

CHAPTER XIII.

INTRODUCTION OF THE TENANCY ACT.

353. By way of preface I would wish to express my obligation to Babu Srigopal Bhattacharjya, Deputy Collector and lately an Assistant Settlement Officer, for the valuable assistance he has given me on this subject. In two places I have already dealt with the Tenancy Act, *i. e.*, under—

Preface.

- (1) Proprietary tenureholders. (Chapter XI paragraphs 301 to 304).
- (2) Raiyats. (Chapter XI, paragraphs 330 and 331.)

It seems worth while to go briefly through the Act and consider whether so much having now been introduced, it is advisable to introduce the whole Act or nearly the whole. I may say that when I came to Orissa seven years ago the Collectors of Cuttack and Balasore (Mr. G. Stevenson and Mr. R. Cornish) as well as the Commissioner (Mr. G. Toynee) were not in favour of the introduction of the whole Act.

It was of course impossible at that time to form any independent opinion, but I am now prepared to say that the status and classes of tenants having been recorded under Chapters II, V, VI, and VII, and the rent Settlement proceedings having been held under Chapter X, there is a case for the introduction of nearly the whole Act.

In all that follows I do not wish to be considered to have overlooked section 2 (2 of the Act. I understand its meaning to be that any section of any Act (specially Act X of 1859) inconsistent with any section of the Tenancy Act introduced into Orissa is repealed. My opinion is that the area being a temporarily settled one the rent-suits should be retained within the jurisdiction of the Collector who is responsible for the land revenue, but that in all other respects the relations of landlord and tenants should not now be different from the rest of Bengal. These principles should guide the introduction of the Act. It should be a matter for consideration also whether after the new settlement has been in force for five years the whole Act should be introduced.

I propose therefore to examine in detail the different sections of the Tenancy Act, and to submit a few remarks as to their applicability to Orissa.

Detailed examination of the unextended sections.

354. Section 1 is formal and calls for no remarks.

Section 2. Only clauses (2) (3) and (4) ought to be extended, as clause (2) will prevent a conflict of interpretation between the sections already extended, and the corresponding sections of Act X of 1859 repealed by necessary implication; clauses (3) and (4) will also be useful for interpretation.

Clause (1) ought to be withheld together with Schedule I in order to keep some of the sections of Act X alive. The necessity of this will appear below.

Section 3 to 5 are already extended to Orissa.

Section 6. On tenures held since permanent settlement.

Section 18. On incidents of holding at fixed rates.

Section 50. On rules and presumptions as to fixity of rent.

These three sections would have no application, even if extended, so far as they relate to the temporarily-settled portions of Orissa, *c.f.* also section 3, 4, and 16 of Act X of 1859.

Section 7 has already been extended.

Section 8 should be extended at once. Under the orders of the Board I have already proposed *rasadi* increase for the rents of certain *sasan tanki banyafidars*.

Section 9 should be extended, though section 113 protects all rents fixed under Chapter X, in the case of tenure-holders for fifteen years.

Sections 10 and 11.—Rampini, J. (page 53) explains that a permanent tenure is created (1) by law, (2) by contract, and (3) by custom or *the course of dealing therewith*.

The proprietary tenures of Orissa are instances of permanent tenures in the last sense.

There is no reason why section 10 should not be extended. It imposes no new penalty on the *sarbarahkars* at any rate.

Section 11 needs careful consideration. Mr. Rampini remarks that the provisions of this section make a change in the law, for hitherto some permanent tenures have been transferable, and others non-transferable. Now all permanent tenures are made transferable and heritable "subject to the provisions of this Act." These words, no doubt, have reference *inter alia* to the provisions of section 183, which lay down that nothing in this Act shall affect any custom, usage or customary right not inconsistent with or not expressly, or by necessary implication modified or abolished by its provisions. It is, therefore, an open question whether permanent tenures, not transferable before, are made transferable now. (Rampini, page 45, Second Edition.

Babu Sriram Chandra Bose, Deputy Collector, late an Assistant Settlement Officer, gives his opinion, that—

Sarbarahkari tenures are neither saleable nor divisible without the consent of the zamindar, *vide* I. W. R. 522 I. L. R. 9, Cal. 126 and I. L. R. 11, Cal. 699.

Muqaddami rights can be transferred in part without the zamindar's consent, and the zamindar is required to register the name and extent of interest of the transferee, but he is not bound to divide his rental and take a proportionate share of it from the latter, *vide* section 27 of Act X of 1859.

In case of succession to a *muqaddami* or a *maurasi sarbarahkari* tenure, the zamindar is bound to register the names of all the heirs of the deceased tenure-holder, but the latter remain jointly responsible for the rent, and the land lord is not bound to split up his *jama*.

