

West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001

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Act 5 of 2001

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020.

Statement of Objects and Reasons of The West Bengal thika Tenancy (Acquisition and Regulation) (Amendment) BILL, 2010It is considered necessary and expedient to make, among others, the following changes in the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (West Bengal Act 32 of 2001) (hereinafter referred to as the said Act), in order to ensure effective implementation of the said Act by way of-(1) amending section 2 of the said Act (a) so that the Bharatia shall mean any person by whom or on whose account, rent is payable for any structure including pucca structure, if any, or part thereof, owned by a Thika tenant, but shall exclude any person paying rent to a Bharatia and any resident of a structure including pucca structure, if any, forfeited by the State Government;(b) so that Thika tenant shall mean any person who occupies, whether under a written lease or otherwise, land under another person, and is, or but for a special contract, would be, liable to pay rent at a monthly or any other periodical rate for that land to that another person, and has erected or acquired by purchase or gift any structure including pucca structure, if any, on such land for residential, manufacturing or business purpose and includes the successors-in-interest of such persons but exclude any resident of a structure including pucca structure, if any, forfeited to the State Government;(c) so as to provide the definition of "Thika land" to mean any land comprised in and appurtenant to, tenancy of Thika tenant irrespective of the fact whether there is any claiming of such tenancy or not and includes open areas and roads on such land(2) amending section 5 of the said Act (a) so that if any question arises as to whether a person is a Thika tenant or not or whether the land in question is a Thika land or not, the Controller either on his own motion or upon receiving any information, may, after giving the persons interested an opportunity of being heard and after examining all such documents and particulars as may be

considered necessary, enquire upon and decide such question;(b) so that the Thika tenant holding directly under the State under sub-section (1) of section 5 shall be entitled to construct pucca structure or to change the nature, character, dimension of an existing structure on the land in accordance with buildings plan sanctioned under the respective Municipal Corporation Act:(3) amending section 6 of the said Act (a) so that any transfer or agreement for transfer, whether oral or in writing or any activity in contravention of the provisions of sub-section (4), or sub-section (5), or proviso to sub-section (5), of section 5, shall be declared invalid under an order of Controller and the structure or part of structure, as the case may be, shall stand forfeited to the State Government;(b) so that a Controller may, after satisfying himself that a Bharatia stays at the structure forfeited under sub-section (2) of this section, grant licence to such Bharatia in respect of so much area of such structure as is occupied by such Bharatia and such licence may be granted on such terms and conditions, and in such manner, as may be prescribed;(4) amending section 8 of the said Act (a) so that if any question arises as to whether a person is a Bharatia under a particular Thika tenant, the Controller, either on his own motion or upon receiving any information, may, after giving the persons interested an opportunity of being heard and after examining all such documents and particulars as may be considered necessary, enquire upon and decide such question;(b) so that an order passed by the Controller under the provisions of the said Act shall be executable by the Controller as a decree of a Civil Court and for this purpose, the Controller shall have all the powers of a Civil Court;(c) so that where there is no Thika tenant or the Thika tenant is not traceable for any reason whatsoever, a Bharatia shall be liable to deposit rent with the Controller in respect of the area of the structure as is occupied by him at such rate, and in such manner, as may be prescribed;(d) so that the State Government shall, notwithstanding anything contained in the said Act, not be deemed to be a landlord as defined in clause (c) of section 2 of the West Bengal Premises Tenancy Act, 1997 (West Bengal Act No. 37 of 1997), but be a licenser and the Bharatia shall be a licensee under the State, where there is no Thika tenant.(5) amending section 9 of the said Act so that a Controller may be an officer belonging to the Indian Administrative Service or the West Bengal Civil Service (Executive), and an Additional Controller and Deputy Controller may be an officer belonging to the West Bengal Civil Service (Executive) or a Special Revenue Officer, Grade-I.(6) amending section 11 of the said Act so as to provide certain more powers to the Controller under the said Act.2. The Bill has been framed with the above objects in view.3. There is no financial implication involved in the Bill.Kolkata, The 8th July, 2010.Sd/- Abdur Razzak Molla, Member-in-charge. Passed by the West Bengal Legislature, Received the Assent of the President of India and was first published in the Kolkata Gazette, Extraordinary, of the 22nd November, 2002 Vide Notification No. 2118-L, dated the 22nd November, 2002An Act to provide for the acquisition of interests of landlords in respect of lands comprised [in Thika tenancies and certain other tenancies] [Substituted by section 2(1) of the West Bengal Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (with retrospective effect from 1.3.2003) for in Thika tenancies.] in KolKata, Howrah and Other Municipalities of West Bengal for development and equitable utilization of such lands. Whereas it is expedient to provide for the acquisition of interests of landlords in respect of lands comprised [in Thika tenancies and certain other tenancies] [Substituted by section 2(2), ibid (with retrospective effect from 1.3.2003) for in Thika tenancies.] in Kolkata, Howrah and Other Municipalities of West Bengal for development and equitable utilization of such lands with a view to sub serving the common good; It is hereby enacted in the Fifty-second Year of the Republic of India, by the Legislature of West Bengal, as follows :

