

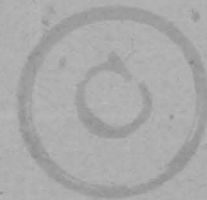
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[Despatch Abstract.]

Malabar Compensation for Tenants' Improvements Bill

Coming to the Select Committee
on the ———, petition from Mr. R. R.
Thimmar Raja Raja Varma ^{President of a public meeting} protesting
against the passing of the Bill

BACK PAPERS.

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

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Government {1899} of Madras. LEGISLATIVE.

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} 1899.

Enclosures

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G.O., No. 53, 24th April 1899.

APRIL.

Malabar Compensation for Tenants' Improvements Bill.

Communicating to the Select Committee on the — petition from M.R.Ry. Chirakkal Raja Raja Varma, as President of a public meeting, protesting against the passing of the Bill.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper :—

Petition from M.R.Ry. CHIRAKKAL RAJA RAJA VARMA, ELAYA RAJA, Avargal, President at a general meeting held on the 26th February 1899 at Cherukunnu, Chirakkal taluk, North Malabar.

MOST RESPECTFULLY SHOWETH,—That Your Excellency's memorialist on behalf of the meeting begs to lay the following representations against the Malabar Compensation for Tenants' Improvements Bill introduced by the Hon'ble Mr. H. M. Winterbotham, and now under consideration in the Legislative Council, since such a Bill is unnecessary, and its enactment will produce serious hardships to the janmis of Malabar, besides indirectly injuring even the prospects of the tenants themselves for whose benefit the Bill has professedly been brought forward.

2. That Your Excellency's memorialist begs to submit this in continuation of the representations made by the Mahajana Sabha as representing the whole Malabar, inasmuch as the system of land tenures and usages that exist in North and South Malabar as well as the relationship existing between the janmis and tenants in these two parts bear material differences.

3. That in South Malabar the Rajahs, Nambudris and local chieftains form all the janmis; that though they are few in number they own large and compact estates. But in North Malabar the case is quite different. There are janmis of all classes and creeds. Most janmis are themselves tenants. It is rare to find a family in North Malabar that does not own at least one plot of ground in janmam. In South Malabar most of the tenants are kanomdars (mortgagees) and this kanom tenure has long been in existence. In North Malabar in former days kanom holdings were rare. The janmis in cases of need raised loans on the security of their lands; when the janmis in course of time, either through an increase of members in the tarwad or through other grounds became unable to repay the loans, the security in lands are changed into a kanom right and thus the number of kanomdars increased. In South Malabar it is seldom that a janmam right is sold, but in North Malabar it is an everyday occurrence. Any man possessed of ready cash through trade or any other means soon becomes a janmi and consequently constant changes take place amongst janmis themselves. But in South Malabar the change is restricted to the kanomdars. In South Malabar the assessment generally stands in the name of the tenant and he is primarily responsible for the payment of the Government dues. In North Malabar he alone is responsible for its payment. The Mappilla riots only occurred in South Malabar, but never did occur in the North; nor is there any likelihood of their occurrence in that part of Malabar. There are very few Mappilla janmis in South Malabar, but in North Malabar there are several, some owning vast lands.

It will be found from the report which the late Justice Mr. Muthuswami Iyer made on the Malabar Marriage Bill that there exists much diversity not only in land tenures and in relationship between janmis and tenants, but also in social customs and usages between North and South Malabar. Even in the right of succession there is difference between the North and South; the same community who follow Makkattayam, right of succession through sons, in South Malabar, adopt, in the North, Marumakattayam, succession through sisters. In South Malabar garden lands are few and rice lands are more in number; while in the North there is a larger number

of garden lands. The complaint that janmis oppressed the tenants originated in the South, while in the North there was scarcely any such complaint and there was no reason, too, for such a complaint. Any murmuring about this was only subsequent to Mr. Logan's enquiry, and it is probably owing to the fact that when the tenants learned that the Government was going to benefit them at the sacrifice of the interests of the janmis, they brought forward their alleged grievances. Elsewhere in this will be stated what Sir Charles Turner says about those representations. As the officers under the Collector whose head-quarters is in Calicut, South Malabar, were mostly natives of that part of Malabar with partisan interests for the tenants, the information they gave was mainly of South Malabar and those British officers who held enquiries about Malabar had, therefore, not sufficient knowledge of North Malabar.