"Notice of division must in all cases be given to the zamindar, and it is the interest of the new tenure-holder to have his name recorded in the landlord's *serishta*.

As a matter of fact, permanent tenures are frequently transferred and bequeathed in Orissa, although the High Court have held in some cases that the *sarbarahkari* tenure is not transferable without the zamindar's consent.

In practice *sarbarahkari* tenures are always sold without the zamindar's consent and *after* the sale the purchaser generally silences the zamindar's opposition by giving him a fee at the time of registration of his name in his *serishta*. Practically, therefore, the zamindar's vetoing power consists in demanding a fee at the transfer of the *sarbarahkari* tenure. In my remarks below on sections 12 to 17, I propose to maintain the zamindar's right to a fee with this difference, that whereas now the scale of fees is very uncertain and varies according to the strength and weakness of the practice, if the sections be extended the equitable scale of fees provided in the law will protect the interests of the weak zamindars or of the weak *sarbarahkars*, as the case may be, from coercion by the strong party on the other side.

Muqaddamis Kharidas and other permanent tenures are freely transferred and bequeathed. I do not think that Orissa zamindars have any better grounds for taking exception to section 11 than the Bengal land lords have, and I would recommend its extension to Orissa as it will only legalise a right that has already the sanction of custom.

Sections 12 to 17. I have already suggested that these sections should be extended. The advantages are that they provide a fee and practically compel the zamindar to keep a *serishta*, whereas under section 27 the *serishta* is generally in a state of chaos. The moderate scale of the fee is certainly a point in the tenure-holders' favour. In Balasore some of the new tenure-holders complained that they could not obtain registration in the zamindars *serishta* on account of the exorbitant demands of fees made by their landlords. This will not be possible under the new rules.

Section 18 (see remarks on section 6).

Sections 19 to 49 have already been extended.

Section 50 (see remarks on section 6).

Section 51 may be extended. A tenant is to be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Sections 52 to 75 have already been extended.

355. Sections 76 to 83. Out of these section 80 has already been extended.

Extension of Chapter LX. The sections are more or less related to one another and section 80 having been extended, the others may come in as well. Although 'improvements' have not been effected by the raiyats on a very wide scale, there are none the less many individual instances of improvements effected on their holdings by the raiyats, more specially in the sea-side Parganas, such as Bhograi, &c., in the Balasore District and in other parts. The difference, if any in this respect between Orissa and Bengal is one of degree only. Sections 76 to 79 and 81 to 83 may be extended to Orissa.

Section 84. There is no reason why the section should not be extended except that the intervention of the "Civil Court" in such a small matter will be rather anomalous in Orissa, where Revenue officers perform the functions of the rent courts of Bengal. No practical inconvenience is felt for the absence of this section.

Section 85 will probably be a dead letter for some years to come, but there is no objection to its extension.

Sections 86 and 87. *Surrender* and *abandonment* prescribe formalities which the Uriya raiyat and his zamindar will not follow for many years. I do not think that Section 19 Act X of 1859, which contains corresponding provisions is much followed. Section 87 might be of use to raiyats who may be obliged to abandon their holdings if a serious famine occurred. This section may also be useful to migratory raiyats in the sea-board Parganas (e.g., Bhograi, Ankura in Balasore District) where instances of voluntary surrender or abandonment are common among people who come from distant villages, cultivate for a season or so and many of them perhaps never resume the cultivation. To meet such cases these sections may be useful to the landlord. I recommend the extension of these sections.

Section 88 is, I think, necessary, more especially if Section 17 is introduced. Section 88 already applies by custom to *sarbarahkari* tenures. It is however somewhat contrary to the incidents of *muqaddami* tenures, divisions of which are permitted by Section 27, Act X, and are recognised by custom.

The Government Pleader (see his opinion, Chapter XI, paragraph 306) says, that it would be only just and proper to make Section 88 applicable to *muqaddami* tenures with similar incident rights as to alienation and Subdivision.

Section 89 may be extended, especially as Sections 25, 44 and 49 have been extended. The terms of Section 89 are wider than those of Sections 21 and 22 of Act X which refer only to decrees under the Act (Act X).

Sections 90 to 92 are fair and may be introduced. The landlord could not under Act X measure rent-free lands within his estate, (Rampini).

Sections 93 to 100. Appointment of common manager. It is very necessary to introduce these Sections at once (see Chapter VIII, paragraphs 270 and 273).

Chapter X. Sections 101 to 115 have already been introduced.