Chapter I

Preliminary

1. Short title, extent and commencement.

(1) This Act may be called the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.(2)It extends to Kolkata as defined in clause (9) of section 2 of the Kolkata Municipal Corporation Act, 1980 (West Bengal Act LIX of 1980), and to Howrah as defined in clause (15) of section 2 of the Howrah Municipal Corporation Act, 1980 (West Bengal Act LVIII of 1980) and such other areas as the State Government may notify from time to time :Provided that the provisions of this Act shall not extend to the whole of, or to any area included within the limits of, Howrah, which, immediately before the 10th day of January, 1983, being the date of coming into force of the Howrah Municipal Corporation Act, 1980, was not comprised in the municipality of Howrah :Provided further that the provisions of this Act shall not extend to the whole of, or to any area included within the limits of, Kolkata, which, immediately before the 4th day of January, 1984, being the date of coming into force of the Kolkata Municipal Corporation Act, 1980, was comprised in any municipality.(3)It shall come into force on such date as the State Government may, by [notification] [With effect from 1.3.2003 vide Notification No. 515-L. Ref./12S-36/95/Pt. II dated 24.2.2003 published in the Kolkata Gazette, Extraordinary, Part I, dated 25.2.2003.], appoint.

2. Definitions.

in this Act, unless there is anything repugnant in the subject or context, (1)"Bharatia" means any person by whom or on whose account, rent is payable to [for any structure including pucca structure, if any, or part thereof,] [Substituted by section 3(1)(a) of the West Bengal Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (with effect from 1.11.2010) for any structure or part thereof,] owned by a Thika tenant, but excludes any person paying rent to a Bharatia and any [resident of any structure including pucca structure, if any,] [Substituted by section 3(1)(b), ibid (with effect from 1.11.2010) for resident of a structure.] forfeited by the State Government under sub-section (2) of section 6, irrespective of the status, the said person may have enjoyed earlier;(2)"Controller" means an officer appointed [under section 9] [Substituted by section 3(2), ibid (with retrospective effect from 1.3.2003) for under section 10.] and includes an Additional Controller and a Deputy Controller;(3)"holding" means a parcel or parcels of land occupied by a Thika tenant under one set of conditions along with any tank included in such land;(4)"hut" means any building or structure, the roof or the floor of which, excluding the floor at the plinth level, is not constructed of masonry or reinforced concrete;(5)"khatal" means a place where cattle are kept or maintained for the purpose of trade or business including business in milk derived from such cattle;(6)"land appurtenant" includes any easement, right, or any common benefits or facilities, or access, passage, drains, tanks and pools which were owned by the landlord and were enjoyed by the Thika tenant and the Bharatia, if any, before the date of vesting;(7)"landlord" means any corporation, charitable or religious institution or person who, for the time being, is entitled to receive or, but for a special contract, would be entitled to receive the rent for any land comprised in the tenancy of a Thika tenant or in a khatal, tank or but owned by

