Revenue (1898) Department

MISCELLANEOUS SERIES.

G.O.,. No. 2525

DATED 15th June

[Despatch Abstract.]

Recording Pros:—Legislative—Investing that the letters from the Govt. of India dated 2nd April and 9th May 1898 re the Madras Tenancy Bill be furnished to the Hon. Members of the Legislative Council.

BACK PAPERS.

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

FURTHER PAPERS.

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

Revenue 1898 Department
Current No 1429

Government {1898} of Madras.

LEGISLATIVE.

27-5-98

RECEIVED 31 MAY 98 LEGISLATIVE DEPARTMENT

Recd. 11 June } 1898. *Enclosures*

Regd. 11 " } *Spare copies* 6 to 8

G.O., No. 35, 1st June 1898.

G. O. misc. no. 2525 dt 15-6-98

Recorded

JUNE. 12/6/98

Madras Tenancy Bill.

Directing that the letters from the Government of India, dated 2nd April and 9th May 1898, regarding the — be furnished to the Hon'ble Members of the Legislative Council.

GOVERNMENT OF MADRAS.

LEGISLATIVE DEPARTMENT.

Read—the following papers:—

From J. B. FULLER, Esq., C.I.E., C.S., Officiating Secretary to the Government of India, Department of Revenue and Agriculture (Land Revenue), to the Secretary to the Government of Madras, Legislative Department, dated Simla, 2nd April 1898, No. 587—371—4.

I am directed to address you as follows in regard to the draft Tenancy Bill which accompanied your letter, No. 90, dated the 19th November 1897.

2. An examination of the provisions of the Bill has disclosed many points on which the Government of India are not precisely in accord with the Government of Madras. But the Governor-General in Council recognizes the inexpediency of delaying legislation which has been under contemplation for over 12 years, in order to bring under discussion views which did not present themselves when the Bill was sent up in 1894; and intimation has been given to your Government by telegram that the Governor-General in Council sanctions the introduction of the Bill into the local Legislative Council, provided that modifications on the following four points of principle are accepted:—*firstly*, that a lease should not bar the acquisition of occupancy right under the 12 years' rule; *secondly*, that non-occupancy rights should be declared non-transferable; *thirdly*, that land purchased from an occupancy tenant by a zemindar should not merge in the private land of the purchaser; and, *fourthly*, that section 150 should be expunged, and its provisions, if thought necessary, be inserted as a sub-section under section 154. The assent of the Madras Government to these modifications has been communicated by telegram, with the intimation that the Bill so modified will be introduced into the Legislative Council early in May next.

3. The points referred to above represent principles which the Government of India consider of such vital importance as to require recognition before the Bill is introduced. But there are other points—some of hardly less moment—on which in their opinion the provisions of the Bill might be advantageously changed. Certain of them will be discussed in a separate communication which will be made after the examination of the Bill in the Legislative Department of the Government of India. In regard to others I am to offer the following observations, which will, it is trusted, be taken into careful consideration when the Bill is in Select Committee. The Government of India fully appreciate the necessity of shaping legislation to suit local conditions, and are impressed with the minute attention which the proposed measure has received at the hands of the Madras Government and its officers. But tenancy legislation is a matter which has for many years past been forced into prominence in the provinces of Upper India, and experience has been gained which can hardly fail to be of service in Madras, especially as local conditions over a great part of the area to which legislation is to apply are seemingly very similar to those which obtain in the neighbouring districts of Bengal and the Central Provinces.

4. I am in the first place to advert to Chapter IX of the Bill which provides for the making of cadastral surveys. The Governor-General in Council attaches very great importance to these provisions, in the belief, shared by many of the Revenue authorities of Madras, that they offer the only effective means of interfering, on behalf of either landlord or tenants, where existing conditions have become generally unfair in the interests of either party. The Bill restricts the power of the Government to order a survey (apart from cases where parties apply or an estate is under

Court of Wards' management) to cases in which the survey "is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally". In this connection I am to forward copy of a despatch lately received from the Secretary of State (No. 31, Revenue, of 17th February 1898) and am to recommend that the power of State interference be widened by the addition to clause (*b*) of section 133, sub-section (2), of the words, "or is required in order to secure either tenants or landlords in the enjoyment of their legal rights." I am also to point out the expediency of so wording section 135 as to make it clear than an application for a survey can be made by any one of the proprietors of, or co-sharers in, an estate, and is not limited by the explanation to sub-section (3) of section 3 to the registered or managing owner. It is admittedly an advantage that a survey should be made and there seems no reason why a co-sharer should not apply. I am to add that this suggestion follows an amendment which it is proposed to make in the Bengal Tenancy Act by a Bill now before the local Legislative Council.

