

Calcutta Thika Tenancy Act 1949

WEST BENGAL

India

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Act 2 of 1949

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Calcutta Thika Tenancy Act 1949 West Bengal Act No. 2 of 1949

024.

[Assent of the Governor-General was first published in the Calcutta Gazette, Extraordinary, of the 28th February, 1949] An Act to make better provision relating to the law of landlord and tenant in respect of thika tenancies in Calcutta. Whereas it is expedient to make better provision relating to the law of landlord and tenant in respect of thika tenancies in Calcutta; It is hereby enacted as follows :

Chapter I Preliminary

1. Short title, extent and commencement.

(1) This Act may be called the Calcutta thika Tenancy Act, 1949. (2) It extends to Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal Act, 1923 (Bengal Act No. 3 of 1923) and [xxx] [Omitted by West Bengal Act 28 of 1969] to the Municipality of Howrah. (3) It shall come into force on the day on which the Calcutta thika Tenancy Ordinance, 1948 (West Bengal Ord. XI of 1948), ceases to operate.

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 for any structure or part of a structure erected by a thika tenant in his holding; (2) "Controller" means an officer appointed as such by the State Government for an area to which this Act extends and includes any officer appointed by the State Government to perform all or any of the duties imposed, or to exercise all or any of the powers

conferred by this Act, on the Controller;(3)"holding" means a parcel or parcels of land held by any person as a thika tenant under one lease or one set of conditions whether such tenant has held the land before or after the commencement of this Act;(4)"prescribed" means prescribed by rules made under this Act;(4a)["pucca structure" means any structure constructed mainly of brick, stone or concrete or any combination of these materials;] [Clause (4a) inserted by West Bengal Act No. 29 of 1969.](5)["thika tenant" means any person who holds, 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 on such land for a residential, manufacturing or business purpose and includes the successors in interest of such person, but does not include a person [Clause (5) substituted by West Bengal Act No. 6 of 1953.](a)who holds such land under that another person in perpetuity; or(b)who holds such land under that another person under a registered lease, in which the duration of the lease is expressly stated to be for a period of not less than twelve years; or(c)who holds such land under that another person and uses or occupies such land as a khattal](6)all words and expressions used but not defined in this Act and used in the Transfer of Property Act, 1882, (IV of 1882) or the Bengal Tenancy Act, 1885 (VIII of 1885), have the same meanings as in those Acts.

Chapter II

Incidents of thika Tenancies

3. [Grounds on which a thika tenant may be ejected. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, a thika tenant shall, subject to the other provisions of this Act, be liable to ejectment from his holding on one or more of the following grounds and not otherwise, namely :

(i)on the ground that he has used the land comprised in his holding in a manner which renders it unfit for any of the purposes mentioned in clause (5) of section 2;(ii)except during any period limited by a registered lease under which a thika tenant may hold the land comprised in the holding and subject to the provisions of sub-sections (2), (3) and (4), on the ground that the land is required by the landlord for his own occupation;(iii)when he holds the land comprised, in the holding under a registered lease for a purpose other than a residential purpose, on the ground that the term of the lease has expired.(2)No landlord shall be deemed to require the land comprised in the thika tenant's holding for his own occupation if he has a house of his own in the city in which such land is situated and the accommodation available in such house is, in the opinion of the Controller, reasonably sufficient for him and his family.(3)Where the landlord requires the land comprised in the thika tenant's holding for his own occupation and the Controller is of opinion that such requirement may be substantially satisfied by ejecting the thika tenant from a part only of his holding and allowing him to continue in occupation of the rest, then, if the thika tenant agrees to such occupation, the Controller shall make an order accordingly and fix the proportionate rent for the portion remaining in the occupation of the thika tenant.(4)Where the thika tenant has erected or acquired a pucca

structure for a residential purpose on the land comprised in his holding, no order for ejectment shall be made against him except in respect of such part, if any, of such land as does not appertain to the pucca structure.] [Section 3 substituted by West Bengal Act No. 29 of 1969.]

