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G.O., No. 366, 13th March 1876.

MARCH.

Ejectment of Tenant by Landlord.

Requesting the Board of Revenue to report whether the results anticipated in the concluding paragraph of their Proceedings, recommending an enactment for securing the right of occupancy to tenants of zamindars, have been obtained and to what extent.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

No. 181. Read the following Proceedings of the Board of Revenue, dated 3th September 1871, No. 3376:—

On the 1st May last, in Special Appeal No. 9 of 1870, judgment was given in a case of paramount importance to the tenantry of zamindari and inam lands. The following is from the summary heading given by the Official Reporter:—"Ejectment by landlord against tenant. It appeared that the land in dispute was the property of a mutum of which the plaintiff was the trustee, and had been let to the defendant's father under a muchilka, dated 14th August 1837, entered into with the Collector, the Manager of the property, on behalf of the Government. The tenancy continued to be regulated by this agreement till plaintiff, in 1867, demanded an increased rent, which the defendant refused to agree to pay. Upon that demand and refusal, the plaintiff, at the end of the fasli and without tendering a patta for another fasli stipulating for the increased rent, brought his suit to eject."

Held by SCOTLAND, C.J., that neither the Rent Recovery Act nor the Regulations operated to extend a tenancy beyond the period of its duration, secured by express or implied terms of the contract creating it; that, therefore, the plaintiff had a right to eject the defendant at the end of a fasli.

By HOLLOWAY, J.—That there is nothing in any existing written law to render a tenancy once created only modifiable by a revision of rent, but not terminable at the will of the lessor exercised in accordance with his obligations."

2. The grounds upon which the learned Judges arrived at these conclusions are, that Madras Act VIII of 1865 has no express provision settling, so as to bind the Courts of Law, the duration of a lessee's tenancy; that its professed effect was the improvement and consolidation of certain Regulations of 1802, whereof a legislative interpretation exists in Regulation IV of 1822; and that nothing can be clearer than the terms of section 2 of that enactment, namely, "It is hereby declared that the provisions of Regulations XXV, XXVIII, and XXX of 1802 were not meant to define, limit, infringe, or destroy the actual rights of any description of landholders or tenants, but merely to point out how tenants might be proceeded against in the event of their not paying the rents justly due from them."

3. It thus appears that Madras Act VIII of 1865 has failed to effect one of its chief objects. Its framers designed to provide for the full protection of the ryot, to secure him the right of occupancy so long as he accepted the patta declared by the Collector to be a proper one in the terms of section 11. But now it is ruled that the landlord is not bound to offer him a fresh patta at all; that he may sue to eject him, and that the only question in issue will be the date of the expiration of the patta; and as pattas and muchilkas are commonly exchanged every year, running from fasli to fasli, the tenant is virtually left without any right of occupation at all.

4. That the very opposite of this was contemplated by the framers of the Bill the Board will shortly proceed to show; but it will be well first of all to prove that the Courts themselves have up to this time ratified this view. In Special Appeal No. 126 of 1869 the following remarks occur in the judgment:—"Now, this tenancy has been found by the Civil Judge to have been that of an ordinary pattadar (in one of the mootahs in Salem), and to apprehend the established general law of this presidency to be that such a tenancy when properly created, entitles the tenant to the right of occupancy for the purpose of cultivation, until default in payment of the stipulated rent at the time it becomes due; and that it may be determined upon such default under section 41 of Madras Act VIII of 1865, or at any time by the landlord's acceptance of a surrender by the tenant, which is required to be in writing by

section 12 of the same Act." The learned Chief Justice took part in his earlier judgment, but he is of opinion that it went "too far in laying down the rule as to a pattadar's right of occupation in the broad terms that it does."

5. Then, as to the intention of the Legislature, the following narrative will suffice to show what it was:—

(1) In the Bill, as brought in by the Hon'ble Mr. Maltby, all zamindars, shrotriendars, jaghiredars and inamdars are styled landlords of the first class, "occupying the place of Government in reference to the land, and entitled only to the tax payable therefrom or to a portion thereof."

