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SECRET

(4) for the custody, production and transfer of the registers and other records kept by registrars ;

(5) for the correction of clerical errors which may be discovered in the registers of births or registers of deaths ;

(6) generally to carry out the provisions of this Act.

¹(TAMIL NADU) ACT No. I OF 1900².

[THE MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT, 1899.]

(Received the assent of the Governor on the 4th December 1899, and that of the Governor-General on the 3rd January 1900 ; the assent of the Governor-General was published in the Fort St. George Gazette of the 9th January 1900.)

An Act to secure to tenants in ¹[certain areas in the State of Tamil Nadu adjacent to the territory which immediately before the first day of November 1956 was comprised in the Malabar district] compensation for improvements.

Preamble.

WHEREAS it is expedient to amend the law relating to compensation for improvements made by tenants in ²[certain areas in the State of Tamil Nadu adjacent

¹ These words were substituted for the word "Madras" by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969, which came into force on the 14th January 1969.

² For Statement of Objects and Reasons, see *Part St. George Gazette Supplement*, dated the 13th December 1898; for Report of the Select Committee, see *ibid.*, dated the 1st August 1899, p. 1; for Proceedings in Council, see *ibid.* dated the 14th February 1899, p. 9; and *ibid.* dated the 12th December 1899, p. 16.

³ The words "certain areas in the State of Madras adjacent to the territory which immediately before the 1st day of November 1956 was comprised in the Malabar district" were substituted for the words "the Malabar district and certain neighbouring areas in the State of Madras" by the Madras Adaptation of Laws Order, 1957 and for the expression "State of Madras", the expression "State of Tamil Nadu" was substituted by the Tamil Nadu Adaptation of Laws Order, 1970, which was deemed to have come into force on the 14th January 1969.

to the territory which immediately before the 1st day of November 1956 was comprised in the Malabar district]; It is hereby enacted as follows :—

¹[1. This Act may be called the Malabar Compensation for Tenants Improvements Act, 1899.] Short title.

2. [Repeal of Act I of 1887.] *Rep. by the Repealing and Amending Act, 1901 (Central Act XI of 1901).*

3. In this Act, unless there is something repugnant Interpretation-
clause. in the subject or context,—

(1) "tenant," with its grammatical variations "Tenant" and cognate expressions, includes a person who as lessee, sub-lessee, mortgagee or sub-mortgagee or in good faith believing himself to be lessee, sub-lessee, mortgagee or sub-mortgagee of land is in possession thereof, or who, with the *bona fide* intention of attorning and paying the customary rent to the person entitled to cultivate or let waste-land, but without the permission of such person, brings such land under cultivation and is in occupation thereof as cultivator :

(2) "ejectment" includes redemption or recovery of possession of land mortgaged. "Ejectment".

(3) "improvement" means any work or product of a work which adds to the value of the holding, is suitable to it and consistent with the purpose for which the holding was let, mortgaged or occupied : "Improve-
ment".

4. Until the contrary is shown the following works or the products of such works shall be presumed to be improvements for the purposes of this Act— What are pre-
sumed to be
improvements.

(a) the erection of dwelling houses, buildings appurtenant thereto, and farm buildings ;

¹ This section was substituted by the Madras Adaptation of Laws Order, 1957, for the original section as amended by section 48 (ii) of the Malabar Tenancy (Amendment) Act, 1951 (Tamil Nadu Act XXXIII of 1951), which came into force on the 15th March 1952.

(b) the construction of tanks, wells, channels, dams and other works for the storage or supply of water for agricultural or domestic purposes ;

(c) the preparation of land for irrigation ;

(d) the conversion of one-crop into two-crop land ;

(e) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, or land used for agricultural purposes, or of waste land which is culturable ;

(f) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;

(g) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto ;

(h) the planting or protection and maintenance of fruit-trees, timber-trees and other useful trees and plants.

Tenant entitled to compensation on ejection.