4. That the most important cause assigned for the introduction of the Bill is the occurrence of the Mappilla riots in South Malabar which are attributed as due to the oppression of the janmis. What the current opinion about them is, will be detailed below. If those riots were the results of janmis' oppression, there is no reason that they occur only in one taluk in South Malabar. It will be clear that the Mappillas of that taluk are naturally disposed to be quarrelsome and mischievous if it is observed that when some of these were enlisted as sepoys they oppressed and robbed the travellers and that some amongst them for such offences are even now undergoing imprisonment.

Sir Charles Turner in chapter 4 of his minute on Land Tenures, dated 20th July 1885, says that in those parts riots were rife from the time of Tipu, that the statement that they are due to agrarian discontentment is not based on any evidence and that the riots are the result of religious frenzy. Instead of punishing those fanatics with severity any leniency shown to them will be productive of evil. What that great gentleman has remarked is true has been now exemplified by the conduct of some of the Mappilla sepoys in Cannanore.

It will be found from a reference to Mr. Logan's Malabar Manual, Volume 3, pages 336, 340 and 341, that riots occurred in this very taluk where they are now attributed to the oppression of the janmis, a century ago. On the 31st July 1800 security for good behaviour was taken from a rebel Mappilla of Vellattara, Chembayan Pocker. A reward of Rs. 5,000 was offered by the Honourable the East India Company on the 25th November 1800 for the capture of another rebel, Manjeri Adam Guruckal. The proclamation, dated 27th April 1801, for the disarmament of the people of Vellattara also goes to show the existence of riots in those places at the time. From the Proclamation, No. 208, given on page 331 of the above manual it will be found that the Mappillas of Shernad and Ernad are then alone addicted to riots and that they raised them through religious frenzy. Even the partisans of the tenants cannot bring forward the imputation that at that time the janmis were oppressing the tenants. They also admit that prior to a certain decision of 1856 by the Sadr Court there was no trouble whatever to the tenants from the janmis. It has been proved that of the previous riots, one was owing to a Teya convert to Muhammadanism relapsing to his old faith. Another riot is due to a Cheruma convert doing the same. Such riots generally take place during the Ramzan, the season of fasting, for the Mappilla; and before an outbreak the rioters seek divine intercession through their thangals or priests. The rioters cut the tufts of hair from the Hindus, kill in cold blood those whom they see in their way, burn houses, violate Hindu temples, kill cows and throw their entrails over the images in the temples. All these clearly show that their conduct is the result of religious fanaticism. This being the case, the opinion which the Government has come to, that the riots are due to janmis' oppression is not consistent with fact and its action on that principle causes the greatest hardship to the janmis and is detrimental to their existing rights.

5. That the Bill now before the Council upsets the existing relationship between the janmis and the tenants and makes the janmi who is possessed of absolute ownership over the land, a mere rent collector; it deprives janmi a part of the value

which is his and gives it to the tenant. Following the scale given in the Bill the value of improvements to be given to a tenant will appear to be more than its janmam value including the value of the land and the improvements. If any plot of garden land be taken in North Malabar and if to it the rate of valuation of improvements fixed by the Bill be applied, it can be conclusively shown that the value of improvements alone will be far in excess of its janmam value. Were a janmi to lease to a tenant a garden land in which there are trees growing wild even for them, under this Bill, the tenant becomes entitled for improvements though no labour has been spent on them by him. Under explanation I to section 4 of the Bill a janmi becomes indebted to a tenant on the heading for upkeep and preservation even for garden lands let on simple lease after planting them with necessary improvements.

