

West Bengal Premises Tenancy Act, 1956

12 of 1956

[March 30, 1956]

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West Bengal Premises Tenancy Act, 1956

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[March 30, 1956]

Assent of the President was first published in the Calcutta Gazette, Extraordinary, of the 30th March, 1956] An Act to provide for the regulation of certain incidents of tenancy of premises in Calcutta and some other areas in West Bengal. It is hereby enacted in the Seventh Year of the Republic of India, by the Legislature of West Bengal, as follows :

CHAPTER 1 Preliminary

1. Short title, commencement and extent :-

(1) This Act may be called the West Bengal Premises Tenancy Act, 1956.

(2) It shall come into force on such date as the State Government may, by notification, appoint.

(3) It extends to the whole of Calcutta and to all areas which have been or may hereafter be constituted municipalities under the provisions of the Bengal Municipal Act, 1932 (Ben. Act XV of 1932):

Provided that the State Government may, by notification, extend this Act or any part thereof to any other area specified in the notification, or may, by notification, exclude any area from the operation of this Act or any specified part thereof ;

[Provided further that this Act shall not apply

(a)to any premises belonging to any local authority,

(b)to any premises belonging to [or requisitioned] by Government,or

(c)to any tenancy created by Government in respect of any premises taken on lease by Government.

Explanation. For the purpose of this section, the expression "local authority" shall include the Board called the Trustees for the improvement of Calcutta, referred to in section 3 of the Calcutta Improvement Act, 1911 (Ben Act V of 1911), as well as any body corporate or authority that may hereafter be constituted under any law for the time being in force for the improvement of any municipality, town or cantonment.

2. Definition :-

In this Act, unless there is anything repugnant in the subject or context,

[(a) "Calcutta" means the area described in Schedule I to the Calcutta Municipal Corporation Act, 1980 (West Ben Act LIX of 1980);]

(b) "Controller" means a Controller appointed under sub-section (1) of section 26 and includes an Additional Controller and a Deputy Controller appointed under sub-section (2) of that section ;

(c) "fair rent" in relation to any premises means the fair rent referred to in section 8 or where the fair rent has been increased under section 9 such increased rent or where the fair rent has been revised under section 11 such revised rent ;

[(cc) "hotel or lodging house" means an establishment where lodging with or without board or other service is provided for B monetary consideration;]

(d) "landlord" includes any person who, for the time being is entitled to receive or but for a special contract, would be entitled to receive the rent of any premises, whether or not on his own account ;

[(dd) "manager of a hotel" includes any person in charge of the management of a hotel]

(e) "notification" means a notification published in the Official Gazette

[(ee) "owner of a lodging house" means any person who for the time being is receiving any monetary consideration from any person on account or board or lodging, or other service in the lodging house, and includes any person who is entitled to institute a suit for the recovery of such monetary consideration

(f) "premises" means any building or part of a building or any hut or part of a hut let separately and includes

(i) the gardens, grounds, and out-houses if any. appertaining there to

(ii) any furniture supplied or any fittings or fixtures affixed for the use of the tenant in such building or part of a building or hut or part of a hut but does not include a room in hotel or a lodging

house,

(g) "prescribed" means prescribed by rules framed under this Act,

(h) "tenant" [means] any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and [(includes any person continuing in possession after the termination of his tenancy or in the event of such persons death, such of his heirs as were ordinarily residing with him at the time of his death) but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction]

3. Certain provisions of the Act not to apply to certain leases :-

(1)[The provisions relating to rent and the provisions of sections 31 and 36 shall apply to any premises held under a lease for residential purpose of the lessee himself and registered under the Indian Registration Act. 1908 (XVI of 1908), where

(a) such lease has been entered into on or after the 1st December. 1948, and

(b) such lease is for a period of not more than 20 years, and save as aforesaid nothing in this Act shall apply to any premises held under a lease for a period of not less than 15 years.] [Notwithstanding anything to the contrary contained in sub-section (1) but subject to sub- section (3) of section 1 this Act shall apply to all premises held under a lease which has been entered into after the commencement of the West Bengal Premises Tenancy (Amendment) Ordinance 1965.

Provided that if any such lease is for a period of not less than 20 years and the period limited by such lease is not expressed to be

terminable before its expiration at the option either of the landlord or of the tenant, nothing in this Act, other than the provisions relating to rent and the provisions of sections 31 and 36, shall apply to any premises held under such lease]

CHAPTER 2 Provisions Regarding Rent

4. Excess over fair rent to be irrecoverable :-

(1) A tenant shall, subject to the provisions of this Act, pay to the landlord

(a) in cases where fair rent has been fixed for any premises, such rent;

(b) in other cases, the rent agreed upon until fair rent is fixed.

(2) Rent shall be paid within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable.

[Provided that a tenant may pay the rent payable for any month at any time during such month before it falls due.]

(3) Any sum in excess of the rent referred to in sub-section (1) shall not be recoverable by the landlord.

5. Restriction on claim, demand or receipt of premium or other consideration :-

No person shall, in consideration of the grant, renewal or continuance of a tenancy of any premises

(a) claim, demand or receive any sums as premium or claim,

demand or receive any consideration whatsoever, in cash or in kind in addition to the rent ; or

(b)except with the previous permission of the Controller, claim demand or receive the payment of any sum exceeding one months rent of such premises as rent in advance.

6. Restriction on the sale of furniture in any premises let to a tenant :-

(1) No landlord shall make the purchase of any furniture in any premises by any person a condition for the grant, renewal or continuance of the tenancy of such premises.

(2) No person shall publish or cause to be published in any newspaper or otherwise advertisement

(a) for the purchase by any person of any furniture ; or

(b)for payment of any sum exceeding one months rent in advance except with the previous permission of the Controller as a condition for the letting of any premises.

7. Refund of rent, premium, etc., not recoverable under this Act. :-

(1) Where any sum or other consideration has been paid by or on behalf of a tenant to a landlord, in contravention of any of the provisions of this Act. The Controller may, on application made to him within a period of six months from the date of such payment, order the landlord to refund such sum or

(2) The provisions of sub-section (1) shall not apply to any case of decrease of rent to which section 12 applies.