4. Notice before ejectment.

It shall not be competent for a landlord to eject any thika tenant from his holding unless the landlord has given the thika tenant notice in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882)(a) in the case where he wishes to eject the thika tenant on [the ground specified in clause (i) of sub-section (1)] [Subsection by West Bengal Act No. 29 of 1969] of section 3 at least one month's notice in writing expiring with the end of a month of the tenancy; and (b) in the case where he wishes to eject the thika tenant on [the ground specified in clause (if) of sub-section (1)] [Substituted by West Bengal Act No. 29 of 1969] of section 3 at least three months' notice in writing expiring with the end of a month of the tenancy : [Provided that save as otherwise provided in any contract in writings, no thika tenant shall be ejected from his holding on the ground specified in clause (ii) of sub-section (1) of section 3 except on payment to the thika tenant or on depositing with the Controller for payment to the thika tenant such compensation as may be agreed upon between the landlord and the thika tenant or, in the case where they do not agree, as may be determined in the prescribed manner by the Controller on application by the landlord or the thika tenant.] [Proviso subsection by ibid]

5. Proceedings for ejectment.

(1) Notwithstanding anything contained in any other law for the time being in force, a landlord wishing to eject a thika tenant on one or more of the grounds specified in section 3 shall apply in the prescribed manner to the Controller for an order in that behalf and, on receipt of such application, the Controller shall, after giving the thika tenant a notice to show cause within thirty days from the date of service of the notice why the application shall not be allowed and after making an inquiry in the prescribed manner either allow the application or reject it after recording the reasons for making such order, and, if he allows the application, shall make an order directing the thika tenant to vacate the holding and, subject to the provisions of section 10, to put the landlord in possession thereof. (2) No order allowing an application under sub-section (1) shall be made in a case where compensation is payable under [xxx] [Omitted by Ibid.] the proviso to section 4 unless and until the amount of compensation so payable has been either paid to the thika tenant or deposited with the Controller.

6. Stay of ejectment for arrears of rent if the amount of arrears and damages are deposited with the Controller.

-[xxx] [Section 6 omitted by West Bengal Act No. 29 of 1969]

7. Restoration of possession where landlord does not use the land for the purpose for which the thika tenant was ejected.

If an order under section 5 directing a thika tenant to vacate any land comprised in a holding on [the ground specified in clause (ii) of sub-section (1)] [Subsection by *ibid*] of section 3 is made and the landlord who recovers possession of the land as a result of such order does not within six months from the date on which he recovers such possession occupy the land himself [* **] [Omitted by *ibid*.] or re-lets it within six months of the said date to any thika tenant other than the previous thika tenant without the permission of the Controller obtained in the prescribed manner, the Controller may on application in writing being made to him in this behalf by the thika tenant from whom the landlord has so recovered possession of the land within nine months from the said date, make an order directing the landlord to restore the thika tenant to possession of the land from such date and subject to such condition as may be specified in the order, or to pay him such compensation as may be fixed by the Controller.[xxx] [Proviso omitted by *ibid*.]

7A. [Power of the Controller to set aside order for ejectment in certain cases. (1) Where an order for ejectment of a thika tenant from his holding has been made by the Controller under section 5 before the date of commencement of the Calcutta thika Tenancy (Second Amendment) Act, 1969, but the possession of the land comprised in the holding has not recovered by the landlord from the thika tenant, the thika tenant may, within sixty days from such date, apply to the Controller for setting aside the order.

(2) On receipt of an application under sub-section (1) the Controller shall cause a notice thereof to be served on the landlord, and if after considering such evidence as the parties may adduce, (a) the Controller is satisfied that the order for ejectment would have been made against the thika tenant even if the Calcutta thika Tenancy (Second Amendment) Act, 1969, had been in force on the date on which such order was made, the Controller shall dismiss the application with such costs as the Controller may allow to the landlord; or (b) the Controller is satisfied that no order for ejectment would have been against the thika tenant if the Calcutta thika Tenancy (Second Amendment) Act, 1969, had been in force on the date on which such order was made, the Controller shall determine the amount which would have been payable by the thika tenant for the period commencing from such date and ending with the date of the order to be made under this sub-section, if the thika tenant had to pay rent at the rate at which it was last paid during such period and after deducting therefrom all such sums as the thika tenant may have deposited with the Controller or paid to the landlord on account of rent for such period the Controller shall direct the thika tenant, by order, to deposit the remaining amount, together with such further amount as the Controller may allow to the landlord as his costs of the proceeding arising out of the application under sub-section (1) of section 5, within such time, not exceeding sixty days from the date of the order, as the Controller may fix. (3) If the thika tenant deposits the amounts ordered by the Controller under clause (b) of sub-section (2) within the time fixed by him, the Controller shall allow the application under sub-section (1) and set aside the order of ejectment and dispose of the application of the landlord

under sub-section (1) of section 5.(4)If the thika tenant fails to deposit such amounts within such time, his application under sub-section (1) shall be dismissed with such costs as the Controller may award to the landlord.] [Section 7A inserted by *ibid.*]

