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[Despatch Abstract.]

Malabar Compensation for Tenant's Improvements Bill

Communicating to the Select Committee
on the — petition from P. Narayana Menon,
Calicut forwarding certain suggestions
on the subject-matter of the Bill.

T. 12-5-88

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G.O., No. 62, 12th May 1899.

MAY.

Malabar Compensation for Tenants' Improvements Bill.

Communicating to the Select Committee on the — petition from P. Narayana Menon, Calicut forwarding certain suggestions on the subject-matter of the Bill.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

READ—the following paper:—

From M.R.Ry. P. NARAYANA MENON, Honorary Secretary, to the Secretary to Government, Legislative Department, dated Calicut, 27th April 1899.

I have the honour to forward, for the information of His Excellency the Governor in Council and the Honourable the Members of the Select Committee appointed to consider the provisions of "A Bill to the Tenants in the Malabar District Compensation for Improvements", copies of certain suggestions on the provisions of the said Bill.

ENCLOSURE.

SUGGESTIONS re "A Bill to secure to the Tenants in the Malabar District Compensation for Improvements" adopted at a public meeting held in the Victoria Jubilee Hall on the 19th of March 1899.

Section 3.—The definition of "tenant" does not taken in all classes of persons who are entitled to get compensation for improvements.

A *couladar* who enters upon land independently of the *janmi* and makes improvements, but pays no rent to the landlord, is entitled to get compensation for improvement and does get compensation now when evicted by the rightful owner.

Trespasser.—Even a trespasser is allowed compensation according to the custom of the country (Wigram's Manual, page 137).

E.g., a person believing himself to be the owner of a land enters upon it and effects improvements. The real owner establishes his right in a court of law and turns him out. Courts do allow him compensation for improvements made by him.

The word "tenant" ought to be defined so as to include such persons or an explanation added to include such persons either to this section or to section 17.

"Tenant" should include sub-tenants of any degree, otherwise in redemption suits a sub-tenant of the demise who does not hold directly under the landlord or pay rent to him may not be able to claim compensation for improvements. It may be that the definition of the term "landlord" may be so construed as to secure the inclusion of sub-tenants entitled to get compensation for improvements.

But as "landlord" may be taken to include only the original landlord, it would be better to make the inclusion of sub-tenants among tenants free from doubt. This object might be secured either by the addition of an illustration or explanation to the definition of the term "tenant" or "landlord". Explanation might run thus: A the *janmi* demises to B, B to C, and C to D. A sues B, C and D. Here A, B and C are successively landlords; B, C and D are successively tenants and are entitled to get compensation at the time of eviction.

The explanation to section 3 must be altogether excluded for the following reasons.

The object of the explanation is to exclude from tenants, mortgagees under clauses (c), (d) and (e) of section 58 of the Transfer of Property Act as such. But as a matter of fact many persons who get compensation for their improvements in Malabar can fairly be brought under the classes of the said mortgagees, e.g., *veppudars*, *ottidars* and *palisamadku* mortgagees. Again a new class of mortgages has lately

sprung up, where one year's rent or less than that is received in advance and is made a charge upon the property and an annual rent is also reserved. This class of transactions is really nothing more than a lease with a contrivance to ensure the regular payment of the rent, though it is sure to fall, technically speaking, under the class of usufructuary mortgages.

In case the explanation is to be retained, the omission of the words "of section 58" after "and (e)" should be rectified.

Section 3 (3).—Rent should also include services to be rendered in lieu of payment in money or kind. There are several cases in which land is held by persons who, instead of paying rent to the landlord, render personal services, more especially with reference to temple lands and *stanam* lands.

Section 4.—The latter portion of the explanation to section 4 seems to require slight modification. Thus—"if it substantially diminishes the value of the remaining portion of the landlord's property in the tenant's holding, taken as a whole."

If the phrase "any other part of the landlord's property" be retained, there is the danger of a tenant who, in effecting a valuable improvement, such as digging a tank or building a house, necessarily happens to injure a very small portion of his holding, not getting compensation for the valuable improvement effected by him.

