15/1113

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 4766

DATED 5th December 1898.

[Despatch Abstract.]

Transferring with Explanations
Dept. the Observations upon them made by the Advocate
General on the Malabar Compensation for
Tenants' Improvements Bill

BACK PAPERS.

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

FURTHER PAPERS.

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

$\frac{O}{18}$ 4,000—18-10-98.

Revenue (1898) Department.

CURRENT No. 3014

From

The Govt. Solicitor-Madras.

Order

No. 563

Dated 21st
Received 22nd } Nov: 1898
Registered 22nd
Enclosures —
Spare copies. —

SUBJECT.

Forwarding a copy of the observations of the Advocate-Genl, Madras in regard to the Bill to secure to Tenants in the Malabar &c compensation for improvements.

Recd 23.11.98

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

D/1 1,000—8-4-97.

REVENUE DEPARTMENT.

G. O. No. 8004.

From

The Government Solicitor.

No. 568, Dated 21st November 1898.

FOR ORDERS.

To SECRETARY.

The Govt. Solicitor forwards a copy of the remarks of the Hon'ble the Advocate-Genl. on the Malabar Compensation for Tenants' Improvements Bill, called for in G.O. 588, dated 11th Octr. 1898 Revenue. The alterations in the Bill suggested by the Advocate-Genl. are :-

(i) To amend the definitions of the terms "Tenant" and "Landlord" so as "to make it clear as to whether, for "the purposes of the Act, the rela- "tion of landlord and tenant exists "between mortgagor and mortgagee as "defined in sec. 58 of the Transfer of "Property Act" (IV of 1882. India).

(ii) To add the words "in the tenan

holding" to the explanation to clause 4(1) of the Bill, if the explanation is not intended to apply to the landlord's property generally.

(iii) To restrict the improvements specified in clause 4(2)(g) (renewals, reconstructions. &c.) to those "necessary for the protection of the property".

2. Point numbered (i) above - Definition of Landlord and Tenant.-

There appears to be no reference to this point in the printed notes. The Hon'ble Mr.Grose's note d/7th Feby. 1893 at bottom of page 211 of the file however, shows that it was considered necessary to retain the definitions of landlord and tenant, as otherwise a janmi might plead that a Kanomdar is a mortgagee not a tenant. The Advocate-Genl. wants it made clear that the definition of landlord and tenant covers the case of mortgagor and mortgagee as defined in the Transfer of Property Act so that the present bill may not be defeated by the application

cf. the Transfer of Property Act.

The definitions in Act 1 of 1887 have been in force for 12 years, and does not appear to have caused any difficulty -
There are few pure mortgages in Malabar i.e. such as are defined in Sec 58 (a) (b) and (c) where no rent is reserved -
When such transactions occur I think they will be regulated by Contract, and that the mortgagee should not be regarded as "tenants" for the purposes of the Act -
If it is considered necessary an explanation may be added to the definition declaring that a mortgagee as under Sec 58 (c) (d) and (e) of Act IV of 1882 is not a "tenant" -
H.S.
2-12-93

I think the explanation clearly means that it can say in any part of the landlord's property - The Advocate Genl's prescription is correct H.S -

I don't approve the proposed addition -
The definition in Sec 4 (1) sufficiently provides against "petty" improvements
H.S -

*marked portion of note at page 213 of the file.

of the decisions founded on the Transfer of Property Act.

Point (ii).- to add the words "in the tenants' holding" to explanation in clause 4(1). Please see the Hon'ble Mr.Stokes's second note d/23rd July 92 on the margin of page 214 of the file. This appears to be the only reference to the point in the notes and it is not clear whether the phrase "the rest of the holding" means the rest of the landlord's property generally or the rest of the tenants' holding.

Point No.(iii)- to restrict improvements in the nature of renewals and reconstructions in cl. 4(2)(c) to those "necessary for the protection of the property". This point does not appear to have been considered before.

3. The Advocate-Genl's remark on clause 3 (4). The first part of the clause was put in to embody the decisions in I.L.R. VIII Madras 331 and 415. These are the same as in 1.M.H.C.R. 112, and 21 Madras 155. the second part embodies

embodies the decision in 20 Madras 124 but this decision does not appear to have been specially referred to when the ~~revision~~ addition was made.

4 The Advocate-Genl. remarks - on clause 3 that the new provisions with reference to compensation effect an important alteration in the Law in favour of the tenant. It is the intention of the Legislature to make the alteration ~~proposed~~

5. The remarks called for from the Board of Revenue and the Hon'ble Mr. Winterbotham have not yet been received.

(ltd.) W.H.M.
25.11.98.

H.M.
For Orders
S/R
25/11/98

Yes. H.M.
S/R
H.S.

† para 3 of the Hon. Mr. Grose's note at page 252 of the file.

S/R H.S.

(No)

I have read through the printed "List of Papers" & find that the proposed Bill has been elaborately discussed by Sir H. Bliss & Mr. Grose.

All the amendments proposed in the Bill, & the Schedules, will have to be carefully examined & discussed by a Select Committee, and it seems useless to incur the delay that would result from my now criticising the Bill in detail.

I heartily sympathise with the object of the Bill, and concur in most of the amendments of the Bill; but I am doubtful about the Schedules.

I think action should be at once taken to bring the Bill before the Madras Public & officials for criticism.

I can find no Statement of Objects & Reasons. H.S.
2-12-98.

Yes. H.M.

Please see draft before it should also be shown to Mr. Mundella. Mr. Chalfont R.A. has also sent the Legislative
28.11.98

Letter from Mr. Grant Selection
No 563 (C. No. 8004)
21-11-98

Endt No 4766 dy 5th Dec 98.
Transferred to the Legislative Dept

S/R 5/12/98

To the Legislative Dept
with copies of notes.

) and copy of note by Mr. Stokes, Mr. Mundella dy 4-8-98

RS
5-12-98

Revenue & PP

9 Dec 98

Given for copying _____
Copied _____
Examined _____ } 189 .
Signed _____

MAIN G.O., No. DATED
189 ,

CUT No.

CLOSURES TO C. No.

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notes.
Re. No Legislative
28/2/95