8. Surrender.

(1) A thika tenant not bound by any lease or other agreement for a fixed period may, at the end of a month of the tenancy, surrender his holding, provided that he gives to his landlord at least one month before he surrenders, notice of his intention to do so.(2)When a thika tenant has surrendered his holding the landlord may, subject to the provisions of section 10, enter on the holding and either let it to another tenant or occupy it himself or dispose of it in any way he may think fit.

9. Abandonment.

(1) When a thika tenant voluntarily abandons his holding without notice to the landlord and without arranging for the payment of his rent as it falls due, the landlord may, at any time after the expiration of a period of two months from the date of such voluntary abandonment, file the notice referred to in sub-section (2) and subject to the provisions of sub-section (3) and of section 10 enter on the holding and let out the same to another tenant or copy it himself.(2)A landlord who intends to enter on a holding under this section shall file a notice in the prescribed form with the Controller stating that he has treated the holding as abandoned and intends to enter on it accordingly; and the Controller shall within fifteen days from the date on which the notice is so filed cause such notice to be published in the prescribed manner.(3)After the publication of the notice under sub-section (2), the thika tenant may apply to the Controller at any time not later than the expiration of one month from the date of the publication of such notice for the cancellation of such notice and thereupon the Controller may, on being satisfied after such inquiry as he considers necessary that the thika tenant is entitled to continue in possession, cancel the notice and direct that the thika tenant shall continue in possession of the holding subject to payment of the arrears of rent due on the date on which the notice is so cancelled. If the thika tenant does not make any application under this sub-section or his application under this sub-section is rejected, the landlord may enter on the holding subject to the provisions of section 10.

10. Consequences of the determination of interests of thika tenants in certain cases.

(1) Notwithstanding anything to the contrary contained in any contract, on the determination of the interest of a thika tenant in the land comprised in a holding as a result of ejectment from the holding of, or of surrender or abandonment of the holding by, the thika tenant, or otherwise, any structure [standing upon] [Subsection by West Bengal Act No. 6 of 1953] such land and existing on the date of such determination shall vest in the landlord.(2)When any structure [standing on any holding of a thika tenant] [Subsection by West Bengal Act No. 6 of 1953.] vests in the landlord under sub-section (1) otherwise than as a result of ejectment of the thika tenant from the holding on [the ground specified in clause (ii) of sub-section (1)] [Subsection by West Bengal Act No. 39 of 1969.] of

section 3, [any Bharatia in possession of such structure or any part thereof, shall without any application being made] be entitled to continue in such possession and shall be [deemed to be a tenant in respect of such structure or part thereof, as the case may be,] [Subsection by West Bengal Act VI OF 1953] within the meaning of the [West Bengal Premises Tenancy Act, 1956 (West Bengal Act No. 12 of 1956)] [Substituted by West Bengal XXIX of 1969], holding under the landlord on the terms and conditions on which such Bharatia had been holding immediately before [such structure] [Subsection by West Bengal Act No. 6 of 1953] vested in the landlord Provided that nothing in this sub-section shall prevent either the landlord or such Bharatia so deemed to be a tenant holding under the landlord, from proceeding under the [West Bengal Premises Tenancy Act, 1956] [Substituted by West Bengal XXIX of 1969], for fixing the standard rent payable in respect of [such structure or part thereof, as the case may be] [Substituted by West Bengal VI of 1953.]

10A. [Right of thika tenant to erect pucca structures.] [Section 10A inserted ibid] (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, but subject to the provisions of sub-sections (2) and (3), a thika tenant using the land comprised in his holding for a residential purpose may erect a pucca structure on such land for such purpose with the previous permission of the Controller.

