three-quarters of the cost of making the improvements. We do not also see on what principle he is awarded the three-quarters of the sum got by the calculation under clauses (a) and (b).

In certain cases, the three-quarters so allowed to the tenant will be more than the value of the property. If 15 times the annual net produce is paid, property can

be purchased in the market. The three-quarters of the sum got by the calculation under clauses (a) and (b) together with a quarter of the cost of making the improvements will in many cases far exceed the value of the property.

Another equally serious objection to this section is that the tenant is allowed the benefit that is due to the good quality of the soil for which the janmi has paid; and that tenant who has planted trees in rather unfavourable soil with great labour and at considerable expense is not half as favoured by the Bill as that tenant who merely plants trees in good soil, goes to sleep, and does nothing more.

Moreover, this section does not make any allowance for the accidents and premature decay of the improvements. This section does not also make any deduction for the tenant's exclusive enjoyment and various other benefits derived from the soil up to the time of eviction.

The trees begin to bear fruit at an earlier age than that fixed by the Bill and in calculating the cost of making the improvements, allowance is not made to the difference that may be caused by the quality of the soil.

By section 9, tenant is given half the value of bamboos and other trees planted by the janmi. This the tenant gets for nothing.

Allowance is not made for the cost of cutting and removing the trees.

The tenant is given under clause (1) three-fourths of the value of the trees. This is too high a compensation.

By explanation, the tenant is given the value of the decayed trunks even though he has enjoyed the full benefit of the tree in its bearing state. This ought not to be given. The words "Whichever is more advantageous to the tenant" are in conflict with the section.

In section 13, reference is made to schedules III and IV and we submit that the cost of cultivating, &c., as given in those schedules is rather too high. It will be advisable to drop all the schedules and leave the work of calculating compensation to the courts according to the evidence in each particular case. The judges presiding over the courts are all honest and capable men who can be safely entrusted with this work.

We have thus briefly brought to your Excellency's notice our objections to this Bill. In the first place, we most earnestly and loyally entreat your Excellency to take this question along with the Tenancy Bill, and if that is not possible we pray that your Excellency's Government may be gracious enough to pass such an Act which will not transfer by legislation the janmi's properties to the tenants without even paying for them.

ORDER—No. 44, Legislative, dated 13th April 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
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