356. We have interpreted the spirit of this Chapter and have extended it to the *nij-jot* of proprietary tenure-holders. The instructions given to officers run as follows :—

Nij-jot is still governed by Act X of 1859, but the spirit of the Tenancy (Act definition must be followed, with the exception of clause (1) (a) of that section (Section 120). The real guide will be the custom of the country.

The Board have already (see correspondence on Mr. Nathan's Kotdes report ending with Government order No. 2604 L. R. of 10th May, 1894) held that legislation on behalf of proprietary tenure-holders' *nij-jot* is unnecessary as being too small a matter. Section 116 can I think, without great straining include sub-proprietors, more especially as in the last Settlement papers as well as now the same word *nij-jot* and *khudkast* are applied equally to the private lands of proprietors as to those of proprietary tenure-holders. I submit that it is necessary to introduce the Chapter. See also Chapter XVIII, paragraph 458, and Appendix A (2) b, paragraph 14.

357. Chapter XII on Distraint.—Sections 121 to 142 deal with distraint.

Extension of Chapter XII on Distraint. Section 121 gives jurisdiction to the 'Civil Court' to entertain applications for distraint. It is, therefore, doubtful whether in rent suits Deputy Collectors can legally exercise

the powers under this Chapter if it be bodily extended to Orissa. This technical objection will not apply to the other sections as they speak of 'courts' a term that equally applies to the courts of the munsiffs as well as of the Deputy Collectors.

Assuming that rent suits will continue to be tried by the Collectorate staff, it is hardly necessary to amend the law in order to make this Chapter operative in Orissa, as the existing provisions of Act X of 1859 on the subject of distraint are sufficient for the necessities of this Province. These provisions will survive if Chapter XII be not introduced. I do not recommend the extension of this Chapter at present.

358. Chapter XIII on judicial Procedure.—Sections 143 to 153 need careful consideration. The framers of the Tenancy Act recognised the necessity of providing the zamindars with some facilities for realising arrears. The judicial procedure in this Chapter resembles the Small Cause Court procedure in many respects. In view of the large increase of the Government revenue in Orissa at this settlement I see no reason why the Orissa zamindars should not have the advantages that were conferred on the Bengal landlords by the simplified procedure in the trial of the rent suits.

I think the provisions that the summons should be for final disposal [Section 148 (c)], that the summons may be served by post [Section 148 (d)], that the written statements should not be filed [Section 148 (e)], and the abbreviated form of recording evidence [Section 148 (f)], are decided improvements over the existing Act X procedure, and that the introduction of these will materially assist the prompt disposal of rent suits.

The other sections of this chapter will also be more or less useful. I may particularly notice Section 133 (b). It may be possible to vest some of the officers of proved ability with this power when circumstances call for a whole-some restraint on appeals to prevent needless harassment of the zamindars. Again, the provision for prompt execution of decrees contained in Section 148 (g) is likely to be conducive to the best interests of the zamindars and of the Government revenue.

While holding the above views about the useful character of the procedure sections of this chapter, I would at the same time maintain my opinion that the existing jurisdiction of the revenue authorities over the rent suits should be retained. The Collectors and Deputy Collectors under the supervision of the Commissioner (Section 151, Act X) have all along been trying these suits. The experience obtained by the revenue authorities at the settlement may be brought to bear on this important work to the advantage of all parties. I would therefore suggest that the most careful attention of the District Officers may be directed to the working of the rent suits and the effect of the new Settlement in Orissa.

I accordingly recommend that except Section 144 the rest of this chapter be extended to Orissa, after due consultation with the Commissioner and the Collectors.

The withholding of Section 144 will remove the rent suits from the purview of the Civil Courts, Original and Appellate, and the jurisdiction sections of Act X will therefore survive. Thus the Original Jurisdiction of the Deputy Collectors and the Appellate Jurisdiction of the Collectors, of the Judge and of the High Court will be retained.

The proviso to Section 153 will give the Judge a new and a wider revisional power, but there can be no objection to this (*c.f.* Section 160, Act X).

359. Chapter XIV. Sections 159-177, on Sale for Arrears under Decree. There is no objection to the introduction of this chapter. Section 163, which allows attachment and proclamation to be issued simultaneously will be very useful for the prompt satisfaction of the decrees.

It may be noted that ACT VIII (B. C.) of 1855 is found very useful by the zamindars in the sales of tenures. They will not be deprived of this advantage by the introduction of Chapter XIV of the Tenancy Act.