him, and includes any corporation, institution or person having superior interest in such Thika tenancy;(8)"lease" means a lease of immovable property by which a transfer of a right to enjoy such property made for a certain time expressed or implied, or in perpetuity in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent;(9)"local authority" includes a Panchayat as defined in clause (15b) of section 2 of the West Bengal Panchayat Act, 1973 (West Bengal Act No. 41 of 1973), or a municipality constituted under the West Bengal Municipal Act, 1993 (West Bengal Act 22 of 1993);(10)"notification" means a notification published in the Official Gazette;(11)"prescribed" means prescribed by rules made under this Act;(12)"public purposes includes a planned development of any holding or area, or the continuation of a scheme or a project which ensures the general welfare of the public;(13)"pucca structure" means any structure constructed mainly of brick, stone or concrete or any combination of these materials, or any other material of a durable nature;(14)"Thika tenant" means any person who occupies, whether under a written lease or otherwise, land under another person, and is, or but for a special contract, would be liable to pay rent at a monthly or any other periodical rate for that land to that another person, and has erected or acquired [by purchase or gift any structure including pucca structure, if any, on such land] [Substituted by section 3(3) of the West Bengal Thika Tenancy (Acquisition and Regulation (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (With effect from 1.11.2010) for by purchase or gift any structure on such land.] for residential, manufacturing or business purpose, and includes the successors-in-interest of such persons but excludes any resident of a structure forfeited to the State under subsection (2) of section 6 of this Act irrespective of the status, he may have enjoyed earlier;(15)["Thika land" means any land comprised in and appurtenant to, tenancies of Thika tenant irrespective of the fact whether there is any claim of such tenancy or not and includes open areas and roads on such land.] [Clause (15) inserted by section 3(4) of the West Bengal Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (with effect from 1.11.2010.)]

3. Act to override other Laws.

- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or in any custom, usage or agreement or in any decree or order of a court, tribunal or other authority.

Chapter II

Acquisition of lands comprised in Thika tenancies and the rights of landlords in such lands

4. Lands comprised in Thika tenancies and other lands, etc. to vest in the State.

With effect from the 18th day of January, 1982, the following lands along with the interest of landlords therein shall be deemed to have vested in the State, free from all encumbrances : (a)[Thika land;] [[Clause (a) substituted by section 4 of the West Bengal Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (with effect from 1.11.2010), which read as under : (a) lands comprised in, and appurtenant to, tenancies of thika tenants including open areas, roads; and.]] (b) lands held in monthly or other periodical tenancies, whether under a written lease or otherwise, for being used or occupied as khatal : Provided that any land comprised in, and appurtenant to, tenancies of Thika tenants created after the 18th day of January, 1982, shall also be deemed to be vested in the State, free from all encumbrances with effect from the date of creation of tenancies of thika tenants : Provided further that such vesting shall not be deemed to have affected in any way the easements, customary rights or other facilities enjoyed by thika tenants, Bharatias or occupiers of land coming within the purview of this section : Provided also that nothing contained in this section shall prevent the State Government or the local authority from taking up any development work on the land appurtenant to tenancies of thika tenants for public purpose.

5. Incidents of tenancies in respect of lands vested in the State.

(1) Subject to the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976), and the provisions of this Act, every thika tenant, occupying any land under a landlord on the date of commencement of this Act, shall occupy such land, on such terms and conditions as may be prescribed, directly under the State as if the State had been the landlord in respect of that land. (2) Every thika tenant holding directly under the State under sub-section (1) shall be liable to pay to the State Government in the prescribed manner such revenue as may be determined. (3) [If any question arises as to whether a person is a thika tenant or not or whether the land in question is thika land or not, the Controller, either on his own motion or upon receiving any information, may, after giving the persons interested an opportunity of being heard and after examining all such documents and particulars as may be considered necessary, enquire upon and decide such question.] [[Sub-section (3) substituted by section 5(1) of the West Bengal Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal, XXV of 2010) (with effect from 1.11.2010), which read as under. (3) If any question arises as to whether a person is a thika tenant or not, the matter shall be decided by the Controller.]] (4) The interests of the thika tenants holding directly under the State under sub-section (1) shall be heritable and shall not be transferable except inter se amongst the heirs and existing co-shares-interest and spouses or to the prospective heirs, with a prior permission of the Controller, subject to the provisions of sub-section (1) of section 6. (5) The thika tenants holding directly under the State under sub-section (1) shall be entitled [to construct pucca structures or to change the nature, character and dimension of an existing structure on the land] [Substituted by Section 5(2), ibid (with effect from 1.11.2010) for to construct pucca structures.] in accordance with the building plans sanctioned under the Kolkata Municipal Corporation Act, 1980 (West Bengal Act LIX of 1980), and the rules made thereunder, or the Howrah Municipal Corporation Act, 1980 (West Bengal Act LVIII of 1980), and the rules made thereunder, according as the land may be situated within Kolkata as defined in clause (9) of section 2 of the Kolkata Municipal Corporation Act, 1980 (West Bengal Act LIX of 1980), or Howrah as defined in clause (15) of section 2 of the Howrah Municipal Corporation Act, 1980 (West Bengal Act

LVIII of 1980), for (a)residential and business purposes for themselves and the Bharatias under them; and(b)essential common facilities like common pathway, common bath, toilet, water supply, drainage, sewerage, lighting and similar other purposes :Provided that the thika tenants holding directly under the State under sub-section (1), shall obtain a no objection certificate from the Controller before making any pucca construction or changing the nature, character and dimension of an existing structure on the land, irrespective of the area of the land.(6)The thika tenant holding directly under the State under sub-section (1), shall be liable to pay rent to the State Government at such rate and in such manner as may be prescribed.