(2) On an application made by a thika tenant in this behalf, the Controller may grant him permission to erect a pucca structure, if the Controller is satisfied that the thika tenant (a) is using the structure existing on the land comprised in his holding for a residential purpose, (b) intends to use the pucca structure to be erected on such land for a similar purpose, and (c) has obtained sanction of a building plan to erect the pucca structure from the municipal authorities of the area in which such land is situated. (3) No thika tenant shall be entitled to eject a Bharatia from the structure or part thereof in the possession of the Bharatia for the purpose of erecting pucca structure: Provided that the thika tenant may by providing temporary alternative accommodation to a Bharatia obtain from him vacant possession of the structure in his possession on condition that immediately on the completion of the construction of the pucca structure the thika tenant shall offer the Bharatia accommodation in the pucca structure at a rent which shall in no case exceed by more than twenty-five per centum the rent which the Bharatia was previously paying.

11. Devolution or transfer of holding of a thika tenant.

-[xxx] [Section 11 omitted by West Bengal Act VI of 1953.]

Chapter III

Provisions as to Rent of thika Tenancies

12. Payment of rent.

Any rent or instalment of rent payable by a thika tenant shall be paid, where there is a contract in writing in this behalf between the landlord and the thika tenant, within the time fixed in the contract or, in the absence of any such contract, by the fifteenth day of the month next following the month or period for which the rent is payable.

13. Time and place for payment of rent.

(1) Every thika tenant shall pay or tender rent or each instalment of rent before sunset of the latest day by which it is payable under the provisions of section 12 :Provided that a thika tenant may pay or tender the rent payable for a month or period at any time during such month or period before it falls due.(2)The payment or tender of rent may be made(i)at the landlord's local office or at such other convenient place as may be appointed in that behalf by the landlord; or(ii)by postal money order in the manner prescribed.A tender may also be made by depositing the rent with the Controller in accordance with the provisions of section 17 or section 18.(3)Any rent or instalment of rent which is not duly paid within the time referred to in section 12 or is not duly deposited with the Controller within the time referred to in section 17 or section 18 shall be deemed to be an arrear.

14. Appropriation of payments.

(1) When a thika tenant makes a payment on account of rent, he may declare the month or period in respect of which he wishes the payment to be credited, and the payment shall be credited accordingly.(2)If he does not make any such declaration, the payment may be credited to the account of such month or period as the landlord thinks fit.

15. thika tenant entitled to receipt for rent.

(1) Every thika tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorised agent a written receipt for the amount paid by him, signed by the landlord.(2)A counterfoil of the receipt shall be prepared and retained by the landlord or his authorised agent.(3)The receipt and counterfoil shall be in such form and shall contain such particulars as may be prescribed.(4)If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

16. Penalty for withholding receipts.

if a landlord without reasonable cause refuses or neglects to deliver to a thika tenant a receipt containing the particulars required by section 15 for any rent paid by the tenant, the Controller may, on application made in this behalf by the tenant within three months from the date of payment, by order direct the landlord to pay the tenant such penalty not exceeding double the amount of that rent as the Controller thinks fit.

17. Deposit of rent on refusal of the landlord to accept.

(1) Where a landlord refuses to accept any rent the thika tenant may, by an application in writing containing such particulars as may be prescribed, (a) deposit such rent with the Controller, within the period specified in sub-section (2), and (b) unless the landlord signifies by notice in writing to the thika tenant his willingness to accept any subsequent rent which becomes due from such tenant, also deposit such rent with the Controller within the period within which it is payable under the provisions of section 12 [xxx] [Omitted by West Bengal Act 24 of 1959.]. Explanation. A landlord shall not for the purposes of this sub-section be deemed to have refused to accept any rent unless the rent is remitted by the thika tenant by postal money order within the time specified and in the manner referred to in section 13 and the rent so remitted is returned to the thika tenant by the postal authorities as undelivered either on account of the landlord having refused to accept payment thereof or for any other cause. (1a) [The application referred to in sub-section (1) shall be accompanied by a copy thereof along with the prescribed fee for sending such copy to the landlord by registered post with acknowledgement due.] [Subsection (1a) inserted by West Bengal Act 39 of 1959.] (2) The deposit referred to in clause (a) of sub-section (1) shall be made within a fortnight of the date on which the rent remitted by postal money order is returned to the thika tenant by the postal authorities as undelivered.