The Bill provides sufficient means for the tenants to get in the shape of value of improvements more than the janmam value of the land in case a janmi sues to recover a garden land. Under article 2, section 6 of the Bill, the tenant is authorized to execute such a decree and harass the janmi. This is a relief which no tenant ever dreamt to get. Even the partition of the tenants never was like this.

In article 2, section 4, janmi is made liable to pay the tenant to raise all sorts of improvements on a land which he wants his value not to recover. Those things which are made for the luxuries of the tenant may not in any way be of use to the janmi who lives at a distance. These conditions of the Bill are productive of great hardships and are more unjust to the rights of the janmis than even the conferring on the tenants the permanent occupancy rights.

6. That it has been made clear by the searching enquiries instituted by the authors of Act I of 1887 that the rights of the janmis ought not to be limited or infringed and that the provisions of this Bill appear to be a means of defeating the aims of the various repeated decisions showing that janmis have got undisputed rights of recovering their lands from the tenants.

7. That Mr. Logan was under G.Os., No. 170, dated 25th January 1881, and No. 281, dated 5th February 1881, appointed a special Commissioner to enquire into the alleged oppression of the tenants by the janmis. Mr. Logan in 1882 sent in a report to Government in the mistaken belief that the Mappilla riots are due to the oppression of the tenants by the janmis believing the stories given in 2,199 petitions which he then received as special Commissioner. The report he then submitted was materially to the prejudice of the janmis' interest and greatly to the advantage of the tenants. About these petitions the learned Chief Justice Sir Charles Turner in his minute already referred to remarks that the allegations contained in those petitions have not been proved.

8. That the result of Mr. Logan's report was a special commission composed of Rajah Sir T. Madhava Rau, K.C.S.I., as President and Messrs. Logan, Wigram, C. Sankaran Nair and P. Karunakara Menon as members. Of these members, Mr. Logan had already expressed his opinion against the interest of the janmis and three others were unacquainted with the state of janmis and tenants in North Malabar. There was, therefore, none in the commission to represent the janmi interest in North Malabar or elsewhere. The two Malayale members of the commission are themselves tenants in South Malabar and were, therefore, representatives of the tenants' interest. Sir Charles Turner in paragraphs 2 and 5 of the first chapter of his minute says thus about this commission. It is admitted that the members appointed to consider Mr. Logan's report, hold decided opinions against the janmis even before they joined the commission. They all take one side of the question. None of them represents the janmi. Though all these Commissioners were pre-possessed in favour of the tenants even they did not go to the length of asserting that the tenants are entitled to occupancy rights. What they have thus failed to accomplish, this Bill indirectly aims to do.

9. That those Commissioners were of opinion that the rights of the janmis were to be respected would be clear from the following examples.

In part 2 of the report and in the accompanying draft Bill which those Commissioners submitted on the 14th July 1884, they give as grounds for eviction of the tenants, intentional denial of the janmi's title; failure to show proper respect to the janmi; and habitual delay in payment of the rent.

Further it is stated in part 2 of that report as well as in the draft Bill annexed thereto and in some special cases freehold rights ought to be created for Malabar tenants and even such tenants ought to pay a periodical renewal fee to the janmis and that all leases ought to run for a period of at least ten years and that the right of pre-emption for the purchase of such lease rights in case of transfers by the tenants will first lie with the janmis.

10. That it will be seen from the report submitted by the above said Commissioners that after mature deliberation on the point of existing rights in land, and of arbitrary eviction of tenants, those Commissioners were unanimous in their opinion only to the extent that the tenants evicted, should be compensated in the marked value of the improvements effected by them. What the learned members of the Land Tenure Committee, constituted under G.O., No. 650, Political, dated 17th September 1885, for considering the report of the above commission, have finally come to and what the Government had accepted was that on eviction the tenants ought to be made entitled to the full value of their improvements. It is, therefore, a matter of extreme regret that the Bill now before the Council should aim to deprive janmis of the part of a value of their own land by allowing to the tenants a rate of compensation which is far in excess of the scales recommended after mature consideration by the above said Commissioners and the Committee and sanctioned by the Government itself.