6. Thika tenant not to let out vacant land.

(1) The thika tenants holding lands directly under the State shall be entitled to let out in whole or in part structures existing on, or constructed after, the date of commencement of this Act on such lands but not any vacant land or any part thereof.(2)Any transfer or agreement for transfer, whether oral or in writing, or any activity in contravention of the provisions of subsection (4) [,or sub-section (5), or proviso to sub-section (5), of section 5] [Substituted by section 6(1) of the West Bengal Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (with retrospective effect from 1.3.2003) for, or sub-section (5) of section 5 or proviso to sub-section (1) of this section.], shall be declared invalid under an order of the Controller and the structure or part of structure, as the case may be, shall stand forfeited to the State in accordance with the procedure as may be prescribed.(3)Notwithstanding anything contained in this section, where a pucca structure has been constructed without No Objection Certificate as required by the proviso to sub-section (5) of section 5, the Controller may, subject to the provisions of any other law for the time being in force, after being satisfied that the forfeiture of such structure to the State under 'sub-section (2) will cause hardship to the thika tenant or the Bharatia, as the case may be, issue a provisional certificate for the purpose of obtaining construction plan sanctioned by the local authority :Provided that the Controller shall not issue final certificate unless the thika tenant has produced a construction plan of such structure sanctioned by the local authority to the Controller within such time and on payment of such fee, as may be prescribed :Provided further that if the thika tenant fails to produce such sanctioned plan within such prescribed time to the Controller, the Controller may invoke the procedure of forfeiture under sub-section (2).(4)Whenever it appears to the State Government that the land comprised in any thika tenancy is needed, or is likely to be needed, for any public purpose, it may, after giving the thika tenant and the Bharatias, if any, an opportunity of being heard, resume the land comprised in such thika tenancy with or without structures, if any, and take possession of the land :Provided that immediately after such resumption, the State Government shall pay to the thika tenant or the Bharatia, if any, an amount not exceeding ten times of the compensation deter-mined under sub-section (6) of section 7 of the Act in addition to the compensation determined under sub-section (6) of section 7.(5)A Controller after satisfying himself that a Bharatia stays at the structure forfeited under sub-section (2) above may [grant licence to such Bharatia in respect of so much area of such structure as is occupied by such Bharatia and such licence may be granted on such terms and conditions, and in such manner, as may be prescribed.] [Substituted by section 6(2) of the West Bengal Thika Tenancy (Acquisition and Regulation)(Amendment) Act, 2010 (West Bengal, Act No. 25 of 2010)(with effect from 1.11.2010) for grant him licence as per terms as may by prescribed.]

7. Payment of compensation.

(1) The State shall, for the vesting of any land under section 4, pay to the landlord or landlords having any right in such land an amount as may be determined in accordance with the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976). (2) Where the landlord is a corporation or an institution established exclusively for a religious or a charitable purpose of a public nature, or is a person holding under a public trust or an endowment or other legal obligation exclusively for a public purpose which is religious or charitable, the State shall, for vesting under section 4, pay to such landlord a perpetual annuity or, where the interest of the landlord is terminable or is liable to be exhausted, an annuity for such number of years may be prescribed, having regard to the extent of the rights of the landlord. Such annuity shall not exceed the annual net income derived from the holding as may be determined by the Controller in the prescribed manner. In determining the net annual income the Controller shall deduct from the gross income, apart from other sums as may be prescribed, charges on account of management and collection at the rate of twenty per centum of the gross income. (3) For the purposes of sub-section (2), the Controller, on his own motion or upon any information, may, after giving the person interested an opportunity of being heard, enquire and decide any question as to whether any trust, endowment corporation or institution is for exclusively religious or charitable purpose, or as to whether it is of public or private nature, and any question of title incidental thereto as may be necessary to determine such question, by examining the document, if any, and by taking into account (a) the actual user of income of the land, (b) the mode of user, and (c) the share of income of the land appropriated, or enjoyed, by or on behalf of such trust, endowment, corporation or institution. (4) An appeal from any order passed by the Controller under this section shall lie under section 12. (5) No compensation shall be paid to the thika tenant for forfeiture of a structure or a part of a structure under sub-section (2) of section 6. (6) The State shall, on resumption under sub-section (4) of section 6 of any structure comprised in any tenancy, pay to the tenant having any right in such structure an amount calculated by the Controller in the prescribed manner. Such amount shall be calculated at such rate as may be prescribed, apart from other sums as may be prescribed. Where the structures are occupied by the tenant himself, fair rent determined by the Controller under this sub-section in the prescribed manner shall be deemed to be the rent paid by the Bharatias. (7) Where there are more than one landlord in respect of a thika tenancy or other tenancy vested under section 4, the amount payable to them under sub-section (1), or the annuity payable to them under sub-section (2), shall be apportioned among them in the prescribed manner.