18. Deposit of rent in certain other cases.

(1) In either of the following cases, namely :- (a) when any rent is payable jointly to two or more co-sharer landlords and the thika tenant is unable to obtain a joint receipt from them for the rent and no person has been empowered to receive the rent on their behalf, (b) when a dispute has arisen as to the person who is entitled to receive the rent, the thika tenant may by an application in writing containing such particulars as may be prescribed deposit such rent with the Controller and may continue to deposit with the Controller any subsequent rent which becomes due from such tenant until the thika tenant is able to obtain a joint receipt from the co-sharer landlords or a person has been empowered to receive the rent on their behalf, or until such dispute has been settled by the decision of a competent Court or by settlement between the parties, as the case may be. (2) The deposit of rent referred to in sub-section (1) shall be made within the period within which it is payable under section 13.

19. Receipt granted by the Controller for rent deposited to be a valid acquittance.

If it appears to the Controller to whom application for deposit is made under section 17 or section 18 that the applicant is entitled to deposit the rent under any of those sections, he shall receive the rent deposited and give a receipt for it under the seal of the Court and such receipt shall operate as an acquittance for the amount of the rent payable by the thika tenant and deposited as aforesaid, in the same manner and to the same extent as if the amount of the rent had been received in cases referred to in clauses (a) and (b) of sub-section (1) of section 17, by the person specified in the application as the person to whose credit the deposit was to be entered; in cases referred to in clause

(a) of sub-section (1) of section 18, by the co-sharers to whom the rent is due; and in cases referred to in clause (b) of sub-section (1) of section 18, by the person entitled to the rent.

20. [Disposal of rent deposited under section 17. On any deposit being made under section 17, the Controller shall send in the prescribed manner the copy of the application to the landlord and the amount lying in deposit may, in such manner as may be prescribed, be withdrawn by the landlord on application made in that behalf and if such amount is not withdrawn before the expiration of three years from the date of deposit, it may, in the absence of any order of a Civil Court to the contrary, be repaid to the tenant on his application and on his returning the receipt given by the Controller under section 19 :

Provided that before passing any order for repayment of the amount to the tenant the Controller shall give a notice to the landlord by registered post at the last known address of such landlord and shall also publish the notice in his office and shall not pass any order for repayment until after the expiry of thirty days from the date of issue of such notice by post. The cost of transmission by post of such notice shall be deducted from the amount in deposit in accordance with such procedure as may be prescribed.] [Section 20 substituted by West Bengal Act No. 24 of 1959]

21. Disposal of rent deposited under section 18.

(1) When the Controller receives a deposit under section 18, he shall forthwith cause to be affixed in a conspicuous place at his office a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under sub-section (2) within the period of fifteen days next following the date on which the notification is so affixed, the Controller shall forthwith in cases referred to in clause (a) of sub-section (1) of section 18 cause a notice of the receipt of the deposit to be posted free of charge at the landlord's local office, if any, and at some conspicuous place in the locality in which the holding is situated, and, in cases referred to in clause (b) of sub-section (1) of the said section, cause a like notice to be served free of charge on every person who, he has reason to believe, claims or is entitled to the deposit. (2) The Controller may pay the amount of any deposit notified under sub-section (1) to any person who proves to his satisfaction to be entitled to the same or is entitled to the amount as a result of a settlement referred to in sub-section (1) of section 18 or he may, if he thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled. (3) If no payment is made under sub-section (2) before the expiration of three years from the date of notice issued under sub-section (1) or three months after the decision of the Civil Court, whichever is later, the amount deposited may in the absence of any order of a Civil Court to the contrary be repaid to the depositor upon his application and on his returning the receipt given by the Controller when the rent was deposited.

22. Saving.

(1) When a landlord accepts rent in respect of any holding sent by postal money order by a thika tenant under clause (ii) of sub section (2) of section 13 or by the Controller under section 21 or with draws any rent deposited under section 17 or section 18, the fact of this acceptance or withdrawal shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money order form or in the application for deposit of such rent.(2)No suit, prosecution or other legal proceeding shall be instituted against the [Government] [Subsection by A.L.O., 1950.] or against any officer of the [Government] [Subsection by A.L.O., 1950.] in respect of anything done by the Controller receiving a deposit under section 17 or section 18; but nothing in this Act shall prevent any person entitled to receive any amount so deposited from recovering the same from any person to whom it has been paid under section 20 or section 21.