8. Fair rent :-

(1) "Fair rent" in relation to any premises means

(a) where the rent of such premises has been fixed under the Bengal House Rent Control Order, 1942 or the Calcutta House Rent Control Order, 1943, or the Calcutta Rent Ordinance, 1946, the rent so fixed together with

(i) where the rent so fixed is more than Rs. 100 per month, 10 per cent of such rent, and where the rent is fixed is not more than Rs. 100 per month, 5 per cent of such rent, in the case of premises used mainly for residential purposes or as a hospital, an orphanage, a public library, or an educational or charitable institution, and

(ii) where the rent so fixed is more than Rs. 100 per month, 15 per cent of such rent and where the rent so fixed is not more than Rs. 100 per month, 10 per cent of such rent, in the case of premises used for purposes other than those mentioned in sub-clause (i) above ;

(b) where the rent of such premises has been fixed under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (West Ben. Act XVII of 1950), whether by way of revision of the rent previously fixed under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 (West Ben. Act XXXVIII of 1948), or not, the rent so fixed ;

(c) where any proceeding is pending for fixation of rent of such premises under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, or under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, the rent fixed under the

provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 ;

(d) where such premises have been constructed and let out after the commencement of this Act, the rent calculated on the basis of annual payment of an amount equal to $\frac{63}{4}$ per cent, per annum of the aggregate amount of the actual cost of construction and the market price of the land on the date of commencement of construction, together with one-half of the total amount of the municipal rates and taxes payable annually in respect of the premises ;

Provided that the rent agreed upon between the landlord and the tenant when such premises are first let out shall, for a period of eight years from the date of commencement of this Act, be deemed to be the fair rent;

(e) where the provisions of clause (a) or clause (b) or clause (c) or clause (d) do not apply, such rent as would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein and where there are similar or nearly similar premises in the locality, having regard also to the rent payable in respect of such premises :

Provided that in fixing such rent the Controller shall in no case allow an increase of more than 10 per cent, over the existing rent, if any, of such premises.

(2) Where the fair rent includes the tenants share of the municipal rates and taxes, then, notwithstanding anything to the contrary in any contract or law, the landlord and not the tenant shall be liable to pay the whole amount of the municipal rates and taxes assessed on the premises

(3) Where any furniture is supplied or any fittings are affixed by the landlord for the use of the tenant, fair rent shall include an additional amount equivalent to ten per cent of the market value of

such furniture or fittings payable for one year, the added amount being payable in equal monthly or other periodical instalments according to the terms of the tenancy

9. Increase of fair rent in certain cases :-

The fair rent of any premises shall be liable to be increased on any of the following grounds and to the extent indicated below

(a) where the fair rent includes the tenants share of the municipal rates and taxes and there has been increase in the municipal rates and taxes, by adding to the rent payable for a year one-half of the total amount of such increase in respect of such premises.

(b) where the landlord incurs any expenditure on the improvement or structural alteration to the premises (made with the written consent of the tenant), by adding to the rent payable for a year 10 per cent, of the amount of such expenditure.

10. Controller to fix or increase fair rent on application by landlord or tenant :-

The Controller shall, on application made to him either by landlord or by the tenant in the prescribed manner, fix in respect of any premises

(i) the fair rent referred to in section 8 ;

(ii) the increase, if any, referred to in section 9.

11. Revision of fair rent :-

(1) The fair rent may be revised only if (here has been an increase or decrease in the market value of the premises

(2) Such revision shall be made on application made to the Controller either by the landlord or by the tenant, in the prescribed manner

Provided that no such application shall be entertained until after the expiry of a period of five years from the date on which rent was last fixed or from the commencement of this Act. as the case may be :

Provided further that in respect of any premises which have been constructed after the commencement of this Act the rent shall not be revised until after the expiry of eight years from the date of commencement of this Act, and when it is revised after such period the revised rent shall not be less than the rent as calculated in accordance with the provisions of clause (d) of sub-section (1) of Section 8.

(3)The rent of the premises payable for a year shall not be increased or decreased by revision by more than 2½ percent, per annum of the difference between the market value of the premises on the date of the application under sub-section (2) and the date of the last fixation of the rent or the commencement of this Act as the case may be.

12. When fair rent fixed by the Controller takes effect :-

When in fixing the fair rent or any increase of rent under section 9 or revising the fair rent under section 11, the rent which was being paid at the time of the application is

(a)decreased by the Controller, the rent so fixed shall be payable from the month of tenancy next after the date of application and the excess amount paid, if any, shall be recoverable under the order of the Controller by instalments or otherwise ;

(b)increased by the Controller, the rent so fixed shall be payable from the month of tenancy next after the date of the application and the additional amount payable on account of the increase up to and including the month of the tenancy immediately preceding the month in which the order for increase is passed shall be recoverable by the landlord by such instalments or otherwise as the Controller may order . Provided that

(i) so much of the increase as is referred to in clause (a) of section 9 shall be payable from the month of tenancy in which the increase in the municipal rates and taxes came into force,

(ii) so much of the increase as is referred to in clause (b) of the said section shall be payable from the month of tenancy after that in which the improvement or structural alteration was completed.

CHAPTER 3 Suits and proceedings for eviction

13. Protection of tenant against eviction :-

(1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds, namely :

(a)where the tenant or any person residing in the premises let to the tenant without the previous consent in writing of the landlord transfers, assigns or sublets in whole or in part the premises held by him ;

(b)where the tenant or any person residing in the premises let to the tenant has done any act contrary to the provisions of clause (m), clause (o) or clause (p) of section 108 of the Transfer of Property Act, 1882 (IV of 1882);

(c)where the tenant has been using the premises or any part

(c)where the tenant has been using the premises or any part thereof or allowing the premises or any part thereof to be used for immoral or illegal purposes ;

(d)where the tenant or any person residing in the premises let to the tenant is guilty of any act of waste or of any negligence or default resulting in material deterioration of the condition of the premises ;

(e)where the tenant or any person residing in the premises let to the tenant has been guilty of conduct which is a nuisance or annoyance to neighbours including the landlord ;

[(f) subject to the provisions of sub-section (3A) and section 18A, where the premises are reasonably required by the landlord for purposes of building or re-building or for making thereto substantial additions or alterations, cannot be carried out without the premises being vacated ;]

(ff) subject to the provisions of sub-section (3A), where the premises are reasonably required by the landlord for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held and the landlord or such person is not in possession of any reasonably suitable accommodation ;

(g) where the premises were let to the tenant for use as residence by reason of his being in the service of employment of the landlord and the tenant has ceased before or after coming into operation of this Act to be in such service of employment ;

(h) where premises let out for residential purpose have been used for any other purpose for more than four months without the consent in writing of the landlord ;

(i) where the tenant has made default in the payment of rent for two months within a period of twelve months or for two successive

periods in cases where rent is not payable monthly ;

(j) where the tenant has given notice to quit but has failed to deliver vacant possession of the premises to the landlord in accordance with such notice ;

(k) when subsequent to the creation of the tenancy, the tenant having agreed in writing with the landlord to deliver vacant possession of the premises to the landlord has failed to do so ;

[(l) where the landlord is a member of the Armed Forces of the Union of India and requires it for the occupation of his family and produces a certificate of the prescribed authority referred to in section 7 of the Indian Soldiers (Litigation) Act, 1925 (4 of 1925), that he is serving under special condition within the meaning of section 3 of that Act or is posted in a non-family area.