5. (1) Every tenant shall on ejection be entitled to compensation for improvements which have been made by him, his predecessor in interest, or by any person not in occupation at the time of the ejection who derived title from either of them, and for which compensation has not already been paid ; and every tenant to whom compensation is so due shall, notwithstanding the determination of the tenancy or the payment or tender of the mortgage-money (if any), be entitled to remain in possession until ejection in execution of a decree or order of Court.

(2) A tenant so continuing in possession shall during such continuance hold as a tenant subject to the terms of his lease or of the mortgage, as the case may be.

6. (1) In a suit for ejection instituted against a tenant in which the plaintiff succeeds and the defendant establishes a claim for compensation due under section 5 for improvements, the Court shall ascertain as provided in sections 9 to 18 the amount of the compensation and shall pass a decree declaring the amount so found due and ordering that, on payment by the plaintiff into Court of the amount so found due and also the mortgage-money (if any), ¹ [on or before such date within six months from the date of the decree as the Court may fix] the defendant shall put the plaintiff into possession of the land with the improvements thereon.

Decree in ejection to be conditional on payment of amount of compensation ascertained under this Act or the difference between it and the amount, if any, adjudged to the plaintiff from the defendant.

(2) If in such suit the Court finds any sum of money due by the defendant to the plaintiff for rent or otherwise in respect of the tenancy, the Court shall set-off such sum against the sum found due under sub-section (1), and shall pass a decree declaring as the amount payable to him on ejection the amount (if any) remaining due to the defendant after such set-off :

*[Provided that, where there are several defendants in a suit, the court shall not set-off under this sub-section any sum of money due by any one of the defendants for rent or otherwise in respect of the tenancy against the sum due under sub-section (1) to any of the other defendants in that suit.]

(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree, and the revaluation of an improvement for which compensation has been so adjudged, when and in so far as such re-valuation may be necessary with reference to the condition of such improvement at the time of ejection as well as any sum of

Compensation for subsequent improvements and revaluation, if necessary, of improvements at the time of ejection.

¹ These words were added by section 46 (iii) (a) of the Malabar Tenancy (Amendment) Act, 1951 (Tamil Nadu Act XXXIII of 1951), which came into force on the 15th March 1952.

* This proviso was added by section 46 (iii) (b), *ibid.*

money accruing due to the plaintiff subsequent to the said date for rent or otherwise in respect of the tenancy, shall be determined by order of the Court executing the decree and the decree shall be varied in accordance with such order.

(4) Every matter arising under sub-section (3) shall be deemed to be a question relating to the execution of a decree within the meaning of clause (c) of section 244 of the Code of Civil Procedure¹.

Tenant may remove buildings, works or trees, not deemed improvements, within a time to be fixed.

7. Whenever a Court passes a decree or order for ejection against a tenant and such tenant has erected any building, constructed any work or planted any tree which the Court finds is not an improvement for which compensation can be claimed, but which the Court finds can be removed without substantial injury to the holding, such tenant may remove such building, work or tree within a time to be fixed by the Court in its decree or order.

Powers to make rules for appointment of assessors, etc.

8. The *[State Government] may, from time to time, by notification in the *Fort St. George and* *[] *District Gazette* make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under section 6 for an improvement, such number of assessors as the *[State Government] thinks fit, determining the qualifications of those assessors, the mode of selecting them, the fee payable to them, and the procedure to be followed in case of a difference of opinion between the judge and one or more of such assessors.

Improvement producing an increase in the

9. (1) When the improvement is not an improvement to which section 13 applies and has caused an increase in the value of the annual net produce

¹ See now section 47 of the Code of Civil Procedure, 1908 (Central Act V of 1908).

² The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

³ The word "Malabar" was omitted by section 46 (iv) of the Malabar Tenancy (Amendment) Act, 1951 (Tamil Nadu Act XXXIII of 1951), which came into force on the 15th March 1952

of the holding, the Court shall determine, as nearly as may be, the average net money value of such increase and the number of years during which such increase may reasonably be expected to continue, and shall then ascertain the present value, at 6 per cent of an annuity equal to such money value for such number of years, and also the cost of making the improvement determined in the manner prescribed in section 11.

(2) If the present value of the annuity does not exceed the cost of making the improvement, the present value shall be the compensation to be awarded.