(2) In the first report of the Select Committee,* dated 18th May 1864, the following declaration is found in paragraph 4:—"As zamindars and similar proprietors occupy, in a great degree, the position of farmers or assignees of the public revenue, the regulations now in force not only give them power to exercise the process necessary to collect their dues, but carefully protect the rights and interests of occupants of land under them. For this latter purpose the Collector is authorized to enforce the exchange of pattas and muchilkas; to prevent or punish exactions and illegal demands for an increase of rent; and to fix the rates of rent in case of dispute."

* Mr. Maltby.
" Pycroft.
" Felly.
" Norton (Advocate-General).
C. Lutchmanarsimha Chetty.

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(3) After this the Select Committee had before them a voluminous report from the Board of Revenue on the relative positions of zamindar and ryot. The Collector of Vizagapatam (Mr. Carmichael) had pressed for more explicit declarations in the Bill on this subject, and strongly urged the repeal thereupon of Regulation IV of 1822. He pointed out that the short but pregnant terms of that enactment are taken word for word out of the Bengal Code,† and that the original regulation was repealed in Bengal when the laws relating to the recovery of rent in that Presidency were consolidated, with modifications, by Act X of 1859.

† Section 15, Regulation VII of 1799.

Had this suggestion been adopted, all arguments on the scope of the earlier Madras Regulation would not have been peremptorily excluded as it is now held to be.

21st December 1864.

Why it was neglected the following extract from the second report of the Select Committee sufficiently informs us. After expressing their obligations to the paper of the Board of Revenue, they proceed thus (paragraph 4):—"The Committee deem it unnecessary to enter into the discussions to which the important measure of his permanent or zamindari settlement has led. They will shortly observe that, without going so far as to hold that zamindars are only farmers or assignees of the public revenue and not proprietors of their estates, they unanimously concur with the Board that the Regulations of 1802 were intended to protect the rights of occupants of land under zamindars by fixing the maximum rent demandable from them, and forbidding their ejectment as long as that rent was paid. The Committee further held that Regulation IV of 1822 (no less than Regulation V) was passed for the increased protection of such occupants of land in consequence of passages in the Regulations of 1802, which spoke of a proprietary right being conferred on zamindars having led to doubt and misapprehension."

(4) When this second report was presented, the Hon'ble R. Ellis put some important amendments on the paper, in consideration of which Mr. Pycroft, who had charge of the Bill at this time, Mr. Maltby having left the country, recommended, when the Council met on the 16th February 1865, that the Bill should be recommitted, and that Messrs. Ellis and Phillips should be added to the Committee. This was agreed to.

6. The Council met again that day month, when the Select Committee's 16th report was presented. Mr. Ellis it seems had proposed in Committee that, if a ryot

refused the patta offered him by the zamindar, the latter might summarily eject him from the land without the necessity of resorting to the Collector to enforce acceptance of the patta on its being found by the Collector to be a proper one.

7. The remaining members of the Select Committee recorded their dissent from this proposal, which nevertheless was somehow carried at the next meeting of Council *non con*. His speech is reported as follows, and it will be sufficient to say of it that, while his other assertions must remain matter of opinion, the first and last are so extremely incorrect that it is matter for surprise how they escaped instant refutation:—"He said that under the existing law the landholder possessed this right. It had been given to him more than sixty years ago, and no complaint had ever been made that it was abused. It was in accordance with native feeling. The landlords are anxious not to be deprived of it, since, even though the power might rarely be used, the knowledge that it existed would prevent contumacious tenants from refusing to accept patta on frivolous and insufficient pretexts. He thought it unwise now to take away a right which was ancient, beneficial, and had been approved of for more than half a century."