Explanation. For the purpose of this clause :

(1) The certificate of the prescribed authority shall be conclusive evidence that the landlord is serving under special conditions or is posted in a non-family area.

(2) "Family" means parents and such relations of the landlord as ordinarily reside with him and are dependant on him.]

(2) The sub-tenants, if any, referred to in section 16 who have given notice of their sub-tenancies to the landlord under the provisions of that section shall be made parties to any suit or proceeding for the recovery of possession of the premises by the landlord ;

Provided that except in cases covered by clause (f) or clause (g) of subsection (1), no decree or order for ejectment shall be passed against any such sub-tenant unless any of the grounds mentioned

in clauses (a) to (e) and (h) apply to him.

(3) Save as provided in sub-section (2) and sub-section (4), a decree or order for the delivery of possession of any premises shall be binding on every sub-tenant.

[(3A) where a landlord has acquired his interest in the premises by transfer, no suit for the recovery of possession of the premises on any of the grounds mentioned in clause (f) or clause (ff) of sub-section (1) shall be instituted by the landlord before the expiration of a period of three years from the date of his acquisition of such interest

Provided that a suit for the recovery of the possession of the premises may be instituted on the ground mentioned in clause (f) of sub-section (1) before the expiration of the said period of three years if the Controller on the application of the landlord and after giving the tenant an opportunity of being heard, permits by order, the institutions or alterations of the suit on the ground that the building or re-building or the additions or alterations as the case may be are necessary to make the premises safe for human habitation.]

(4) Where the landlord requires the premises on any of the grounds mentioned in clause (f) [or clause (ff)] of sub-section (1) and the Court is of opinion that such requirement may be substantially satisfied by ejecting the tenant or a sub-tenant from a part only of the premises and allowing the tenant or the sub-tenant to continue in occupation of the rest, then if the tenant or a sub-tenant agrees to such occupation, the Court shall pass a decree accordingly and fix the proportionate rent for the portion remaining in the occupation of the tenant or the sub-tenant. The rent so fixed shall be deemed to be the fair rent for purposes of this Act. If the tenant does not agree but a sub-tenant agrees to such occupation, no decree or order for ejectment shall be passed against such sub-tenant and such sub-tenant shall become, with effect from the date of the decree or order, a tenant directly holding under the landlord.

(5) Where under sub-section (2) a decree or order for ejectment is passed against a tenant but not against a sub-tenant, the sub-tenant shall become with effect from the date of the decree against the tenant, a tenant directly holding the landlord in respect of the premises in his occupation and he shall pay such rent as may be fixed by the Court. The rent so fixed shall be deemed to be the fair rent for purposes of this Act

(6) Notwithstanding anything in any other law for the time being in force no suit or proceeding for the recovery of possession of any premises on any of the grounds mentioned in sub-section (1) except the grounds mentioned in clause (j) and (k) of that sub-section shall be filed by the landlord unless he has given to the tenant one months notice expiring with a month of the tenancy.

14. Restriction of subletting :-

(1) After the commencement of this Act. no tenant shall, without the previous consent in writing of the landlord

(a) sublet the whole or any part of the premises held by him as a tenant or

(b) transfer or assign his rights in the tenancy or in any part thereof.

(2) No landlord shall claim, demand or receive any premium or other consideration whatsoever for giving his consent to the subletting of the whole or any part of the premises held by a tenant.

15. Tenant not to receive any sum of consideration for relin-quishment of tenancy :-

It shall not be lawful for the tenant or any other person acting or purporting to act on behalf of the tenant to claim or receive any sum or any consideration as a condition of the relinquishment of his tenancy of any premises.

16. Creation and termination of sub-tenancies to be notified

:-

(1) Where after the commencement of this Act, any premises are sublet either in whole or in part by the tenant with the previous consent in writing of the landlord, the tenant and every sub-tenant to whom the premises are sublet shall give notice to the landlord in the prescribed manner of the creation of the sub-tenancy within one month from the date of such subletting and shall in the prescribed manner notify the termination of such subtenancy within one month of such termination.

(2) Where before the commencement of this Act, the tenant with or without the consent of the landlord, has sublet any premises either in whole or in part, the tenant and every sub-tenant to whom the premises have been sublet shall give notice to the landlord of such subletting in the prescribed manner [within six months] of the commencement of this Act and shall in the prescribed manner notify the termination of such sub-tenancy within one month of such termination.

(3) Where in any case mentioned in sub-section(2) there is no consent in writing of the landlord and the landlord denies that he gave oral consent, the Controller shall, on an application made to him in this behalf either by the landlord or the sub-tenant within two months of the date of the receipt of the notice of subletting by the landlord or the issue of the notice by the sub-tenant, as the case may be, by order declare that the tenants interest in so much of the premises as has been sublet shall cease, and that the sub-tenant shall become a tenant directly under the landlord from the date of the order. The Controller shall also fix the rents payable by the tenant and such sub-tenant to the landlord from the date of the order. Rents so fixed shall be deemed to be fair rent for purposes of this Act.

17. When a tenant can get the benefit of protection against eviction :-

(1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in section 13, the tenant [shall, subject to the provisions of sub-section (2), within one month] of the service of the writ of summons on him [or where he appears in the suit or proceeding without the writ of summons being served on him, within one month of his appearance] [deposit in court or with the Controller or pay to the landlord] an amount calculated at the rate of rent at which it was last paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made together with interest on such amount calculated at the rate of eight and one-third per cent, per annum from the date when any such amount was payable upto the date of deposit, and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate.

(2) If in any suit or proceeding referred to in sub-section (1) there is any dispute as to the amount of rent payable by the tenant, the tenant shall within the time specified in sub-section (1), deposit in court the amount admitted by him to be due from him together with an application to the Court for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of such application, the Court shall

(a) having regard to the rate at which rent was last paid, and the period for which default may have been made, by the tenant, make, as soon as possible within a period not exceeding one year, a preliminary order, pending final decision of the dispute, specifying the amount, if any, due from the tenant and thereupon the tenant shall, within one month of the date of such preliminary order, deposit in court or pay to the landlord the amount so specified in the preliminary order ; and

(b) having regard to the provisions of this Act, make, as soon after the preliminary order as possible, a final order determining the rate of rent and the amount to be deposited in Court or paid to the landlord and either fixing the time within which the amount shall be deposited or paid or, as the case may be, directing that the amount already deposited or paid be adjusted in such manner and within such time as may be specified in the order].

