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Revenue (1899) Department.

MISCELLANEOUS SERIES.

G.O., No. 157

DATED 10th January 99

[Despatch Abstract.]

Recording G.O. Leg: Communicating to the Hon'ble Mr. H. M. Winterbotham, the member in charge of the Malabar Compensation for Tenants' Improvement Bill, 1898, the Board's remarks thereon.

BACK PAPERS.

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

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Revenue (1899) Dept.

Government (1898) of Madras.
LEGISLATIVE.

Current No 53

Recd. } 4th January } 1899.
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G.O., No. 82, 13th December 1898.

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Malabar Compensation for Tenants' Improvement Bill, 1898.

Communicating to the Hon'ble Mr. H. M. Winterbotham, the member in charge of the —, the Board's remarks thereon.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

Read—the following paper:—

Proceedings of the Board of Revenue (Land Revenue), No. 333, dated 3rd December 1898.

Read—the following paper:—

G.O., No. 588, Revenue, dated 11th October 1898.

Resolution—No. 333, dated 3rd December 1898.

The Bill forwarded by Government is unaccompanied by any Statement of Objects and Reasons, but the Board presumes that the main object held in view is that provided by the Malabar Land Tenures Committee, viz., the check of capricious evictions and the control of the monopoly of lands at present enjoyed by the landlords of Malabar. The view taken by a distinguished member of that committee, Sir Philip Hutchins, was that the real safeguard against arbitrary eviction is to be found in the award to tenants of fair compensation for any improvements which they effect, the true measure of such compensation being in his opinion the difference between the present market value of the land in its improved condition and what would have been its present value if it had remained in its former condition. In the letter printed in G.O., No. 2530, Judicial, dated 11th December 1891, Mr. Winterbotham, as Collector of Malabar, assigned reasons for the view that the table of rates framed by the High Court and now in force in Malabar fails to secure to the tenant the full market value of his improvement. When this letter was referred to the High Court for remarks the Judges quoted the ruling in I.L.R., Madras XIII, 454, and urged that it was open to any tenant to show that in the special circumstances of his case the market value is higher and that the rate specified in the table should be raised. In the particular case dealt with in the ruling quoted, it was held that in the absence of evidence as to the actual market value of the improvement the tenant should only receive the actual cost of effecting it. It was further laid down that when calculating the value of an improvement, the courts are bound to take into consideration the period of time during which the tenant has enjoyed the enhanced produce resulting from such improvement without paying additional rent. Incidentally it was held that a landlord's failure to enhance the rent on the expiry of the ordinary period of redemption of the kanom, viz., 12 years, must be taken to imply an intention to confer an advantage on the tenant by way of compensation for the labour and capital expended by him on the holding. As the Board understands, the chief objection taken by the local officers to the present Act (I of 1887) is that the difficulty of adducing satisfactory evidence to prove the actual market value of an improvement, coupled in certain cases with the ignorance of the tenant that such evidence is required, has in the light of the ruling just quoted, produced the effect of nullifying the provision contained in clause (I) of section 6 which was intended to secure to the tenant the full value of the improvement effected by him.

2. It remains to be seen whether this defect in the existing law will be remedied by the passing of the Bill referred for the Board's consideration and whether the provisions of the Bill are in any other respect open to criticism.

Sections 3 to 5 practically correspond with sections 2 to 4 of the existing Act, the modifications contained in sub-section (2) of section 4 and sub-clause (i) of the same sub-section being a distinct improvement. The explanation to sub-section (1) of the same section, however, appears open to the criticism that it bars the grant of compensation under the Act for an improvement to a holding if made up of (a) an increase in the value of one part of the landlord's property diminished by (b) a substantial reduction in the value of another part. Thus supposing a tenant converts a cultivable portion of his holding into an embankment to protect the remaining portion from inundation or into an irrigation channel designed to convert the rest of the holding from dry to wet, the embankment and the channel so constructed would apparently fall within the category of "improvements," but no compensation could be granted in respect of them under the Bill.