23. Interest on arrears.

Any arrear of rent shall bear simple interest at the rate of six and a quarter per centum per annum from the expiry of the time within which the rent or the instalment of rent is payable under the provisions of section 12 or is to be deposited under section 17 or section 18, as the case may be, to the date of payment or of the institution of the suit, whichever date is earlier.

23A. [Suit for arrears of rent.] [Section 23A and 23B inserted by West Bengal Act No. 29 of 1969.] (1) Notwithstanding anything contained in any other law for the time being in force, no suit for the recovery of arrears of rent shall be instituted against a thika tenant unless the thika tenant has defaulted in the payment of rent for more than two months or periods.

(2)If in any suit instituted for the recovery of arrears of rent, it appears to the Court that the thika tenant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the landlord in addition to the amount decreed for rent and costs such damages not exceeding twelve and a half per centum on the amount of rent decreed, as he thinks fit :Provided that interest shall not be decreed when damages are awarded under this section.(3)If in any suit instituted for the recovery of arrears of rent, it appears to the Court that the landlord has instituted the suit without reasonable or probable cause the Court may award to the thika tenant, be way of damages, such sum not exceeding twelve and a half per centum on the whole amount claimed by the landlord as he thinks fit.

23B. Right of landlord to purchase holding in case of execution sale.

(1) Where any land comprised in the holding of a thika tenant is sold in execution of a decree obtained against him, the landlord may, within two months of the date of the sale, apply to the executing Court for the transfer of such land to him.(2)The application shall be dismissed, unless the landlord at the time of making it, deposit in Court the amount of the price for which such land was sold together with compensation at the rate of five per centum of such amount.(3)If such deposit is

made the Court shall give the auction-purchaser notice of the application and an opportunity of being heard. If the Court is satisfied that the conditions referred to in sub-section (1) have been fulfilled, the Court shall make an order directing that the deposit made under sub-section (2) shall be paid to the auction-purchaser.(4)From the date of the making of the order under sub-section (3) the right, title and interest in the land comprised in the holding accruing to the auction-purchaser by his purchase at the execution-sale shall be deemed to have vested in the landlord free from any encumbrance which may have been created after the date of such sale and the Court may, on further application of the landlord, place him in possession of the land vested in him.

24. Restrictions on enhancement of rent.

The rent of a thika tenant shall not be enhanced except as provided in this Act.

25. Enhancement of rent.

(1) The rent payable by a thika tenant for his holding may be enhanced by the Controller on application made to the Controller by the landlord in the prescribed manner on either or both of the following grounds, namely : (a) that the value of the holding has increased; (b) that the landlord has effected some improvement to the land at his own cost which has increased the value of the holding : Provided that no rent shall be enhanced under this sub-section so as to exceed the rent previously payable by the thika tenant by more than twelve and a half per centum. (2) The rent fixed under sub-section (1) shall not be further enhanced during three years next following the date on which it has been last so enhanced.

26. Reduction of rent by the Controller.

Any rent payable by a thika tenant which has been settled within a period of three years immediately before the commencement of this Act, may be reduced by the Controller on application made in that behalf by the thika tenant if the Controller considers that the rate of rent so settled is unfair and inequitable having regard to the prevailing rate of rent payable by thika tenants of lands of a similar description and with similar advantages in the locality.

Chapter IV

Appeals and Certain Special Procedures

26A. [Power of District Judge and Chief Judge, Court of Small Causes of Calcutta to withdraw and transfer proceeding. (1) 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 his own motion without such notice, the District Judge in the case of the proceeding pending before a Controller appointed for any area within the district, or the Chief Judge of the Court of Small

Causes of Calcutta in the case of a proceeding pending before a Controller appointed for any area within the Presidency town of Calcutta, may at any stage withdraw such proceeding and transfer it for hearing or disposal to a Controller appointed for any other area within the district or within the Presidency town of Calcutta, as the case may be, 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 point at which it was withdrawn and transferred.Explanation. In this section "proceeding" includes any proceeding arising out of an application made to the Controller under the provisions of this Act.] [Section 26A inserted by West Bengal Act No. 6 of 1964.]