[(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), on the application of the tenant, the Court may, by order,

(a) extend the time specified in sub-section (1) or sub-section (2) for the deposit or payment of any amount referred to therein ;

(b) having regard to the circumstances of the tenant as also of the landlord and the total sum inclusive of interest required to be deposited or paid under sub-section (1) on account of default in the payment of rent, permit the tenant to deposit or pay such sum in such instalments and by such dates as the Court may fix :

Provided that where payment is permitted by instalments such sum shall include all amounts calculated at the rate of rent for the period of default including the period subsequent thereto up to the end of the month previous to that in which the order under this sub-section is to be made with interest on any such amount calculated at the rate specified in sub-section (1) from the date when such amount was payable up to the date of such order.]

(2B) No application for extension of time for the deposit or payment of any amount under clause (a) of sub-section (2A) shall be entertained unless it is made before the expiry of the time specified therefor in sub-section (1) or sub-section (2), and no application for permission to pay in instalment under clause (b) of sub-section (2A) shall be entertained unless it is made before the expiry of the time specified in sub-section (1) for the deposit or payment of the amount due on account of default in the payment

of rent.

[(3) If a tenant fails to deposit, or pay any amount referred to in subsection (1) or sub-section (2) within the time specified therein or within such extended time as may be allowed under clause (a) of sub-section (2A). or fails to deposit or pay any instalment permitted under clause (b) of sub-section (2A) within the time fixed therefor, the Court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.]

(4) If a tenant makes deposit or payment as required by subsection (1), [sub-section (2), or sub-section (2A)] no decree or order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant shall be made by the Court but the Court may allow such costs as it may deem fit to the landlord :

[Provided that a tenant shall not be entitled to any relief under this subsection if, having obtained such relief once in respect of the premises, he has again made default in the payment of rent for four months within a period of twelve months.]

17A. Power of Court to set aside order striking out defence against delivery of possession :-

(1) Where in a suit pending at the date of commencement of the West Bengal Premises Tenancy (Amendment) Act, 1968 the defence against delivery of possession was struck out by an order made under sub-section (3) of section 17 before such date, the tenant may, within a period of thirty days from such date make an application to the Court which made such order to set aside such order

(2) On receipt of an application under sub-section (1), the Court

shall determine, after giving credit for every deposit or payment made by the tenant in accordance with the provisions of sub-section (1) or sub-section (2) of section 17, the total amount which the tenant remained liable to deposit or pay in accordance with such provisions up to the end of the month previous to that in which the order under this sub-section is to be made and direct the tenant, by order, to deposit such amount in the Court within a period of thirty days from the date of the order

(3) If the tenant deposits such amount within such time, the Court shall allow the application under sub-section (1) and set aside the order made under sub-section (3) of section 17 striking out the defence against delivery of possession.

(4) If the tenant fails to deposit such amount within such time, his application under sub-section (1) shall be dismissed with such costs as the Court may award to the landlord

17B. Power of Court to set aside decree in cases where defence against delivery of possession struck out :-

(1) Where a decree for the recovery of possession of any premises was passed before the commencement of the West Bengal Premises Tenancy (Amendment) Act, 1968. in a suit in which the defence against delivery of possession was struck out by an order under sub-section (3) of section 17. but the possession of such premises, has not been recovered from the tenant by the execution of such decree, the tenant, may, within a period of sixty days of such commencement, make an application to the Court which passed such decree to set aside such decree.

Explanation. Where such decree has been passed in the exercise of appellate jurisdiction, an application under this sub-section shall be made to the Court of first instance

(2) All proceedings in execution of such decree shall remain stayed

during the period referred to in sub-section (1) and, where an application under that sub-section has been made by the tenant within such period, until such application is disposed of by the Court.

(3) On receipt of an application under sub-section (1) the Court shall cause a notice thereof to be served on the landlord and after hearing such evidence as the parties may adduce, determine

(a) the total amount that the tenant was liable to deposit or pay in accordance with the provisions of sub-section (1) or sub-section (2) of section 17 during the period ending with the date of the decree for the recovery of the possession, after giving credit for every deposit or payment made by the tenant in accordance with such provisions during such period and

(b) the total amount that the tenant remained liable to pay if he had to pay for the period commencing from the date of such decree and ending with the date of the order to be made under this sub-section a monthly sum equivalent to the rent at the rate at which it was last paid, after giving credit for all such sums that the tenant might have deposited in the Court or with the Controller or paid to the landlord for such period and direct the tenant by order to deposit in the Court the aggregate of the amounts referred to in clauses (a) and (b) within such time not exceeding sixty days from the date of the order as the Court may fix

(4) If the tenant deposits the amount ordered by the Court within the time fixed by it the Court shall allow the application under sub-section (1) and set aside the decree for the recovery of possession passed in the suit and the order made under sub-section (3) of section 17 striking out the defence against delivery of possession, and fix a date for proceeding with the hearing of the suit

(5) If the tenant fails to deposit the amount ordered by the Court within the time fixed by it his application under sub-section (1) shall be dismissed with such cost as the Court may award to the landlord

17C. Deposit, under section 17A or section 17B to be deemed to be deposit as required by subsection (1) or subsection (2) of section 17. :-

A tenant who deposits the amount as directed by the Court under sub-section (2) of section 17A or sub-section (3) of section 17B shall for the purpose of sub-section (4) of section 17, be deemed to have duly made the deposit as required by sub-section (1) or sub-section (2) of section 17

17D. Power of Court to set aside decrees passed on account of default in the payment of rent :-

(1) Where before the commencement of the West Bengal Premises Tenancy (Amendment) Act, 1968. a decree for the recovery of possession of any premises was passed

(a) in a suit under this Act in which no order had been made under sub-section (3) of section 17 striking out defence against delivery of possession, only on the ground referred to in clause (i) of sub-section (1) of section 13, or

(b) in suit under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, by reason only of clause (i) of the proviso to sub-section (1) of section 11 of that Act. \ but the possession of such premises had not been recovered from the tenant by the execution of the decree, the tenant may within a period of sixty days from the date of commencement of the West Bengal Premises Tenancy (Second Amendment) Act, 1969, make an application to the Court which passed the decree to set aside the decree.

Explanation. Where the decree was passed in the exercise of appellate jurisdiction, an application under the sub-section shall be made to the Court of first instance.

(2) Where an application has been made under sub-section (1) for setting aside a decree, all proceedings in execution of the decree shall remain stayed until the application is disposed of.