5. Under the draft Bill the survey record is to be accepted as conclusive proof. It is observed that the Madras Government have not adopted this conclusion without careful consideration of the arguments which have been urged against it. But the Government of India desire to press those arguments again as the question is one which is, in their opinion, vital to the success of the survey as well as to the interests affected by it, and the legalization of the record as final proof may not improbably wreck the survey altogether. The idea is altogether novel in practice and has never been adopted even in provinces in which a record has been maintained for a century and has been elaborately scrutinized at repeated Settlements. It was brought forward in 1871, but was rejected for reasons which will be found stated in Sir FitzJames Stephen's speech in the Legislative Council of the 30th October of that year on the Punjab and North-Western Provinces Land Revenue Bills. It has been found in experience that the acceptance of the survey entries as *presumptive* proof is all that is required in order to secure titles with a minimum of litigation. With a comparatively small amount of trouble, errors can be brought within narrow limits and do little harm as long as the entries are rebuttable in the Courts. Every attempt at stricter accuracy adds enormously to labour and expense. And it is hopeless to expect that errors can be absolutely eliminated, take what trouble we may.

6. Such being the views of the Government of India, it follows that the procedure in preparing the record can be considerably simplified. Under the Bill as it stands, the procedure in drawing up the preliminary record will be summary and of an executive character. Objections received after publication should also be decided summarily, and appeals should lie to a special Collector and not to a Judge. There should be no appeal permitted to the High Court, and the period for publication should be limited to three months at the outside. In Bengal only one month is allowed.

7. I am, however, to explain that in urging that the survey entries should not generally be accepted as more than presumptive proof, the Government of India do not mean to imply that in certain matters the decision of the Record Officer should not be accepted as final. Instances of such matters would be the amount of rent fixed in cases where rent settlement is undertaken, or the particular lands which are to be included in the zemindar's "private lands".

8. Another point in which the provisions for survey may be modified with advantage is the necessity under section 134 for recording the boundaries of each tenant's lands. The record will be accompanied by a survey and the words "as shown in a map of the village" should be added to clause (*d*). A map is an adequate record of field boundaries and has been accepted as such in all provinces except Bengal, where the obligation to describe boundaries as well as map them has added very greatly to the time and labour of the survey and has rendered the record of inconveniently large size. The Government of India hope that in this matter the Madras Government will find themselves able to adopt the procedure which has been followed for many years with success in the Punjab, the North-Western Provinces and the Central Provinces.

9. I am next to turn to the provision of Chapter X regarding the zemindars' "private lands" The Bill contemplates the extension of these lands by the purchase of occupancy rights from ryots. Such a provision must act as a direct encouragement to the ousting of occupancy ryots by proprietors and is absolutely opposed to the principles adopted in other provinces. The cultivating right of a proprietor in his demesne is not of the same kind as tenant right; it is a strong and exclusive phase of proprietary right, and it seems unreasonable and impolitic to give a proprietor the power to bar for all time the growth of occupancy rights in a field by getting rid of an occupancy tenant who happens to hold it. In deference to these views the provision has now been omitted, and till a record is prepared, a zemindar's "private lands" will only include such fields as are customarily so recognized under one or other of certain names locally applied to them. The making of a record will under section 148 enable a proprietor to bring into this class land which he has held in his own cultivation for the three years preceding. Having regard to the evidence which past correspondence affords as to the tendency of zemindars to extend the area of their demesnes at the expense of their tenants, the Government of India consider that a three-years' term of occupancy is too short to warrant the exclusion of land from the *ryoti* class and that the rule followed in the North-Western Provinces, Bengal and Central Provinces should be adopted, under which twelve years' continuous occupation is necessary. In the case, however, of land reclaimed by the proprietor from waste, a three-years' term seems free from objection. A further criticism of section 148 is that it regards occupation *at the time of the order for the survey*. To this there is the apparently fatal objection that it would lead to a scramble for land between the passing of the Act and the inception of survey, and the Government of India are of opinion that (following in this matter the law of Bengal) the date on which the Bill becomes law should be taken as the determining point.