27. Appeal, review and execution.

(1) Any person aggrieved by an order of the Controller may, within thirty days from the date of the order, present an appeal in writing (a)in respect of any holding in the Presidency town of Calcutta, to the Chief Judge of the Court of Small Causes of Calcutta; and(b)in respect of any holding elsewhere, to the District Judge of the district in which the holding concerning which such order is made is situated.(2)The State Government may, by notification, appoint any person who has exercised the powers of a District Judge to hear appeals presented under clause (a) of sub-section (1) to the Chief Judge of the Court of Small Causes of Calcutta and may, by notification, also appoint any person who is a judicial officer not below the rank of a subordinate Judge to hear appeals presented under clause (b) of the said sub-section to a District Judge.(3)The Chief Judge of the Court of Small Causes of Calcutta to whom an appeal is presented under clause (a) of sub-section (1) or a District Judge to whom an appeal is presented under clause (b) of that sub-section may transfer such appeal to any person appointed to hear any such appeal under sub-section (2) and may withdraw any appeal so transferred and either hear and dispose of it himself or transfer it to any other person appointed to hear such appeals under sub-section (2).(4)The Chief Judge or the District Judge or any person appointed under sub-section (2) to whom an appeal is transferred under sub-section (3), as the case may be, shall then send for the record of the case from the Controller and after perusing the record and, if necessary, taking such evidence himself or personally making such further inquiries as he thinks fit, shall make an order deciding the appeal after giving the parties an opportunity of being heard.(5)Subject to such rules as may be made under this Act, any order passed under this Act by the Controller, the Chief Judge of the Court of Small Causes of Calcutta, or a District Judge or a person appointed under sub-section (2) may be reviewed by the person who passed the order on the ground of the discovery of any new and important matter or evidence or on account of some mistake or error apparent on the face of the record or for any other sufficient cause :Provided that before any order is passed under the sub-section which is likely to affect any person adversely such person shall be given a reasonable opportunity of being heard.(6)An order under sub-section (4) made by the Chief Judge or the District Judge or a person appointed under sub-section (2), as the case may be, or, subject to such order, -[if any,] [Inserted by

West Bengal Act No. 6 of 1953.] an order made by the Controller under this Act, shall, subject to the provisions of sub-section (5), be final and may be executed by the Controller in the manner provided in the Code of Civil Procedure 1908 (5 of 1908), for the execution of decrees.

28. Power of Court to rescind or vary decrees and orders in certain cases.

- [xxx] [Section 28 omitted by ibid]

29. Application of Act to pending suits and proceedings.

[xxx] [Section 29 omitted by ibid.]

30. Bar to application of Act to certain lands.

Nothing in this Act shall apply to-(a)Government lands,(b)any land vested in or in the possession of (i)the State Government,(ii)a port authority of a major port, or(iii)a railway administration, or(iv)a local authority, or(c)any land which is required for carrying out any of the provisions of the Calcutta Improvement Act, 1911 (Bengal Act No. 5 of 1911).

31. Restriction or exclusion of Act by agreement.

Nothing in any contract between a landlord and a thika tenant made after the commencement of this Act shall take away or limit the rights of such tenant as provided for by 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.

32. Power to enter and inspect premises, to require information and to summon witnesses.

(1) For the purposes of any inquiry under this Act, the Controller and any person deciding an appeal under section 27, may, (a)enter and inspect any premises at any time between sunrise and sunset;(b)authorise any person subordinate to him to enter and inspect any premises between sunrise and sunset; or(c)by written order require any person to produce for his inspection such accounts, rent receipts, books or other documents relevant to the inquiry at such time and at such place as may be specified in the order :Provided 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.(2)The Controller and any person deciding any appeal under section 27 shall, subject to any rules made under this Act and in so far as such powers are necessary for carrying out the provisions of this Act, have power to summon and enforce the attendance of witnesses, including the parties interested, and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a Court by the Code of Civil Procedure, 1908 (5 of 1908).