(3) If the present value of the annuity exceeds the cost of making the improvement, the compensation to be awarded shall be the cost together with one-half of the excess.

Explanation.—The value of the net produce means the amount remaining after deducting from the value of the gross produce, the cost of cultivation and the Government assessment and cesses.

10. When the improvement is not an improvement to which section 9 applies, but consists of timber trees or of other useful trees or plants spontaneously grown during the period of the tenancy or sown or planted by any of the persons mentioned in section 5, the compensation to be awarded shall be three-fourths of the sum which the trees or plants might reasonably be expected to realize, if sold by public auction to be cut and carried away.

Improvement consisting of trees or plants spontaneously grown during tenancy or sown or planted by tenants.

11. When the improvement is not an improvement to which section 9 or 10 applies, the compensation to be awarded shall be the cost of the labour, including supervision thereof, and of the materials, together with other expenditure, if any, which would at the time of the valuation be required to make the improvement, less a reasonable deduction on account of the deterioration, if any, which may have taken place from age or other cause.

Other kinds of improvements.

Value of improvement to be ascertained in the most favourable way to the tenant. 12. Notwithstanding anything contained in sections 9, 10 and 11, the amount of compensation to be awarded for an improvement shall be ascertained in the way prescribed by any of the said sections which is most favourable to the tenant.

Illustrations.

(a) The compensation to be awarded for a jack tree as a fruit-tree is ascertained under section 9 to be Rs. 7, but for the same tree as a timber tree it is ascertained under section 10 to be Rs. 10.

(b) The compensation to be awarded for an immature casuarina plantation is ascertained under section 10 to be Rs. 20, but under section 11 to be Rs. 100.

In each case, the Court shall award the higher amount.

Improvement consisting in the protection and maintenance of trees and plants not sown or planted by tenants and of trees and plants spontaneously grown prior to tenancy. 13. When the improvement consists in the protection and maintenance of timber or fruit trees or of other useful trees or plants not sown or planted by any of the persons mentioned in section 5, or of such trees or plants spontaneously grown prior to the commencement of the tenancy, the compensation to be awarded shall be the proper cost of such protection and maintenance ascertained as provided in section 11.

Power to frame tables of maximum and minimum rates of compensation. 14. The ¹[State Government] may prepare ²[for any local area] tables showing the maximum and the minimum rates of compensation to be awarded under this Act for all or any class of improvements, and when such tables have been published the amount awarded as compensation under sections 9, 10, 11 and 12 shall not, except where the Court is satisfied

¹ The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

² These words were substituted for the words "for the whole or any part of the Malabar district" by section 46 (v) of the Malabar Tenancy (Amendment) Act, 1951 (Tamil Nadu Act XXXIII of 1951), which came into force on the 15th March 1952.

that there has been exceptional care, skill or enterprise on the part of the tenant, exceed such maximum rates, nor shall it in any case be less than such minimum rates.

15. (1) For the purpose of determining the amount of compensation to be awarded under this Act, the ^{Power to prepare tables of prices of products, the cost of} ^{cultivating} ^{paddy, planting, protecting, and maintaining} ^{trees and plants.} ¹[State Government] may prepare tables ²[for any local area] showing all or any of the following matters :

(a) the price of coconuts, arecanuts, ³[oranges, cashewnuts, graft mangoes, tamarind], pepper and paddy ;

(b) the cost of—

(i) cultivating and harvesting a crop of paddy ;

(ii) planting, protecting and maintaining a coconut tree, an arecanut tree, a jack tree, ⁴[an orange tree, a cashewnut tree, a graft mango tree, a tamarind tree] and a pepper vine until the tree or vine is in bearing ;

(iii) protecting and maintaining a coconut tree, an arecanut tree, a jack tree ⁴[an orange tree, a cashewnut tree, a graft mango tree, a tamarind tree] and a pepper vine for one year when in bearing.

(2) The tables prepared under this section shall on publication be receivable in evidence, and the rates and amounts therein specified shall be presumed to be the proper rates and amounts until the contrary is proved : Provided that, in so far as such tables prescribe prices of products, the presumption shall not be rebuttable except by proof of the average price as provided in section 16.