(3) On receipt of an application under sub-section (1) the Court shall cause a notice thereof to be served on the landlord and after hearing such evidence as the parties may adduce, determine

(a)(i) where the decree was passed in a suit under this Act, the total amount that the tenant was liable to deposit or pay in accordance with the provisions of sub-section (1) or sub-section (2) of section 17 during the period ending with the date of the decree, after giving credit for every deposit or payment made by the tenant in accordance with such provisions during such period, or

(ii) where the decree was passed in a suit under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, the total amount that the tenant would have been liable to deposit on account of rent including the arrears of rent during the period ending with the date of the decree, had an order been made in the suit by the Court under sub-section (4) of section 14 of that Act for deposit of rent at the rate at which it was last paid and the arrears of rent, if any, after giving credit for every deposit made by the tenant for such rent or arrears during such period, and

(b) in either case, the total amount that the tenant remained liable to pay if he had to pay for the period commencing from the date of the decree and ending with the date of the order to be made under this sub-section, a monthly sum equivalent to the rent at which it was last paid, after giving credit for all such sums that the tenant might have deposited in the Court or with the Controller or paid to the landlord for such period, and direct the tenant, by order, to deposit in Court the aggregate of the amounts referred to in clauses (a) and (b), together with such further amount as the Court may allow as costs of the suit within such time, not exceeding sixty days from the date of the order as the Court may fix.

(4) If the tenant deposits the amounts ordered by the Court within

the time fixed by it the Court shall allow the application under sub-section (1) and set aside the decree for the recovery of possession passed in the suit and dismiss the suit,

(5) If the tenant fails to deposit the amounts ordered by the Court within the time fixed by it, his application under sub-section (1) shall be dismissed with such costs as the Court may award to the landlord.]

17E. Power of Court to set aside certain decrees passed in suits brought by transferee-landlords within three years from the date of transfer :-

(1) Where before the commencement of the West Bengal Premies Tenancy (Second Amendment) Act, 1969, a decree for the recovery of possession of any premises was passed in a suit which had been brought by a landlord, who had acquired his interest in such premises by transfer, before, the expiration of a period of three years from the date of his acquisition of such interest only on one or more of the grounds mentioned in clause (f) of sub-section (1) of section 13 as it was in force before such commencement, but the possession of such premises has not been recovered from the tenant by the execution of the decree, the tenant may within a period of sixty days from the date of commencement of the West Bengal Premises Tenancy (Amendment) Act, 1970 make an application to the Court which passed the decree to set aside the decree.

Explanation Where the decree was passed in the exercise of appellate jurisdiction, an application under this sub-section shall be made to the Court of first instance.

(2) Where an application has been made under sub-section (1) for setting aside a decree, all proceedings in execution of the decree shall remain stayed until the application is disposed of

(3) On receipt of an application under sub-section (1), the Court shall cause a notice thereof to be served on the landlord and if after considering such evidence as the parties may adduce,

(a) the Court is not satisfied that the suit in which the decree was passed had been brought by a landlord, who had acquired his interest in the premises by transfer, before the expiration of a period of three years from the date of his acquisition of such interest, the Court shall dismiss the application with such costs as the Court may award to the landlord ; or

(b) the Court is satisfied that the suit in which the decree was passed has been brought by a landlord who had acquired his interest in the premises by transfer before the expiration of a period of three years from the date of his acquisition of such interest, the Court shall determine the amount which would have been payable by the tenant for the period commencing from the date of the decree and ending with the date of the order to be made under the sub-section, if during such period the tenant had to pay. month by month, a sum equivalent to the rent at the rate at which it was last paid and after deducting therefrom all such sums as the tenant may have deposited in Court or with the Controller for such period, the Court shall direct the tenant by order to deposit in Court the remaining amount together with such further amount as the Court may allow as costs of the suit within such time not exceeding sixty days from the date of the order as the Court may fix.

(4) If the tenant deposits the amounts ordered by the Court under clause (b) of sub-section (3) within the time fixed by it, the Court shall allow the application under sub-section (1) and set aside the decree for the recovery of possession passed in the suit and dismiss the suit

(5) If the tenant fails to deposit the amounts ordered by the Court under clause (b) of sub-section (3) within the time fixed by it his application under sub-section (1) shall be dismissed with such costs as the Court may award to the landlord]

18. When a tenant is entitled to restoration and compensation :-

(1) Where the landlord obtains delivery of possession of any premises from the tenant in pursuance of a decree obtained under clause (f) [or clause (ff)] of sub-section (1) of section 13 and the building or re-building or additions and alterations are not commenced or the premises are not occupied by the landlords or any person for whose benefit the premises are held as the case may be. within six months of the date of vacation of the premises by such tenant, or the premises having been so occupied by the landlord or any person for whose benefit the premises are held are re-let within [ten years] of the date of such occupation to any person other than such tenant without the permission of the Controller obtained in the prescribed manner the Controller may, on the application of such tenant made within nine months of his vacating the premises -[or where the premises have been relet within [ten years], within three months of such re-letting] and after giving the landlord an opportunity of being heard by order direct the landlord to put such tenant in possession of the premises if not re-let within fourteen days of the date of the order, or to pay him such compensation as may be deemed adequate to the Controller in case the premises have been re-let.

(2) If upon an order being made under sub-section (1)

(a) the landlord fails or neglects to deliver possession of the premises to the tenant within the time specified, then the Controller shall execute the order and put the tenant in possession of the premises and in that event the tenant shall be liable to pay fair rent in respect of the premises from the date of delivery of such possession .

(b)the tenant fails or neglects to take possession of the premises then the order made by the Controller under sub-section (1) shall stand vacated and the tenant shall be liable to pay the landlord by

way of compensation a sum equivalent to the fair rent of the premises calculated from the date of his application under sub-section (1) up to the date on which the tenant should have taken possession, and such costs of the proceedings as may be assessed by the Controller and the Controller shall make an order accordingly

(3) Without prejudice to the provisions of sub-section (1) where the landlord obtaining delivery of possession of any premises from the tenant in pursuance of a decree made on the ground mentioned in clause (ff) of sub-section (1) of section 13 was, at the time of obtaining such delivery of possession, in occupation of some other premises as owner thereof, he shall not, within ten years from the date of his obtaining such delivery of possession let such other premises to any person other than the tenant from whom such delivery of possession had been obtained except with the permission of the Controller obtained, in the prescribed manner and in case the landlord lets such other premises to any person other than such tenant in contravention of the provisions of this sub-section, the Controller may on the application of such tenant made within three months of such letting and after giving the landlord an opportunity of being heard, by order, direct the landlord to pay to such tenant such compensation as may be deemed adequate by the Controller in all circumstances of the case]

18A. Restoration to tenancy where decree for recovery of possession is passed under clause (f) of sub-section (1) of section 13 :-

(1) Where the Court passes a decree for recovery of possession of any premises on the ground mentioned in clause (f) of sub-section (1) of section 13. it shall specify the period within which the building or rebuilding, or the additions or alterations, on or to such premises shall be completed and may on the application of the landlord extend such period from time to time for good and sufficient reasons

(2) On the completion of the building or re-building or the additions

or alterations, on or to such premises the Controller may, on the application of the tenant who has been ejected from such premises made within three months of the date of such completion and after giving the landlord an opportunity of being heard, by order direct the landlord to put such tenant in possession of such premises or such part thereof as the Controller may specify in his order within fourteen days of the date of the order.