Chapter III

Incidents for tenancies of Bharatias in structures

8. [Incidents for tenancies of Bharatias.] [Marginal Note substituted by section 7(1) of the West Bengal thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (with effect from 1.11.2010), which read as under :thika tenants and Bharatias to be governed by West Bengal, Act No. 12 of 1956.]

The monthly and other periodical tenancies of Bharatias in respect of the structures occupied by them on payment of rents to the thika tenants shall, with effect from the date of coming into force of this Act, be governed by the provisions of [the West Bengal Premises Tenancy Act, 1997 (West Bengal Act No. 37 of 1997)] [Substituted by section 7(2) of the West Bengal thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (with effect from 1.11.2010) for the West Bengal Premises Tenancy Act, 1956 (West Bengal Act No. 12 of 1956).], in matters relating to the payment of rent by the Bharatias and their eviction by the thika tenants, the owners of the structures shall be deemed to be landlords and the Bharatias shall be deemed to be tenants under the said Act.(2)[If any question arises as to whether a person is a Bharatia under a particular thika tenant, the Controller, either on his own motion or upon receiving any information, may, after giving the persons interested an opportunity of being heard and after examining all such documents and particulars as may be considered necessary, enquire upon and decide such question.] [[Sub-section (2) substituted by section 7(3), *ibid* (with effect from 1.11.2010), which as earlier as under : (2) Any question as to whether a person is a Bharatia under a particular thika tenant, or where there is no thika tenant, in a particular thika land, shall be decided by the Controller.]] (3) Any dispute regarding payment of rent by the thika tenant to the State Government or by a Bharatia to a thika tenant, or any case of eviction of Bharatia, shall be disposed of by the Controller in such manner as may be prescribed. (4) A thika tenant may, in default of payment of rent to the State Government, be evicted or otherwise penalised by the Controller in such manner as may be prescribed. (5) [An order passed by the Controller under the provisions of this Act shall be executable by the Controller as a decree of a Civil Court and for this purpose, the Controller shall have all the powers of a Civil Court.] [[Sub-section (5) substituted by section 7(4), *ibid* (with effect from 1.11.2010), which read as under : (5) For the purpose of this section, the Controller shall exercise all such powers and perform such duties as are exercisable by a Rent Controller under the West Bengal Premises Tenancy Act, 1956 (West Bengal Act No. 12 of 1956).]] (6) Notwithstanding anything contained in this Act or in [the West Bengal Premises Tenancy Act, 1997] [Substituted by section 7(5), *ibid* (with effect from 1.11.2010) for the West Bengal Premises Tenancy Act, 1956.], a Bharatia under a thika tenant shall be entitled to take separate electrical connection from the electricity supplying agency and separate water supply connection from the appropriate agency for his own use. (7) A Bharatia shall be liable to pay rent to the thika tenant at such rate as may be prescribed. (8) [Where there is no thika tenant or the thika tenant is not traceable for any reason whatsoever, a Bharatia shall be liable to deposit rent with the Controller in respect of the area of the structure as is occupied by him at such rate, and in such manner, as may be prescribed.] [[Sub-section (8) substituted by section 7(6) of the West Bengal thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (with effect from 1.11.2010), which read as under : (8) Where there is no thika tenant, a Bharatia shall be liable to deposit rent with the Controller of the area at such rate as may be prescribed.]] (9) [Notwithstanding anything contrary contained in the Act, the State Government shall not be deemed to be a landlord as defined in clause (c) of section 2 of the West Bengal Premises Tenancy Act, 1997 (West Bengal Act No. 37 of 1997), but be a licenser and the Bharatia shall be a licensee under the State, where there is no thika tenant.] [Sub-section (9) inserted by section 7(7), *ibid* (with effect from 1.11.2010).]