11. That if the Bill now before the Council be passed, as the ownership of the janmi to the land is likely to be imperilled, the janmis beg to refer the following papers and to show that their rights to their lands cannot be infringed by a Legislative Enactment:

The report of the Commissioners above alluded to will clearly disclose that all their attempts were for the amelioration of the condition of the tenants; that they did not go to the length of denying the absolute rights possessed by the janmis over their lands. For since the assumption of the Government of Malabar by the Honourable East India Company in 1792 the various British officers and European travellers have left on record after full and careful enquiry what the rights incidental to the Janmam and Kanom tenures existing in Malabar, and the various other local usages are. They all speak to the fact that janmis have a valid right of unqualified ownership over their lands. The report of the joint Commissioners of 1793 will show that the janmis' rights over their lands are absolute. Paragraphs 22 and 23 of the Revenue Board minute, dated 5th January 1818, form a valuable document to show that the janmis are in enjoyment of unlimited and absolute rights of private ownership over their lands. That view is confirmed by the report of the Select Committee on Land Tenure constituted by the East India Company—*vide* page 130 of their report No. 5. Paragraph 178 of the General Report, dated 31st January 1803, of the Madras Revenue Board bears out the correctness of the above views. Mr. Wardell in 1801, Mr. Thackeray in 1807, Mr. Ellis in 1816, Sir Thomas Munro in 1817, Mr. Groome in 1822 and the Court of Directors in 1825 have all concurred in the view that the Malabar janmis possess full rights of ownership over their lands.

12. Before Hyder's invasion of Malabar there was not even a Government assessment on the janmam lands in Malabar. Francis Day on page 65 of his "Land of the Perumals" remarks that the very name of Government assessment is unknown in Malabar. The evidence of Mr. Murdock Brown, Major Walker, Mr. Thackeray, and Sir Thomas Munro as well as the minutes of the Revenue Board of the year 1818 prove the truth of these statements.

13. The decision arrived at by the Sadr Court in 1856 after full consideration of the rights of the janmis was that the janmis had full rights of eviction of their tenants. Besides these admitted principles which would discourage all those who wish to show that janmis possess neither right nor authority of eviction of the tenants or who want to make those rights null and void by any Legislative Enactment, there are,

in addition to Mr. Strange's report on Land Tenures, several decisions of the Lords of the Judicial Committee of the Privy Council on the subject of the Land Tenures on Malabar.

14. The Bill now before the Council, if passed, will entirely destroy the proprietary interest of the janmis and will further make them dependants of the tenants. To show that the rights of the janmis are time honoured and worthy of respect the authority of Abbé Dubois may be cited. In his Hindu Manners, Customs, and Ceremonies he says on pages 57 and 58 of the work translated and edited by Mr. Henry K. Beauchamp "that Malabar owing to its position has generally escaped the invasions and revolutions which have so often devastated the rest of India and has thus managed to preserve unaltered many ancient institutions which in the parts have fallen into disuse. Of these the * * * the most remarkable are proprietary rights * * * and indeed one may well say *no land without lord*."

These proprietary rights have existed from the remotest times and exist still amongst the Nairs, the Coorgs, and the Tulus, the three aboriginal tribes of the Malabar Coast. This is, I believe, the only province in India where proprietary right has been preserved intact until the present day. Everywhere else the soil belongs to the ruler and the cultivator is merely his tenant. The lands which he tills are given to, or taken away from, him according to the will of the Government for the time being. On the Malabar Coast, however, the lands belong to those who have inherited them from their forefathers and these in their turn possess the right of handing them down to their descendants. Here the lands may be alienated, sold, given away, or disposed of according to the will of the owners. In a word the *Jus utendi et abutendi* which is the basis of proprietary right belongs entirely to them.