(3) If upon an order being made under sub-section (2), the landlord fails or neglects to deliver possession of such premises or such part thereof as is specified in the order to the tenant within the time specified then the Controller shall execute the order and put the tenant in possession of such premises or such part thereof and in that event the tenant shall be liable to pay fair rent in respect of such premises or such part thereof from the date of delivery of such possession.

19. Provisions regarding notice of giving up possession by tenants under contracts :-

(1) A tenant who is in possession of any premises to which this Act applies shall observe all the terms and conditions of the contract creating the tenancy and shall be entitled to the benefits thereof so far as these terms and conditions are consistent with the provisions of this Act.

(2) Notwithstanding anything in any other law for the time being in force a tenant may give up possession of the premises on giving such notice as is required under the contract creating tenancy. In the absence of any provision in the contract relating to notice or when there is no contract, the tenant may give up possession of the premises on giving not less than one months notice expiring with a month of the tenancy

20. Special provisions regarding jurisdiction of Courts for trial of suits for possession :-

Notwithstanding anything contained in any other law a suit or proceeding by a landlord against a tenant in which recover of possession of any premises to which this Act applies is claimed shall lie to the Courts, as set out in [the first schedule], and no other Court shall be competent to entertain or try such suit [or proceeding].

CHAPTER 4 Deposit of Rent

21. Deposit of rent by the tenant :-

(1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in section 4 or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner :

Provided that where any rent is remitted by the tenant to the landlord by postal money order, the date of issue of the postal money order shall, for the purposes of this sub-section, be deemed to be the date of tender of such rent by the tenant to landlord.]

(2) The deposit shall be accompanied by an application supported by an affidavit by the tenant stating

(a) the premises for which the rent is deposited with the description sufficient for identifying the premises ;

(b) the period for which the rent is deposited ;

(c) the name and address of the landlord or the person or persons claiming to be entitled to such rent ;

(d) the reasons and circumstances for the application for deposit of the rent.

Provided that in the case of deposits of rent for successive months during any continuous period, no affidavit in support of applications shall be required after the first deposit if the reasons and circumstances which led the tenant to make the first deposit remain the same.

[Provided further that in the case of deposit of rent for any month in respect of any premises in any area included within the limits of Calcutta, which, immediately before the 4th day of January, 1984, was comprised in the municipality of Jadavpur, South Suburban or Garden Reach, no further affidavit in support of application for such deposit shall be necessary if the Challan showing the deposit for the month immediately preceding is produced at the time of deposit.]

(3) The application shall be accompanied by as many true copies thereof as there are landlords or persons claiming the rent along with the prescribed fee for sending such copy or copies to the landlords or such persons by registered post with acknowledgment due.

(4) On such deposit of the rent being made the Controller shall send in the prescribed manner the copy or copies of the application to the landlord or persons claiming to be entitled to the rent with an endorsement showing the date of the deposit, such endorsement being authenticated by the seal of his office and the signature of the Controller or some other officer authorised by him. Such authenticated copy of the application shall be admissible in evidence in all Courts of law.

[(4A) Where rent for any month or period has been deposited under this section on the ground that the landlord did not accept the rent when tendered by the tenant, then notwithstanding anything contained in subsection (1) the tenant may, without further tender of the rent to the landlord continue to deposit the rent for subsequent months or periods unless the landlord signifies by notice in writing to the tenant his willingness to accept the rent

if tendered to him within the time referred to in section 4]

(5) If an application is made for the withdrawal of only deposit of rent, the Controller, shall, if satisfied that the applicant is the person entitled to receive the rent deposited, order the amount of the rent to be paid to him in the manner prescribed .

Provided that no order for payment of any deposit of rent shall be made by the Controller under this sub-section without giving all persons named by the tenant in his application under sub-section (2) as claiming to be entitled to payment of such rent an opportunity of being heard and such order shall be without prejudice to the rights of such persons to receive such rent being decided by a court of competent jurisdiction

(6) If any deposit of rent is not withdrawn by the landlord or by the person or persons entitled to receive the rent deposited

(a) in the case of a deposit made under this Act, within three years from the date of posting of the notice of deposit under subsection (4) [or within five years from the date of commencement of the West Bengal Premises Tenancy (Amendment) Act 1989] whichever is later,

(b) in case of a deposit made under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1958, the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, the Calcutta Rent Ordinance, 1946, the Calcutta House Rent Control Order, 1943 or the Bengal House Rent Control Order, 1942, which has not been forfeited to Government by an order made by the Controller of the West Bengal Premises Tenancy (Amendment) Act, 1975. within two years from such date Such deposit shall be credited to Government as a lapsed deposit]

(6A) Any deposit of rent credited to Government as a lapsed deposit under sub-section (6) shall be repayable to the landlord or to the person or persons entitled to receive the rent deposited in

accordance with such procedure as may be prescribed.

(7) [***]

(8) If at the time of filing the petition mentioned in sub-section (5), but not after the expiry of thirty days from receiving the notice of deposit, the landlord or the person or persons mentioned in sub-section (3) complain to the controller that the statements in the tenants application of the reasons and circumstances which led him to deposit the rent are natural the Controller after giving the tenant an opportunity of being heard, may levy on the tenant a fine which may extend to an amount equal to two months rent or one hundred rupees, whichever is more, if he is satisfied that the said statements were materially untrue and may order that a sum out of the fine realised be paid to the landlord as compensation

(9) The Controller may on the complaint of the tenant and after giving an opportunity to the landlord of being heard levy on the landlord a fine which may extend to an amount equal to two months rent or one hundred rupees whichever is more if he is satisfied that the landlord without any reasonable cause refused to accept rent though tendered to him within the time referred to in section 4 and may further order that a sum out of the fine realised be paid to the tenant as compensation

22. Time limit for making deposit and consequences of incorrect particulars in application for deposit :-

(1) No rent deposited under section 21 shall be considered to have been validly deposited under that section for purposes of clause (1) of sub-section (1) of section 13 unless deposited within fifteen days of the time fixed by the contract in writing unless deposited within the last day of the month following that for which the rent was payable :

[Provided that where any rent remitted to the landlord by postal

money order within the time referred to in section 4 is returned to the tenant by the postal authorities as undelivered either on account of the landlord having refused to accept payment thereof or for any other cause, such rent may also, be validly deposited for the purposes of the said clause within fifteen days from the date on which it is so returned to the tenant]

(2) No such deposit shall be considered to have been validly made for the purposes of the said clause if the tenant wilfully or negligently makes any false statement in his application for depositing the rent, unless the landlord has withdrawn the amount deposited before the date of institution of a suit or proceeding for recovery of the possession of the premises from the tenant

(3) If the rent is deposited within the time mentioned in subsection (1) and does not cease to be a valid deposit for the reason mentioned in subsection (2), the deposit shall constitute payment of rent to the landlord as if the amount deposited has been valid legal tender of rent if tendered to the landlord on the date fixed by the contract for payment of rent when there is such a contract, or, in the absence of any contract, on the fifteenth day of the month next following that for which rent is payable.