Section 5.—It is desirable to make provision for payment of compensation for improvements to tenants, who by reason of causes over which they have no control are obliged to surrender the holding; e.g., A lets some paddy lands and parambas and B plants trees on the parambas. The land becomes, by natural causes such as inundation or by deposit of sand, unfit for cultivation. The profits of parambas alone will not enable the tenants to pay the rent in respect of the entire holding. When under such circumstances, it becomes necessary for the tenants to surrender the holding, it is but equitable that the tenants should be entitled to get the value of the improvements. Generally speaking the tenant should be given the privilege of claiming the value of improvements, in all circumstances under which a mortgagee has the right of demanding mortgage money under section 68, clause (b), and the last paragraph thereof, of the Transfer of Property Act.

Section 6—Clause (1).—It is desirable to state in ejectment decrees as in redemption decrees, the time within which the amount of compensation due to the tenant is to be deposited.

Clause (2).—To avoid a possible hardship to the *janmi* of having his properties other than the subject-matter of the suit being brought to sale for value of improvements due to the tenant, it is suggested that the tenant's right to execute the decree or order shall be confined, so far as it relates to the value of improvements, to the sale only of the property that forms the subject-matter of the suit. But this restriction ought not of course to apply to the realization of costs or other reliefs granted to the tenants by the decree or order.

Clause (3).—This clause looks very fair as regards landlords who deal honestly with their tenants. But in Malabar the landlords have of late hit upon a device to deprive the tenants of their right to get compensation for improvements. It is this. Fix a fictitious rent and then allow a reduction for making improvements. The balance rent made payable is the actual rent obtainable for the property. At the end of the tenancy the tenant has to surrender the property without claiming any compensation for the improvements effected by him, or if he has not made any improvements to refund the amount allowed as a reduction or remission with interest. E.g., the actual rent of a land is Rs. 100. In a demise, rent is fixed at Rs. 120. Rs. 20 is allowed as remission for making improvements, or in other respects the tenant is appointed the landlord's agent to make improvements for a fixed pay. The rent payable every year is only Rs. 100. At the end of the tenancy the tenant is bound to surrender the holding without claiming compensation for the improvements effected by him and if he has not made any improvement he is bound to refund at the rate of Rs. 20 a year with interest. Documents containing such clauses are very numerous and tenants require to be protected from such unconscionable contracts. Such contracts are intended to defeat the object of section 7 of Act I of 1887.

To minimise the evil it is suggested that the burden of proving that the reduction, remission or other advantage contemplated in this clause is real and *bonâ fide* and not colorable, may be thrown on the landlord. The casting of the burden thus on the landlord is not likely to cause hardship on him, seeing that he can easily discharge the burden by the production of the earlier deeds or by other easy means.

Clause (4).—The latter portion of this clause beginning with “*adjustment*” is rather obscure. It would be better to say that “*re-valuation* of the improvements as they exist at the time of execution of the decree or order may, if necessary, be made.”

This section (section 6) may with advantage be split into several sections dealing respectively with the substantive and adjective portions of law.

Section 9.—There are some trees (*e.g.*, jack trees, mango trees, &c.,) which may be classed both as fruit trees and as timber trees. In the case of such trees it is desirable that the tenant should be entitled to claim such compensation as is more advantageous to him.

Section 15—*Jack-tree*.—The number 30 is too small; 40 trees may be planted in one acre.

Areca.—This may also be increased.

Section 16.—It is desirable to give the benefit of this Act to all contracts made between landlords and tenants whether before or after January 1886. Experience shows that many unconscionable contracts have been entered into between landlords and tenants and unless retrospective effect is given to this Act courts are powerless to give relief where necessary.

Schedule II.—2 annas 6 pies is too low a price for 100 arecanuts. It should be raised to 4 annas.

Schedule III.—Rs. 9-8-0 is insufficient for cultivating one acre of paddy land. Rs. 12-8-0 is necessary (*vide* Mahajana Sabha memorial, dated the 28th August 1894).

Miscellaneous.—Tamarind trees should be classed as fruit trees.

ORDER—No. 62, Legislative, dated 12th May 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.

Exd. P. Seetharam.

Legislative (1899) Department.

CURRENT No. 127

From P. Narayana Menon
Hon. Secy
Calicut

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