3. Section 6 varies considerably from section 5 of the existing Act, but the Board observes with satisfaction that the proviso to sub-section (3) expressly negatives the ruling that the landlord's omission to revise the rent on the expiry of a kanom clearly implies an intention to confer an advantage on the tenant which must, under explanation (c) to section 6 (1) of the present Act, be set off as part compensation for improvements effected by the tenant. It may perhaps be urged that section 6 (3) of the Bill will permit a landlord to deprive a tenant of compensation to which he is justly entitled by arranging at the commencement of the lease for a so-called "reduced" rent in consideration of improvements to be made in the future. The Board does not consider, however, that it would be possible to frame the law more favourably to the tenant without putting a complete stop to improvement leases and causing grievous detriment to landlord and tenant alike. Sufficient safeguards are to be found in the facts that the matter is no longer left to implication, for there must be an express agreement in writing between the parties that the landlord cannot demand a deduction on this account as a matter of right, and that the discretion accorded to the courts is limited to the deduction of such sum as under all the circumstances of the case may be reasonable. While, however, the Board admits the necessity of these safeguards so far as future leases are concerned, it doubts the propriety of rigidly enforcing them with regard to leases executed prior to the passing of the Bill, and considers that discretion should be given to the courts to allow agreements of the character contemplated to be proved otherwise than by production of a written document.

4. Sections 8 to 13 lay down specific rules as to the calculation of the compensation to be awarded and these effectually meet the main difficulty referred to in paragraph 1 *supra*; for where, as is so frequently the case, satisfactory evidence as to the change in the market value of a holding is not forthcoming, the courts are bound to award compensation at rates which cannot be described as unfavourable to the tenant. The onus of proving that the value of the improvement exceeds the initial cost of effecting it is no longer cast upon the tenant.

5. As to the considerations upon which the division of the value of an improvement between the landlord and the tenant has been fixed in section 8 the Board has not been furnished with detailed information, but it presumes that the main principle held in view is that the tenant is entitled to the larger share of the profit in consideration of the fact that he takes the whole of the risk. It appears to be considered that the tenant is reasonably entitled to reap the full benefit accruing from an improvement during the period of his tenancy, and that if he is then evicted, he is further entitled to recover the present value of the improvement if it is still subsisting, unless that value exceeds his initial outlay, in which case a portion is assigned to the landlord. The tenant is not necessarily entitled to recoup his initial outlay for in the case of an improvement which is not particularly profitable, it would be obviously unfair to require the landlord to pay anything in excess of its present value. If on the other hand the improvement is a particularly profitable one, it is a fair assumption that a portion of the excess value is due to the natural advantages of the land rather than to the labour, skill and judgment of the tenant. It is impossible to apportion the two shares accurately in such a case and an arbitrary division is necessary. The proportion adopted by Government is three shares to the tenant and one to the

landlord. This is undoubtedly much in favour of the tenant for it must be remembered that he may already have enjoyed the annual profits reaped from the improvements for several years and thus recouped the whole of its original outlay before becoming eligible to receive compensation. On the other hand the landlord will suffer no loss, for he will get at least 6 per cent. on the money which he is required to pay as compensation.

6. The subject is one which presents many difficulties, but after devoting much consideration to it, the Board has come to the conclusion that the division adopted in the Bill will be open to grave objection unless some modification be introduced for the purpose of preventing the grant of exorbitant compensation, and meeting the criticism that under the Bill the owner of a field will be mulcted in direct proportion to the fertility of the soil rented by his tenant. Objection has already been taken on this ground in paragraphs 4 and 10 of Board's Proceedings, No. 38, dated 29th January 1896, and the Board desires to reiterate the arguments against the indiscriminate grant of exorbitant compensation, which are set forth in those paragraphs and in the minute of the Board's First Member printed in the same proceedings. It considers that on the whole the most satisfactory way of meeting the difficulty will be to fix a limit to the amount of compensation ordinarily admissible the courts being entrusted with a discretionary power to award more in cases in which it is proved that the increase in value resulting from the improvement is due to exceptional skill or brilliancy of conception on the part of the tenant. It may fairly be assumed that a reasonable expectation of a return of 18 per cent., on the necessary outlay would induce a tenant to effect a given improvement, and any profits in excess of this amount would ordinarily be due to the exceptional fertility of the soil or to other conditions not in any way the result of the tenant's action. The tenant could not therefore justly complain if, as the Board would propose, the compensation ordinarily payable to him were limited to an annuity equal to 18 per cent. on the cost of effecting the improvement, such annuity being capitalized at 6 per cent. This would enable the tenant who had already enjoyed the full profits of his improvement during the period of his tenancy to obtain for the rest of his life, by a safe and easy investment at 6 per cent., an income equal to 18 per cent. on his outlay in effecting the improvement, and this annuity he would be able to leave to his heirs.