23. Saving as to acceptance of rent :-

The withdrawal of rent deposited under section 21, in the manner provided therein, shall not operate as an admission against the person withdrawing it of the correctness of the rate of rent, the period of default, the amount due, or of any other facts stated in the tenant's application for depositing the rent under the said section, nor shall it operate as a waiver of any notice to quit given by him to the tenant

24. Where there shall be a waiver of default :-

When there is no proceeding pending in Court for the recovery of possession of the premises, the acceptance of rent in respect of the period of default in payment of rent by the landlord from the tenant shall operate as a waiver of such default.

25. Receipt to be given for rent paid :-

(1) Every tenant who makes a payment 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 or his authorised agent.

(2) If the landlord or his authorised agent refuses or neglect to deliver to the tenant a receipt referred to in sub-section (1) for any rent paid by the tenant, the Controller shall, on application made in this behalf by the tenant within two months from the date of payment and after hearing the landlord or his authorised agent, by order, direct the landlord or his authorised agent to pay to the tenant, by way of damages such sum not exceeding double the amount of rent paid by the tenant and the costs of the application and shall also grant a certificate to the tenant in respect of the rent paid. Chapter 4A Hotels and Lodging Houses

25A. Fixation of fair rent and number of lodgers :-

The Controller shall, on the application made by any person interested,

(a) fix a fair rate to be charged for board, lodging or other service

provided in a hotel or lodging house and in fixing such fair rate specify separately the rate for lodging, board or other service

(b) fix the number of lodgers to be accommodated in each room specified unit of accommodation in a hotel or lodging house.

25B. Revision of fair rate and number of lodgers :-

The Controller may from time to time revise the fair rate or the number of lodgers fixed under section 25A.

25C. Notice of fair rate and number of lodgers to be displayed. :-

The manager of a hotel or the owner of a lodging house shall, where the fair rate or the number of lodgers has been fixed under section 25A for a hotel or lodging house display in a conspicuous part of the hotel or lodging house a notice of the fair rate and the number of lodgers so fixed

25D. Notice of fair rate and number of lodgers to be displayed. :-

Agreement for payment of charges in excess of fair rate. An agreement for the payment of any charge in excess of the fair rate referred to in section 25A shall be null and void in respect of such excess and shall be construed as if it were an agreement for the payment only of such fair rate.

25E. No eviction if fair rate paid :-

No manager of a hotel or owner of a lodging house shall have any right to evict or refuse board or other service to a lodger as long as he pays or tenders payment of the fair rate fixed under section 25A and observes and performs the other conditions of the agreement in so far as they are not inconsistent with the provisions of this Chapter:

Provided that a lodger shall not be entitled to the benefit of this section

(a) if the lodger has been guilty of conduct which is a nuisance or an annoyance to the other lodgers of the hotel or lodging house, or

(b) if the lodger has continuously been absent from such hotel or lodging house for a period exceeding two months , or

(c) if the lodger having contracted to stay for any specified period stays beyond that period unless the Controller on an application made to him in this behalf extends the period

25F. Punishment :-

(1) Every manager of a hotel or owner of a lodging house who accommodates lodgers or permits lodgers to be accommodated in a room or specified unit of accommodation in a hotel or lodging houses in excess of the number fixed by the Controller under section 25A except with the consent of all the lodgers of such room or specified unit of accommodation, shall on conviction in a Criminal Court be punished with fine which may extend to one thousand rupees.

(2) Every manager of a hotel or owner of a lodging house who fails to display a notice as required under section 25C of the fair rate or the number of lodgers fixed under section 25A shall on conviction in a Criminal Court be punished with fine which may extend to five hundred rupees.

25G. Chapter IVA not to apply to certain hotels or lodging houses :-

The provisions of Chapter IVA shall not apply to hotels or lodging house included in the list of hotels or lodging houses approved by the Department of Tourism of Government of India]

CHAPTER 5 Appointment of the Controller and other officers, their powers and functions

26. Appointment of Controller, Additional and Deputy Controllers and Registrars :-

(1) The State Government may, by notification appoint a person to be the Controller for any area or part of area to which this Act extends to exercise the powers and discharge the duties of the Controller in accordance with the provisions of this Act in such area or part.

(2) The State Government may also by notification, appoint any person to be Additional Controller or a Deputy Controller, or a Registrar [or a Deputy Registrar] for any area to which this Act extends.

(3) An Additional Controller or a Deputy Controller shall exercise such of the functions of the Controller as may, subject to the control of the State Government, be assigned to him in writing by the Controller and in the discharge of these functions an Additional Controller or a Deputy Controller shall have and shall exercise the same powers and discharge the same duties as the Controller.

(4) A Registrar [or a Deputy registrar] shall exercise such of the functions of the Controller relating to the rent deposited under section 21 as may be delegated to him by the Controller in writing.

(5) The Controller may

(a) transfer any case pending before him for disposal to any Additional Controller or Deputy Controller, or

(b) withdraw any case pending before any Additional Controller or Deputy Controller ; and

(i) dispose of such case himself, or

(ii) transfer such case of disposal to any other Additional Controller or Deputy Controller. [A Controller, an Additional Controller or a Deputy Controller appointed under this section shall be a member of the Indian Administrative Service or the Executive or the Judicial Branch of the State Civil Service or the State Junior Civil Service or be a Sub-Magistrate and Sub-Collector]

27. Final hearing of certain application :-

(1) The hearing of every application made to the Controller under this Act shall be completed within a period of three months, other than an application for obtaining permission under sub-section (2) of section 34 which shall be completed within a period of one month, unless, in either case, for reasons to be recorded by the Controller in writing, it is not possible for him to complete the hearing within that period.

(2) The hearing of every application shall, when it has begun be continued from day to day unless, for reasons to be recorded by the Controller in writing, it is not possible so to do

(3) In all proceedings before him the Controller shall consider the question of costs and may award to and against any party such costs as would be reasonable.