15. That besides the above evidence and opinions, the immemorial customs of Malabar as well as the wording of the old title-deeds bear testimony that the janmis in Malabar possess every imaginable right over their lands. From older times janmam deeds are called the deed of attipper. This term is generally used for janmam deed. Attipper is another form of *Ati Ver* which means the principal root. In old janmam deeds that land, the stones, thorns, snakes and all other appertinements of the land are stated to be sold, its intention simply being that every thing either lying underneath or above the soil is sold at a sale of janmam.

16. That it is undisputed that the present class of Malabar janmis are either those who have inherited their lands from their ancestors who have been in possession of them from time immemorial or the purchasers of their right at immense cost from such men as inherited the land. The proclamation of Her Gracious Majesty the Queen Empress when she assumed the direct management of India in 1858 guarantees that such rights and usages will be respected. The Bill now before the Council violates the pledge contained therein and in a peaceable way takes away the legitimate rights of the janmis without in any way recompensing them, and confers these rights on the tenants. Even now most janmis find it impossible to recover their lands after paying the value of improvements under Act I of 1887 and consequently leave unexecuted several decrees for redemption.

17. That this Bill will prevent the sale of lands by Janmis as well as their raising loans on the security of their lands. The ownership of the lands in future will vest in the purchasers of the tenancy rights owing to enhanced value of improvements. It will be now easy for a class of usurers who lend money to the poor tenants to become real possessors of the land. In future tenants are not likely to pay their rents regularly on demand by the janmis. Most tenants will on such demand ask the janmi to pay them the value of the improvements. The Janmis will then have to go to the civil courts to get their rents. The provisions of the Rent Recovery Act have not been enforced through the indifference of the Malabar janmis. Now by a special enactment to its operation has been excluded so far as Malabar is concerned. The only remedy open to the Malabar janmi to get his dues is to resort to a civil court. It is well known that recourse to law is invariably productive of great hardship and loss. It is too common an occurrence that janmis are put to much loss and inconvenience by the tenants transferring their rights on which arrears of rent are due.

18. That which the janmi gets from his land is simply the rent and the renewal fee. That the tenant who is in possession of the land enjoys all the uses and benefits thereof. The present law allows no interference on the part of a janmi who is the real owner of the land until he recovers it from the tenant by an order of the court. The tenant enjoys rent free the benefits of such fruit trees like mango, tamarind, nuxvomica, plantains, and cashew and raises annually on the land chillies, brinjals, cucumber, melons, water melons, and such like vegetables and occasionally cultivates cereals and food grains like grams, pulses, ragi, and barley. On none of these is the janmi entitled to a share. Further if janmi wants to raise any of these in a land leased out to a tenant he cannot do it without the tenant's consent.

19. That the Honourable Mover of the Bill has calculated the rate of improvements far in excess of the present rate of usage, will be clear if this scale is applied to the use and results accruing from the possession of a cocoanut tree. What the janmi gets for that tree is a rent calculated in the simple yield of the tree in cocoanuts. Even of the yield a part is set apart as the tenant's share. The tenant in addition gets every year leaves of the value varying from one and a half to two annas as well as midrib (mattal) fibre and such other things that can be used as fuel. If a land which was in the possession of the janmi is thus leased to a tenant the latter alone incidentally enjoys all these benefits. It is not, therefore, necessary that an unusually large amount should be paid by the janmi to the tenant under the name of value of improvements.