9. Controller.

(1) The State Government may, by notification, appoint one or more officers as Controller or Controllers and Additional Controllers and Deputy Controllers to perform all the functions of a Controller under this Act in respect of any area or areas to be specified in the notification.(2)[A Controller may be an officer belonging to the Indian Administrative Service or the West Bengal Civil Service (Executive).] [[Sub-section (2) substituted by section 8(1) of the West Bengal thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (with effect from 1.11.2010), which read as under : (2) A Controller may be an officer belonging to the Indian Administrative Service, West Bengal Civil Service (Executive) or West Bengal Higher Judicial Service.]](3)[An Additional Controller and Deputy Controller may be an officer belonging to the West Bengal Civil Service (Executive) or a Special Revenue Officer, Grade-I.] [[Sub-section (3) substituted by section 8(2), ibid (with effect from 1.11.2010), which read as under : (3) An Additional Controller and Deputy Controller may be an officer belonging to the Indian Administrative Service, West Bengal Civil Service (Executive), West Bengal Higher Judicial Service or West Bengal Subordinate Land Revenue Service, Grade-I.]]

10. Tenancy of Bharatia to continue.

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, the tenancy of a Bharatia as a tenant under a thika tenant shall not be extinguished because of subsequent nonexistence of the structure or a part thereof which the Bharatia previously occupied under the thika tenant.(2) If any structure or part thereof which was in the occupation of a Bharatia as a tenant under a thika tenant ceases to exist except under any order of a court, the thika tenant shall reconstruct similar accommodation and restore possession to the Bharatia and put the Bharatia in possession of such accommodation within one month of such structure ceasing to exist, failing which the Bharatia may make an application to the Controller concerned in the prescribed manner.(3) On an application made by a Bharatia under sub-section (2), the Controller having jurisdiction in the area shall, after giving the thika tenant and the Bharatia an opportunity of being heard, direct the thika tenant by an order in writing to reconstruct an accommodation in such manner as may be prescribed and restore possession to the Bharatia within such time as the Controller may specify in the order.(4) If the thika tenant fails to comply with the order of the Controller under sub-section (3), the Bharatia shall be entitled to reconstruct the structure and, for that purpose, may make an application to the Controller who shall, after giving the Bharatia and the thika tenant an opportunity of being heard, approve such cost of reconstruction as may appear to him to be fair and reasonable and, after such reconstruction, allow adjustment of the cost of such reconstruction from the rent payable by the Bharatia in such monthly instalments as the Controller may think fit.(5) If there is any unlawful resistance by or on behalf of the thika tenant to the reconstruction by the Bharatia under subsection (4), the Officer-in-Charge of the local police station shall, on receipt of any requisition of the Controller in writing in this behalf, render all necessary and lawful assistance to the Bharatia.

Chapter IV

Miscellaneous and supplemental provisions

11. Powers of Controller.

—[(1)] [Original section 11 renumbered as sub-section. (1) of that section by section 9 of the West Bengal thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Ben, Act No. 25 of 2010) (with effect from 1.12.2010).] The Controller and any person deciding any appeal from his order shall have all the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters : (a) summoning and enforcing the attendance of any person and examining him on oath as a witness, (b) requiring the discovery and production of any document or record, (c) receiving evidence on affidavits, (d) requisitioning any public record or copy thereof from any court or office, (e) issuing commission for the examination of witnesses or documents, (f) enforcing or executing orders (including an order for restoration of possession) as if such orders were decrees of a civil court, (g) remanding any case or proceedings to the officer from whose order the appeal is preferred. (2) [The Controller may transfer any proceeding pending before him for disposal to any Additional Controller or Deputy Controller or withdraw any proceeding pending before any Additional Controller or Deputy Controller and dispose of such proceeding himself or transfer such proceeding for disposal to any other Additional Controller or Deputy Controller. (3) Any clerical or arithmetical mistake in any order passed by the Controller or any error arising out of any accidental omission may, at any time, be corrected by the Controller on an application received by him in this behalf from any of the parties or otherwise. (4) The Controller may, at any stage of proceeding, either on his own motion or upon the application of either of the parties and on such terms as may appear to him to be just, order that the name of any party improperly joined be struck out and the name of any person who ought to have been joined, whether as a petitioner or as an opposite party or whose presence before him may be necessary in order to enable him effectively and completely to adjudicate upon settle all the questions involved in the proceedings, be added. (5) The Controller may, for reasons to be recorded in writing, by order, require the personal appearance of either party. (6) The Controller may, for causing delivery of possession of any premises to a thika tenant or Bharatia, send a requisition, in writing, to the officer-in-charge of the police station within the jurisdiction of which the premises is situated or to any police officer superior to such officer-in-charge in rank and on receipt of such requisition, the officer-in-charge or the police officer, as the case may be, shall render all necessary and lawful assistance to the Controller for effecting the delivery of possession of such premises.] [Sub-sections (2) to (6) inserted by section 9 of the West Bengal thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal, Act No. 25 of 2010) (with effect from 1.11.2010).]