Mr. Rampini says that Act VIII (B. C.) is not repealed by the Tenancy Act, so that tenures on which the right of selling has been especially reserved continue saleable under Act VIII (Rampini, Second Edition, Paragraph 232). I may add that Section 4 of Act VIII of 1865 reserves under the jurisdiction of this

Act (VIII of 1865) such under-tenure as are saleable under Section 105 of Act X of 1859. I am of opinion that neither Act VIII of 1865 nor Section 105 of Act X will be repealed by the introduction of this Chapter XIV.

360. Chapter XV. Sections 178 to 183 should be extended immediately.

They have apparently been omitted by oversight.
Extension of Chapter XV.

Section 178 is absolutely necessary to prevent raiyats contracting themselves out of their occupancy rights under Section 7 of Act X. During the *Khanapuri* inspection of 1892-1894 we invariably interpreted the Section as if it was extended. Section 183 is also specially necessary.

Chapters XVI and XVII. Sections 184 and 185 may be introduced; the provisions are stronger than those of Section 119 of Act X. Section 187 and 188 may be introduced. They will apply only to such sections of the Act as may be introduced. Sections 189 to 192 are already introduced. Sections 193 to 196 may be introduced at once.

Schedule I ought not to be introduced, in order to keep some of the sections of Act X operative in Orissa. This schedule taken with Section 2, clause (1) will repeal the whole of Act X. I have therefore withheld clause (1) of Section 2.

Schedules II and III may be introduced at once.

361. To sum up, I think that the status and rights of the tenants having

been recorded under the portions of the Tenancy Act already in force in Orissa, the extension of

many provisions of the Act is absolutely necessary, as I have noticed in the preceding remarks.
Summary.

As regards some of the remaining provisions it may be generally remarked that although they may not be indispensable still they may be useful. The Tenancy Act embodies some of the advanced ideas regulating the relations of landlord and tenant that find no place in Act X of 1859. Now that we have already extended most of the sections dealing with substantive rights a large part of the procedure sections may as well be extended in order to give the zamindars better facilities for the realisation of their arrear rents. For reasons already recorded I would reserve at the same time the jurisdiction of the Collectorate staff over these suits. In order to effect this object some of the sections have to be kept back.

Turning next to details, I submit that —

(a) Section 3 to 5, 7, 19 to 49, 52 to 75, 80, 101 to 115, 189 to 192 are already introduced.

(b) the following sections must, I submit be introduced at once (being dependent on sections already in force or because they have been already used by the Settlement Department), Sections 2 (2) (3) (4), 8, 9, 51, 76 to 83, 89, 116 to 120, 178 to 183.

(c) The following sections may be introduced at once, *i. e.*, after reference to the Commissioner and Collectors :—

10 and 11, 12 to 17, 88, 93 to 100. For the benefit of zamindars and proprietary tenureholders.

84. Acquisition of holding by the landlord.

85 to 87. Surrender and abandonment.

90 to 92. For the benefit of the landlords.

143, 145 to 158. Judicial procedure, section 144 on Jurisdiction

being held back.

159 to 177. On sale for arrears.

184 to 185. Limitation.

186. Penalties for illegal interference.

187 to 188. Regarding representation of landlords.

193 to 196. Pasturage, &c., conditions binding on landlords and

savings for special enactments.

Schedules II and III.

(d) The following sections would be inoperative except in permanently settled areas :—

6, 8 and 50; as somewhat analogous provisions exist in Act X (see sections 3, 4, and 16) they may be introduced.

(e) The following sections should not be introduced for the present :—

Section 1, which will more properly come in when the whole Act comes into force.

Section 2, clause (1) which ought to be withheld in order to keep alive a part of Act X.

Sections 121 to 142 on Distraint.

Section 144, on Jurisdiction in Tenancy Act proceedings.

Schedule, I, which must be kept back with clause. (1) of Section 2.

I venture to suggest therefore that the sections recorded in (b) should be introduced without delay, and that those in (c) and (d) be introduced after reference to the District Officers and the Commissioner.

As regards the sections mentioned in (e) I cannot recommend their introduction at present, but having introduced nearly the whole Act I would suggest that the most careful attention of District Officers may be directed for the next five years to the working of rent suits and the effect of the new Settlement in Orissa. After that period it will be possible to gauge the result of the introduction of the portion of the Act extended to Orissa and to determine whether special courts are to be constituted. In case the whole Act is to be extended after five years the Judicial Department of Government will have time to provide the machinery for the trial of rent suits.

The principle which I would suggest in introducing the sections of the Tenancy Act at once should be the extension of all sections except those which provide for trial by the Civil Court of rent suits (including suits by proprietors against proprietary tenureholders) and the sections auxiliary to this procedure. In following this principle it is probable that I have proposed certain sections for introduction which should be excluded and have omitted others which should be included. The district and legal officers will easily be able to correct these mistakes.