20. That since the above Bill introduced by the Hon'ble Mr. Winterbotham (who, as can be seen from his report, dated 24th April 1888, on the Eviction Bill has already expressed opinion hostile to the janmis) entirely ignores their interests, they beg to represent one more instance of their hard lot. It has been already stated that in North Malabar the Government assessment stands in the name of the janmi. Of late the Government has also directed that no assessment is to be made in the name of the tenant. The tenant is, therefore, free from the liability of paying the Government dues. The money out of which the janmi is to pay the Government dues is to come out of the rent which the tenant has to pay him. So far as the recovery of revenue is concerned the severity of collection increases every day. Ten instalments were allowed previously. They have now been reduced to four. Even these four instalments succeed one another at short intervals and fall due before the crops of the land are fully harvested. The collection of the revenue begins generally before the time of the collection of the rent with the result that both the moveable and immoveable property of the janmi has to be sold in most cases in satisfaction of the arrears of revenue. The Government has all the facility for the recovery of the revenue, but the janmi who is to get the amount for its payment from his tenant has for his means only the hard and expensive medium of law courts. On this point the janmis beg to refer to the question asked in the Legislative Council on the 26th February 1896 by the Hon'ble Mr. N. Subba Rao and the reply made by the Hon'ble Mr. Grose that the question of changing the dates of the instalments is under consideration by Government. No relief has yet been obtained by the patta-dars. The janmis were able to pay the Government dues till this owing to the general good will and respect that existed between the janmi and the tenant, but now as this Bill is likely to create disunion between the two classes and as it upsets the existing order of things it will be impossible for janmis to get in time even that part of the rent required for the payment of the Government dues.

21. That the above Bill frees the occupier of the soil from several of the liabilities which the Government, consistent with the principles of administration, may saddle him with. It would have been a wise provision if the tenants were asked to raise fruit trees as adopted to the soil of the lands in their possession. Instead of that the Bill provides for the award of compensation even for trees of wild growth in lands in the possession of a tenant though he rears no valuable trees in the land and though he has been taking from time to time such usufruct of the soil as detailed in paragraph 18 even without paying a share thereof either to the Government or to the janmi.

22. That the Bill puts obstacles in the way of janmis recovering their lands which they have rented out to tenants, even if tenants fail to take proper care of the improvements which the janmis have made in the lands and which they make over to the tenants at the time of the lease. For when a janmi attempts to recover the land a tenant may at an outlay of a few rupees plant some cocoanut or areca trees or raise a grove of plantains; and under the Bill tenant gets an excessively large amount in the shape of value of improvements for the haphazard planting.

23. That if provisions of the above Bill be properly considered Your Excellency's memorialist begs to say that everyone of these provisions contained in the body of the Bill as well as in the schedule will be found to be productive of the greatest hardship to the janmis; that if a new enactment be found necessary Your Excellency's memorialist begs to state that provisions to safeguard the interests of the janmis should also find a place therein; and that as the aim of the Bill may well be secured if honest and efficient Commissioners be appointed to calculate the value of improvements already provided for under Act I of 1887, there is no necessity for the Bill and that, therefore, Your Excellency's humble memorialist on behalf of the meeting respectfully begs that the Bill now before the Council may be withdrawn.

ORDER—No. 53, Legislative, dated 24th April 1899.

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

(True Extract.)

M. HAMMICK,
Ag. Secretary to Government.

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

Leg. CURRENT No. 103

FROM,

M. R. Ry.

CHIRACKAL RAJAH RAJAH VARMA,
ELAYA RAJAH, AVERGAL,
PRESIDENT GENERAL MEETING,
CHERUKUNNU,
NORTH MALABAR.



To,

HIS EXCELLENCY,
THE GOVERNOR IN COUNCIL,
FORT ST. GEORGE,
MADRAS.

Order No. 53 of 24-4-99

Revised

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

Wt
18-4-99

ale
10/4/99

8/4/99

The Select Committee on the Malabar Compensation
for Tenants' Improvements Bill
passed 1st May 1899.

Wt receipt of this
communication has been
reported in Council

Dated 22nd } MARCH 1899.
Recd. }
Regd 6-4-99.

ENCLOSURE,,

Submitting that the Malabar Tenants' Improvements Bill now before the Legislative Council may be withdrawn being greatly prejudicial to the time honored and existing rights of the Janmis and to the general welfare of the people at large.

Order complete.
Letter only.
Order complete with Letter.

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ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH DITTO.

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