12. Appeal.

(1) Any person aggrieved by an order of a Controller may, within 30 days from the date of the order, prefer an appeal in writing before the Land Reforms and Tenancy Tribunal established under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (West Bengal Act No. 25 of 1997). (2) Subject to provisions of this Act and rules made thereunder, any order passed by the Land

Reforms and Tenancy Tribunal may, in the manner prescribed, be reviewed by the said Tribunal on account of some mistake or error apparent on the face of the record or for any other sufficient cause of like nature.

13. Revision by State Government.

(1) The State Government may, on its own motion, call for and examine the records or any order passed or proceedings taken by the Controller under the provisions of this Act and against which no appeal has been preferred for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of the procedure, and pass such order with respect thereto as it may think fit : Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter. (2) The State Government shall empower, from time to time, one or more officers to act on behalf of the State Government and to exercise all powers conferred on the State Government in this section.

14. [Power of West Bengal Land Reforms and Tenancy Tribunal to withdraw and transfer any proceeding.] [[Marginal Note substituted by section 10 of the West Bengal thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (with retrospective effect from 1.3.2003), which read as under :

Power of District Judge and Chief Judge, Court of Small Causes of Kolkata to withdraw and transfer any proceedings.]] On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the Land Reforms and Tenancy Tribunal may, at any stage, withdraw such proceeding from one Controller and transfer it for hearing or disposal to a Controller appointed for any other area, or re transfer it for hearing or disposal to the Controller from whom it was withdrawn. (2) The Controller to whom any proceeding has been transferred under sub-section (1), shall have the same power to hear or dispose of it as the Controller from whom it was withdrawn and may, subject to any special directions in the order of transfer, either rehear it or proceed from the stage at which it was withdrawn and transferred. Explanation. In this section "proceeding" means any proceeding drawn by a Controller under the provisions of this Act.

15. Bar to application of the Act to certain lands.

Nothing in this Act shall apply to (a) lands belonging to the Central and the State Governments; (b) any land, vested under any other law in or in the possession of, (i) the Central Government, or (ii) the State Government, or (iii) a port authority of a major port, or (iv) a railway administration, or (v) a statutory body meant for the development of area like Kolkata Metropolitan Development Authority, Kolkata Municipal Corporation, Howrah Municipal Corporation, Kolkata Improvement Trust, and the Howrah Improvement Trust; (c) any land which is required for carrying out any of the provisions of the Kolkata Improvement Act, 1911 (Bengal Act No. 5 of 1911) : Provided that nothing contained in this section shall apply to any land under the control or possession of a

bank.Explanation.- For the purposes of this section, a bank is one as define in section 2(e) of the Reserve Bank of India ACT, 1934 (2 of 1934).

16. Restriction or exclusion of the Act by agreement.

Nothing in any contract between a thika tenant and a Bharatia made after the commencement of this Act shall take away, or limit, the rights of such tenant or Bharatia as provided for in this Act, and any contract which is made in contravention of, or which is inconsistent with, any of the provisions of this Act shall be void and without effect to the extent of such contravention or inconsistency, as the case may be.

17. Power to enter and inspect premises to require information and to summon witnesses.

For the purpose of any inquiry under this Act, the Controller and any person deciding an appeal under [section 12] [Substituted by section 11 of the West Bengal thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (with retrospective effect from 1.3.2003) for section 13], may (a)enter and inspect any premises at any time between sunrise and sunset; or(b)authorise any person subordinate to him to enter and inspect any premises between sunrise and sunset; or(c)require, by written order, any person to produce for his inspection such accounts, rent receipts, books or other documents at such time, and at such place, as may be specified in the orderProvided that no premises shall be entered under clause (a) or clause (b) without the consent of the occupier, unless at least twenty-four hours' previous notice in writing has been given.