7. The limit now proposed would in other words be expressed in the condition that the compensation awarded must not exceed three times the initial cost of effecting the improvement. That the provisions of the Bill might lead to the grant of compensation at exorbitant and unequal rates is clear. Thus, the compensation ordinarily admissible for a single arecanut tree brought into bearing at a cost of As. 2-6, artificial irrigation being unnecessary (*vide* schedule III) may under schedule IV, table III, amount to as much as Rs. 4-6-2 or 28 times the initial outlay; this figure, as will be shown in paragraph 9 *infra*, is in fact below the mark, for under section 8 the compensation would be nearly Rs. 6-8-0, or almost 42 times the outlay. But if artificial irrigation be employed the court will presume the cost of rearing to be As. 12 and the maximum compensation would be Rs. 5-14-6 or less than eight times the initial outlay. This is, of course, an extreme instance, but similar results will be obtained if more probable cases are dealt with.

8. Section 9, clause (1), appears open to similar objections on the ground of the exorbitant nature of the compensation held to be admissible, unless the Board misapprehends the effect of it. Thus, to take the case of a holding near a rising town with a brisk demand for building timber upon which half a dozen large teak trees were growing at the time when the tenancy commenced, the tenant expends little or nothing on the protection or maintenance of such trees, but that trifling expenditure constitutes an improvement under section 4 (2) (i), while he would be entitled under section 9 to receive half their value on vacating the holding, possibly a sum of several hundred rupees. In the instances dealt with in both the preceding paragraphs the limit suggested in paragraphs 6 and 7 would effectually prevent the grant of the exorbitant compensation otherwise admissible.

9. The remaining sections for the most part lay down presumptions as to the value of various articles of produce, cost of cultivation, &c., and are acceptable as they

ensure the uniformity of valuation in case the evidence is meagre. The Board is presumably not desired to verify the general accuracy of the rates now proposed, but the attention of Government will be invited to the fact that an examination of the entries in schedule IV, tables II, III and IV shows that they have been drawn up on the hypothesis that the landlord and tenant should receive *equal* shares of the difference between the value of a valuable improvement and the initial outlay incurred, instead of shares in the ratio of 1:3 as provided in section 8 (c) of the Bill. While referring to the tables the Board would also suggest that the labour imposed upon appraisers would be greatly simplified, without really increasing the risk of error if a considerable reduction were made in the number of the groups in which trees are classified with regard to their productive capacity and period of bearing.

10. The only other remark which suggests itself to the Board is that section 15 is a distinct improvement as constituting a safeguard against claims for excessive compensation on the strength of over-planting such as are referred to at pages 18 and 19 of the minute of the Board's First Member printed in Board's Proceedings, No. 38, dated 29th January 1896.

(True Extract.)

(Signed) LIONEL DAVIDSON,
Acting Secretary.

To the Secretary to Government, Revenue Department.

Endt. Mis. No. 4811.

Transferred to the Legislative Department.

FORT ST. GEORGE,
7th December 1898.

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

ORDER—No. 82, Legislative, dated 13th December 1898.

Communicated to the Hon'ble Mr. H. M. Winterbotham the member in charge of the Bill.

(True Extract.)

A. Edgington
Secretary to Government.

To the Revenue Department.
" Hon'ble Mr. H. M. Winterbotham.

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189 .

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