10. In regard to section 28, which provides for enhancement or reduction of rent on the ground of alteration in area, I am to observe that in the opinion of the Government of India its application should be restricted to cases in which *actual gain or loss* of area can be proved to have taken place since rent was fixed or in which rent was *calculated on area* and the area proves to have been taken incorrectly. When a ryot holds at a lump rent, fixed without special regard to area, or with no regard to area, as is the case with the "plough" rents in vogue in backward tracts, it is not fair to permit the landlord to claim enhancement because he can show that the area entered in the lease or recorded against the holding in the village papers is incorrect and understates the quantity of land held. The section as it stands would enable a landlord to put his tenant into Court over differences arising from errors in survey or estimation which in no way affect the rental assessment.

11. It is noticed that the Bill makes no provision for the authoritative suspension of rents in time of distress. Section 40 permits a landlord to postpone rent collection of his own motion; but the Government of India do not think that it should be left to the landlord's discretion to deal equitably or inequitably with his tenants in, for instance, a year of famine, and are of opinion that a provision should be added on the lines of section 73 of the Central Provinces Tenancy Act, under which Courts trying cases for arrears of rent are empowered to allow deduction or direct payment by instalments in cases where the tenant can prove loss owing to extraordinary calamity. A further security which I am to advocate is a provision that in cases where Government suspends the collection of land-revenue, a corresponding suspension of rents shall follow, and that the powers of the landlord to distrain, sell or eject shall not be exercised during the season to which the suspension relates.

12. The Bill apparently makes no provision for the use of progressive rents in clearance leases. The Bengal Tenancy Act contains a useful section [178, clause (1)] which recognizes the grant of leases at progressive rents in the case of lands reclaimed from waste. A similar provision was included in the draft Bill of 1894, but it has now been omitted because "it is a principle of the present Bill that waste land for agricultural purposes should not be treated differently from other land." But I am to remark that this seems no reason for not recognising a convenient and equitable custom

under which a landlord *postpones* realization of part of a full rent till land has been thoroughly reclaimed, and I am to recommend the restoration of the provision contained in clause (1) of section 121 (3) of the Bill of 1894.

13. Lastly, I am to remark that the provisions of the Bill in regard to distraint and the summary recovery of arrears by sale or ejectment appear extraordinarily severe: but the Governor-General in Council hesitates to condemn on general grounds a procedure to which the people in Madras have apparently grown habituated, and which, though open to great abuse, has perhaps become safeguarded by custom during the past 30 years. But I am to suggest that a severe penalty be provided for the case of a zemindar's obtaining by a false statement the issue of a warrant under section 129.

Enclosure.

Despatch from the Right Hon'ble Lord GEORGE HAMILTON, Her Majesty's Secretary of State for India, to His Excellency the Right Hon'ble the Governor-General of India in Council, dated India Office, London, 17th February 1898, No. 31 (Revenue).

I have considered in Council your Excellency's letter, No. 88 (Revenue), dated the 9th December 1897, concerning the suggestion that a cadastral survey and record of rights should be prepared for the permanently-settled tracts of the Madras Presidency.

2. The Madras Government consider that there is no clearly-proved necessity for undertaking such a survey; that a general compulsory survey of the kind is inexpedient, as it might disturb the harmony now existing between landlords and tenants; that the cost of such an undertaking would be heavy, and ought not to be thrown upon private proprietors without more justification than at present exists. They say that a cadastral survey may be expedient in special cases, either for the prevention of agrarian dispute or at the desire of the proprietor of an estate; and provision has been made in the "Madras Survey and Boundaries Act, 1897," for giving the Government power to take needful action in such cases.

3. You regret the decision of the Madras Government, partly because when a survey and record of rights is found necessary hereafter, the execution of the work will be more difficult and more costly than it would be now. You point out that papers recently submitted by the Madras Government contained a considerable body of evidence that harmony does not exist between landlords and tenants over large areas of permanently-settled estates, and that the existing agrarian trouble can only be set at rest by a survey and record of rights. You remark that neither in the North-West Provinces nor in Bengal have survey operations been productive of dispute and litigation, while in many cases the results have been most beneficial; and you explain that the cost of the survey and record of rights to the persons affected would probably not exceed Rs. 100 per square mile, which would be reduced by such grants as might be made from the general revenues.

4. In favour of a cadastral survey and record of rights on Madras estates is the consideration that the reorganised village agency there will be able to maintain the record and correct it from year to year; whereas the strongest argument against the survey of North Behar was that there was no existing staff competent to correct and maintain the record of rights in future years.