Such tables to be presumptive evidence that the prices and costs therein mentioned are correct.

¹ The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

² These words were substituted for the words "for the whole or any part of the Malabar district" by section 46 (vi) (a) of the Malabar Tenancy (Amendment) Act, 1951 (Tamil Nadu Act XXXIII of 1951), which came into force on the 15th March 1952.

³ These words were inserted by section 46 (vi) (b), *ibid.*

⁴ These words were inserted by section 46 (vi) (c), *ibid.*

Value to be ascertained where no table has been prepared or the correctness of the price mentioned in the table is disputed.

16. In respect of any product for which no table showing the price has been published, and whenever the presumption under section 15 as to price is sought to be rebutted, the Court shall adopt as the money value, for the purpose of awarding compensation under section 9, the average price as nearly as may be ascertainable, in the taluk where the land is situated, for a period of ten years immediately preceding the institution of the suit.

17. The tables prepared under this Act shall be published ¹[in the *Fort St. George and District Gazettes* in English and in such other language or languages as the State Government may by rules, prescribe] and shall be kept publicly posted in the Courts having jurisdiction over the area to which the tables apply.

The ²[State Government] may by like publication cancel or vary from time to time the tables so published.

Compensation may be refused where trees have been over-planted.

18. When trees are planted in excess of the following scale, the Court, if satisfied that, in the circumstances of the particular case, the land is overplanted, may, notwithstanding anything hereinbefore contained, either refuse to grant any compensation, or may grant compensation at a lower rate, for so many of the trees as are in excess of the scale and are immature :—

Coconut trees .. .. .	..	..	³ [80]	per acre.
Arecanut trees .. .. .	..	..	[ 480]	"
Jack trees .. .. .	..	..	[ 40]	"

¹ These words were substituted for the words "in English and Malayalam in the *Fort St. George and Malabar District Gazettes*" by section 48 (vii) of the Malabar Tenancy (Amendment) Act, 1951 (Tamil Nadu Act XXXIII of 1951), which came into force on the 15th March 1952.

² The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

³ These figures were substituted for the figures "120, 720, 60" by section 48 (viii) (a) of the Malabar Tenancy (Amendment) Act, 1951 (Tamil Nadu Act XXXIII of 1951), which came into force on the 15th March 1952.

In the case of a mixed garden each tree shall be allowed a proportionate fraction of an acre according to the above scale.

¹[Provided that in respect of the trees planted ^{[Tamil Nadu] Act XXXIII of 1951.} before the commencement of the Malabar Tenancy (Amendment) Act, 1951, the scale aforesaid shall be read as if for the figures " 80 ", " 480 " and " 40 ", the figures " 120 ", " 720 " and " 60 " were respectively substituted.]

19. Nothing in any contract made after the first day of January, 1886, shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provisions of this Act : ^{Contracts affecting tenant's right to make improvements.}

²[Nothing contained in any contract made before ^{[Tamil Nadu] Act XXXIII of 1951.} the first day of January 1886, shall take away or limit the right of a tenant to make improvements after the commencement of the Malabar Tenancy (Amendment) Act, 1951, and to claim compensation for them in accordance with the provisions of this Act :]

Provided that nothing herein contained shall affect any agreement in writing registered made after the effecting of the improvements settling the amount of compensation due therefor at the date of such agreement.

20. Nothing in this Act shall be construed as taking away the right of any person who may be entitled by law or custom to claim compensation for any improvements other than those dealt with under the provisions of this Act. ^{Saving clause.}

¹ This proviso was added by section 46 (viii) (b) of the Malabar Tenancy (Amendment) Act, 1951 (Tamil Nadu Act XXXIII of 1951), which came into force on the 15th March 1952.

² These words were substituted for the word " Madras " by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969, which came into force on the 14th January 1969.

³ This paragraph was inserted by section 46 (ix) of the Malabar Tenancy (Amendment) Act, 1951 (Tamil Nadu Act XXXIII of 1951), which came into force on the 15th March 1952.