32A. [Thika Tenant may get supply of electricity to the holding and structure thereon without permission of the landlord.-

(1)A thika tenant desiring to get supply of electricity from a licensee, as defined in clause (h) of section 2 of the Indian Electricity Act, 1910 (Act 9 of 1910), may, if the landlord, refuses or withholds his consent to such supply, apply to the Controller, setting out the scheme for such supply.(2)On receipt of such application the Controller may, after giving the landlord an opportunity of being heard, permit the thika tenant to get the supply in accordance with the scheme set out in the thika tenant's application or in accordance with any modified scheme.(3)On such permission being given, the landlord shall be deemed, notwithstanding anything contained in any other law for the time being in force, to have given the requisite consent under sub-section (2) of section 12 of the Indian Electricity Act, 1910, and the licensee shall not be liable to the landlord for trespass for steps taken for supply of electricity according to the said permission.] [Section 32A inserted by West Bengal Act 24 of 1959.]

32B. [Duty of thika tenant to provide essential amenities for Bharatias. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, it shall be the duty of every thika tenant to keep the structures let out to Bharatias, in a condition fit for habitation and to make such provisions for water-supply, conservancy and sanitary services as may be considered by the Con-troller essential, regard being had to the conditions of water-supply, conservancy and sanitary services prevailing in the area in which the holding is situated and the number of Bharatias in possession of the structures.

(2)Where the Controller is, on an application filed by a Bharatia, satisfied that any structure let out to the Bharatia is unfit for habitation or that essential provisions for water-supply, conservancy and sanitary services therein have not been made or if made, are not adequate, the Controller shall cause a notice to be served in the prescribed manner on the thika tenant requiring him to carry out within such time as may be specified in the notice, such works as, in his opinion, are necessary for making such structure fit for habitation or for securing such water-supply, conservancy and sanitary services as are essential.(3)If after the service of such notice the thika tenant fails to show cause or neglects to carry out such works within the specified time the Controller may, after giving the thika tenant an opportunity of being heard and after making such inquiries as he may consider necessary, make an order in writing specifying the works to be done and giving an estimate of costs of such works, and get such works executed by such agency as he may consider fit and thereafter all expenses incurred in executing the works together with interest thereon at the rate of six and a quarter per centum per annum from the date on which demand for expenses is made payment, may be recovered by the Controller from the thika tenant as a public demand.] [Section 32B inserted by West Bengal Act No. 29 of 1969]

33. Repeal and saving.

On the expiry of the Calcutta Thika Tenancy Ordinance, 1948 (West Bengal Ord. XI of 1948), the provisions of section 8 of the Bengal General Clauses Act, 1899, shall apply as if it were an enactment then repealed by a West Bengal Act,

34. Rules.

(1) The State Government may, subject to the condition of previous publication, make rules for carrying out the purposes 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 following matters, namely : (a) the manner of determination of compensation referred to in the proviso to section 4; (b) the manner in which a landlord may apply to the Controller and the manner in which the Controller may make inquiries under section 5; (c) the manner of obtaining permission of the Controller referred to in section 7; (d) the form of notice and the manner of publication of such notice under sub-section (2) of section 9; (e) the manner of payment or tender of rent by postal money order referred to in clause (ii) of sub-section (2) of section 13; (f) the form of receipt and of the counterfoil referred to in sub-section (3) of section 15, and the particulars to be specified in such receipt and counterfoil; the particulars to be contained in applications for depositing rent under sub-section (1) of section 17 and sub-section (1) of section 18; (h) the manner of sending the copy of the application to the landlord, and of withdrawal by the landlord of the amount in deposit, referred to in section 20 and the procedure for deducting from the amount in deposit the cost of transmission by post of the notice to the landlord, referred to in the proviso to section 20; (i) the manner of making application for enhancement of rent under sub-section (1) of section 25; (j) the procedure to be followed in inquiries under this Act, by the Controller, the Chief Judge of the Court of Small Causes of Calcutta, the District Judge and any person appointed under sub-section (2) of section 27; (k) the procedure for review of orders referred to in sub-section (5) of section 27; (l) the procedure for summoning and enforcing the attendance of witnesses and compelling the production of documents referred to in sub-section (2) of section 32; (m) the manner of service of notices issued under this Act where the mode of such service is not provided in this Act; and (n) the charging or remitting of costs and fees and the fixing of a scale of costs and fees; (o) [any other matter which is required to be or may be prescribed.] [Clause (o) added by West Bengal Act 24 of 1959.]