18. Penalty.

(1) Whoever contravenes any provision of this Act which may facilitate the commission of an offence, shall be punishable with imprisonment for a term which may extend to five years and also with fine which may extend to ten thousand rupees.(2)Whoever voluntarily causes any resistance or obstruction to the lawful discharge of duties of the Controller or his representative, shall be punished with imprisonment for a term which may extend to one year and also fine which may extend to five thousand rupees.(3)Offences under this section shall be bailable and cognizable.(4)No court shall take cognizance of any offence punishable under this section except on a complaint made in writing by a Controller or by an officer authorised by him in this behalf.(5)An offence under this section shall be triable by a Judicial Magistrate of first class having jurisdiction over the places of occurrence of such offence.

19. Power to make rules.

(1) The State Government may make rules for carrying out the purposes of this Act. The rules framed under the Calcutta thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981 (West Bengal Act No. 37 of 1981) may continue as rules under this Act to the extent they are

not repugnant to and transgressive of the provisions of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which may be, or is required to be, prescribed or made by rules.

20. Saving of limitation.

In computing the period of limitation prescribed by any law for the time being in force for an application for ejectment of a Bharatia or for an appeal from an order or decree made on such application or suit or for the execution of an order or decree for ejectment of a Bharatia, the period from the 19th day of July, 1978 to the date of coming into force of this Act shall be excluded.

21. Bar to jurisdiction.

No civil court shall have jurisdiction to decide, or to deal with, any question, or to determine any matter, which, by or under this Act, is required to be, or has been, decided or dealt with, or which is to be, or has been, determined, by the Controller or the appellate or other authority specified in the provisions of this Act, and no order or judgment passed, or proceedings including execution proceedings commenced, under the provisions of this Act shall be called in question in any civil court.

22. Indemnity.

No suit, prosecution or other legal proceedings whatsoever shall lie against any person for anything in good faith done or intended to be done under this Act.

23. Maintenance, preparation and revision of record-of-rights.

(1) Except as hereinafter provided, Chapter VII and Chapter VIIA of the West Bengal Land Reforms Act, 1955 (West Bengal Act No. 10 of 1956), and the rules made thereunder shall apply mutatis mutandis to the maintenance, preparation and revision of record-of-rights for the purposes of this Act.(2)Without prejudice to the generality of the provisions of Chapter VII and Chapter VIIA of the West Bengal Land Reforms Act, 1955, the names of Bharatias and thika tenants, the right of every Bharatia in respect of the concerned tenant, the duration and incident of tenancies with area involved in each case, rent payable by each thika tenant and each Bharatia, and the area occupied by each Bharatia shall be incorporated in such record-of-rights.(3)The State Government may, if it thinks fit, direct that such record-of-rights shall be revised or prepared only in respect of lands to which section 5 of this Act applies.(4)Notwithstanding anything contained in sub-section (5) of section 51 of the West Bengal Land Reforms Act, 1955, there shall be a separate khatian for each thika tenant or tenant of other lands holding directly under the State, but the lands owned by such thika tenant or tenant of other lands as a raiyat shall not be incorporated in such khatian,

24. Payment of monthly revenue.

(1) In respect of any holding, a thika tenant or tenant of other lands holding directly under the State, shall pay monthly revenue to the State Government at such rate as may be prescribed.(2)The said monthly revenue shall be enhanced at such rate as may be prescribed.

25. Disposal of land or structures vested in, or resumed by, the State.

Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, and subject to the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976), it shall be competent for the State Government to make use of, or settle with any person or authority, any land or structure vested in, or resumed by, the State under this Act for public purpose on such terms and conditions, and in such manner, as may be prescribed.

26. [* * *] [[Section 26 omitted by section 12 of the West Bengal Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (with effect from 1.11.2010), which was as under :

26. Disposal of land or structures vested in, or resumed by, the State. Notwithstanding anything contained in this Act, the State Government shall not be deemed to be a landlord within the meaning of the term as in the West Bengal Premises Tenancy Act, 1956 (West Bengal Act No. 12 of 1956) but be a licenser and the Bharatia a licensee under the State where there is no thika tenant.]]

27. Repeal and savings.

(1) With effect from the date of commencement of this Act, the Kolkata thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981 (West Bengal Act No. 37 of 1981), shall stand repealed.(2)Notwithstanding the repeal of the said Act, such repeal shall not (a)affect the previous operation of the said Act or anything duly done or suffered thereunder; or(b)affect any right, privilege, obligation or liability acquired, accrued or incurred under the said Act; or(c)affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Act; or(d)affect any investigation, legal proceeding or remedy, in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.