5. I find that my predecessors, when considering the expediency of effecting a cadastral survey of permanently-settled estates, have repeatedly, in the case of the districts of the Benares province and in the case of the districts of North Behar, held that the assured advantages secured by a survey to the tenantry and to the landlords clearly outweigh objections founded on the cost and the temporary inconvenience caused by such operations. I am disposed to share your regret that the present favourable opportunity of using the experienced survey staff for this work should be lost to Madras.

6. If, on reconsidering the matter in the light of the arguments contained in your letter of the 13th November 1897, the Madras Government should see their way to

undertaking the general survey and record of rights which you advocate, I shall very gladly give my consent to the measure; but should it be otherwise, I trust some favourable opportunity will be taken for again urging your views on that Government.

From DENZIL IBBETSON, Esq., C.S., c.s.i., Secretary to the Government of India, Department of Revenue and Agriculture (Land Revenue), to the Secretary to the Government of Madras, Legislative Department, dated Simla, 9th May 1898, No. 866—371-6.

In continuation of paragraph 3 of my letter, No. 587—371-4, dated the 2nd instant, on the subject of the Bill which it is proposed to introduce in the local Legislative Council to amend and declare the law regulating the relations between landlord and tenant in the Presidency of Madras, I am directed to intimate that, as the result of a further examination of the measure in the Legislative Department, the Government of India find it unnecessary to add any observations to those already communicated in respect of the principles of the Bill or the expediency of its introduction. I am, however, to take this opportunity of explaining the reasons for the suggestion, which the Government of India offered and the Government of Madras have so readily accepted, regarding the omission of clause 150 and the amplification of clause 154 of the Bill.

2. Clause 150 as drawn purports to make the Code of Civil Procedure applicable in its entirety to suits tried by Collectors under the proposed measure. The experience gained in other Provinces—and especially of late in Bengal—has demonstrated the unsuitability for settlement purposes of the procedure prescribed by that Code and the wisdom of taking power for the Government to lay down a simpler method of proceeding. The application of the Code implies that each individual case must be dealt with separately, a separate record being kept and evidence being separately recorded in each instance; but, when a settlement of rents is being made on a large scale, as is necessary when a settlement of revenue is undertaken over an extensive area, it is apparent that to make the rent of each individual tenant the subject of a separate suit must involve much waste of both time and money. If, for example, an enhancement or reduction of rent is claimed on the ground of a rise or fall in prices since the rent was last fixed, the alterations in prices, if once established for a local area, must obviously affect all the tenants in that area whose rents were last settled at the same time, and ought to render it unnecessary to record the evidence over and over again and to allow it to be disputed afresh in each individual case. Again, a prevailing rate may be found in a village up to which, if there is no sufficient reason to the contrary, the rents for the same class of land may be enhanced; and once such rate is shown to exist, it ought not to be necessary to prove it by evidence against every tenant separately. Moreover, it has always been recognized that Government officers in settling rents for the purpose of ascertaining the assets on which the revenue is to be based in temporarily-settled estates should have more discretion in the matter of altering rents than is allowable in suits between private persons in the Civil Courts. The Government of Bengal, however, in 1885, with a view to showing that they claimed nothing in the way of enhanced rents in their own estates, or in estates under settlement of revenue, which they were not prepared to concede to private landlords, consented to have the same rules and the same procedure applied to their own estates as were proposed for the fixation of rent in private estates; but the distinction between the difficulty of a settlement of rents on a large scale and that of dealing with the application of a single landlord or a single tenant appears to have been lost sight of, and the practical impossibility of working the provisions of chapter X of the Bengal Tenancy Act, 1885, on the lines required by the Code of Civil Procedure has just led to important amending legislation in the Bengal Council. It is very desirable that history should not be allowed to repeat itself in the case of the Presidency of Madras where a general re-adjustment of rents may be found necessary (as contemplated by the Bill) in the interests of tenants, though the permanent settlement of the land revenue renders the State unaffected by the result.

Endorsement of the Revenue Department, Mis. No. 2300, dated 27th May 1898.

Order—No. 35, Legislative, dated 1st June 1898.

The foregoing letters from the Government of India will be furnished to the Hon'ble Members of the Legislative Council.

(True Extract.)

Secretary to Government.

To the Revenue Department.
„ Hon'ble Members of the Legislative Council.

Rxd A Rait

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