8. If the Bill had gone up to the Viceroy with this confiscatory clause, it may be surmised with confidence that it would never have passed into law. The Council, however, were no longer in favour of it when they met twelve days after on the 1st April. On this occasion it was withdrawn from the Bill after universal condemnation, which would have been more severe had not there been a misunderstanding about the matter. The harsh nature of the proposed addition "or summarily to eject such tenant" was not fully apprehended. Mr. Ellis clearly never intended that the zamindar should take the ryot before the Collector at all; but those who spoke in the Council appeared to think that, if the Collector found the zamindar's offered patta a proper one, the ryot might be forthwith ejected by the zamindar without the option of submitting himself to the decision by the terms of Mr. Ellis's amendment.

9. The Collector of Vizagapatam (Mr. Carmichael) was one of those who took the latter view. He immediately telegraphed to the Board as follows:—"Urgent. Section 10, amended Rent Bill. The ryot has right of occupancy, but on what terms may often be complicated question. Everybody may contend for supposed rights without further penalty than costs and damages if found in the wrong. If the ryot alone to suffer condemnation besides? I entreat Board to move Government against the order of ejectment at option of zamindar. The public peace is deeply concerned." The telegram was submitted to Government in due course before the final discussion. This concludes the history of this Bill, which passed as it was settled at this meeting of the 1st April 1865.

10. It being evident, therefore, that the local Legislature supposed it had secured the right of occupancy to the majority of "zamindars, jaghiredars, shrotrindars, inamdars, and persons farming lands from the above persons or farming the land revenue under Government," the Board resolve to urge Government to obtain an enactment affirming this right on unmistakable terms; but then the question arises, is the right to belong to every ryot without limitation?

11. It is a curious circumstance that the word *ryot* never once occurs in the Act. "The term 'tenant' shall, for the purpose of this Act, include all persons who are bound to pay rent to a landholder" (section 1). An *ijadar*, therefore, is a tenant no less than a ryot, and the engagement of the landholder, whether with the *ijadar* or the ryot, is equally termed a *patta* (section 3). If the landholder proceeds by a summary suit to enforce acceptance of a patta, the Collector is first to inquire whether the party sued is bound to accept a patta and grant a *muchilka*, and *unless this is proved* the suit is to be dismissed with costs (section 10). But in the reverse case, where the landholder is sued on refusal to grant a patta, no similar preliminary inquiry as to the defendant's liability to grant a patta is necessary; the Collector trying the case is to "direct a proper patta to be granted, and shall award to the tenant such costs and damages as may be shown to have been incurred."

12. The dictum "once a patta, always a patta" cannot have been intended as the enactment in *all* cases. Yet the language admits of no other interpretation. To exclude renters and such like the old fashioned word "*Ryot*" should be adopted, and it should be distinctly specified—as has been found necessary in another presidency—what gives a ryot the right of occupancy. These alone should be entitled to hold at the rates described in section 11. Mr. Edward Currie, in introducing, October 10th, 1857, the Bengal Recovery of Rents Bill, said, "the Bill also declares that all resident ryots have a right of occupancy in the lands held or cultivated by them so long as they pay the rents legally demandable from them," and by section 6 of the Act (X of 1859) this right accrues after twelve years, the holding of the father, or other person from whom a ryot inherits, being deemed to be the holding of the ryot within the meaning of that section.

13. In conclusion, the Board resolve to point out that immediate action is required. The crisis is undoubted, for any ryot can now be turned out of his holding at the end of a *fashi*. Much mischief has not, the Board hope, been done yet, because the High Court judgments (and this one was *officially* published in July last only) are not at once widely known.

(A True Extract.)

(Signed) J. B. PENNINGTON,
Acting Secretary.

No. 132. ORDER THREON, 13th March 1876, No. 366.

Miscellaneous.

This reference has, from various causes, now been lying so long unnoticed, that it appears expedient to request the Board of Revenue—before any steps are taken in the direction suggested by them—to inquire and report whether the results anticipated in the concluding paragraph have ensued and to what extent, within the knowledge of Collectors of districts and their Divisional Officers.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

To the Board of Revenue

Exa. C. Kuppuswami.

18 Copies.