28. Power to enter and inspect premises to require information and to summon witnesses :-

(1) For the purposes of any inquiry or discharge of his duties under this Act, the Controller may

(a) after giving not less than twenty-four hours previous notice in writing, enter and inspect, or authorise any officer subordinate to him to enter and inspect, any premises at any time between sunrise and sunset ; or

(b) 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

(2) The Controller shall have all the powers of a Civil Court under

the Code of Civil Procedure, 1908 (Act V of 1908), for the purpose of summoning and enforcing the attendance of witnesses and compelling the production of documents.

CHAPTER 6 Appeal, Revision and Review

29. Appeal, revision and review :-

(1) An appeal shall lie from a final order of the Controller

(a) to the Chief Judge of the Court of Small Causes of Calcutta, in cases relating to premises situated within the Ordinary Original Civil Jurisdiction of the Calcutta High Court ;

(b) to the District Judge of the district in cases relating to premises situated in a district.

(2) An appeal shall be filed within 30 days of the date of the order of the Controller.

(3) The procedure for filing an appeal, and the powers to be exercise and the procedure to be followed by an Appellate Officer in admitting an dealing with an appeal shall be the same as in the case of appeals from orders under the Code of Civil Procedure 1908 \

(4) The Chief Judge of the Court of Small Causes of Calcutta may trans fer an appeal to any other Judge of that Court and a District Judge me transfer an appeal to an Additional District Judge or a Subordinate judge of that district The Chief Judge of the Court of Small Causes of Calcutta a District Judge may withdraw an appeal transferred by him under the provisions of this sub-section

(5) A Controller or an Appellate Officershall in dealing with

proceeding under this Act be deemed to be a Court for the exercise of powers under section 151 or section 152 or Order XLVII of the Code of Civil Procedure 1908 (Act V of 1908)

(6) The provisions of the Code of Civil Procedure, 1908, shall apply all suits and proceedings referred to in section 20 except suits or proceedings which lie to the High Court.

CHAPTER 6A Summary trial of certain applications

29A. Provisions of this Chapter to have overriding effect :-

The provisions of this Chapter or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force.

29B. Special Procedure for disposal of applications for eviction on the ground of bona fide requirement :-

(1) No Civil Court shall entertain any application by a landlord being a Government employee, and who being in occupation of any residential premises allotted to him by his employer, is required by, or in pursuance of, an order made by such employer to vacate such residential accommodation, or in default to incur certain obligations on the ground that he owns a residential accommodation either in his own name or in the name of his wife or dependant child at or near the place where he is posted for the time being [or by a landlord who has retired, or will retire within a period of less than one year, as a member of the naval, military or air force of the Union of India, or by a landlord who is the parent or the wife of such member of the naval, military or air force of the Union of India, or by a landlord who is a relation (other than a minor child or the widow) and a dependant of a member of the naval, military or air force of the Union of India and ordinarily resides with him or a minor child or the widow of such member who dies while in service or within five years of retirement] for the recovery of possession of any premises on the ground specified in clause (ff) of sub-section (1) of section 13 but such application shall be dealt with

by the Controller in accordance with the procedure specified in this section.

(2) Whenever any application is filed before the Controller by a landlord referred to in sub-section (1) for the recovery of possession of any premises on the ground specified in clause (ff) of sub-section (1) of section 13, the Controller shall issue summons, in the form specified in the Second schedule

[Provided that

(a) where the landlord has retired, or will retire within a period of less than one year, as a member of the naval, military or air force of the Union of India, a certificate by the Area or Sub-Area Commander within whose jurisdiction the premises are situated or by the Head of his Service or by his Commanding Officer that he has retired, or will retire, as such member and that he requires the premises for his own occupation and for the occupation of his family after retirement, or

(b) where the landlord is the parent or the wife of such member of the naval, military or air force of the Union of India as aforesaid. a certificate by the Area or Sub-Area Commander within whose jurisdiction the premises are situated that he or she is the parent or the wife, as the case may be, of such member of the naval, military or air force of the Union of India and that he or she requires the premises for his or her own occupation and for the occupation of his or her family after the retirement of such member or

(c) where the landlord is a relation (other than a minor child or the widow) and a dependant of a member of the naval military or air force of the Union of India and ordinarily resides with him or a minor child or the widow of such member who dies while in service or within five years of retirement, a certificate by the Area or Sub-Area Commander within whose jurisdiction the premises are situated that he or she is the relation and dependant as aforesaid or the minor child or the widow, as the case may be, of the deceased member of the naval, military or air force of the Union of

India and that he or she requires the premises for his or her own occupation and for the occupation of his or her family, shall be produced before the Controller while filing the application, and such certificate shall be conclusive evidence of the fact stated therein.]

[Explanation I]. - "Family" shall have the same meaning as the Explanation to clause (1) of sub-section (1) of section 13.

[Explanation II], For the purposes of this sub-section, Area or Sub-Area Commander shall include

(a) in the case of persons retired from the Indian Navy, a Flag Officer Commanding-in-Chief of the Naval Command, and

(b) in the case of persons retired from the Indian Air Force, the Air Force Station "Commander.";]

(3)

(a) In addition to, and simultaneously with, the issue of summons for service on the tenant, and the sub-tenants, if any, the Controller shall also direct the summons to be served by registered post with acknowledgment due addressed to the tenant and sub-tenant or their agents empowered to accept the service at the place where the tenant and sub-tenant or their agents actually and voluntarily reside or carry on business or personally work for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant and the sub-tenant are last known to have resided or carried on business or personally worked for gain.

(b) When acknowledgments purporting to be signed by the tenant, sub-tenant or their agents are received by the Controller or the registered article containing the summonses is received back with endorsements purporting to have been made by a postal employee to the effect that the tenant, sub-tenant or their agents had

refused to take delivery of the registered article, the Controller may declare that there has been valid service of the summonses

(4) The tenant and the sub-tenant on whom the summonses are duly served (whether in the ordinary way or by registered post) in the form specified in the Second Schedule shall not contest the prayer for eviction from the premises unless they file affidavits² [within fifteen days of the service of the summons] stating the grounds on which they seek to contest the application for eviction and obtained leave from the Controller as hereinafter provided : and in default of their appearance in pursuance of the summonses or their obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the sub-tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall [within fifteen days from the date of filing of the affidavit under sub-section (4) by the tenant or sub-tenant, as the case may be] give to the tenant or sub-tenant leave to contest the application if the affidavit filed by the tenant or sub-tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (ff) of sub-section (1) of section 13.

(6) Where leave is granted to the tenant or sub-tenant to contest the application, the Controller shall commence the hearing of the application on a date not later than one month from the date of grant of the leave as aforesaid, and shall conclude the hearing and give his decision within fifteen days from the date of commencement of the hearing as far as practicable.]

[(6A) Where the Controller decides at the conclusion of the hearing that the tenant or sub-tenant of any premises shall put the landlord referred to in sub-section (1) or any relation of the said landlord in possession of the said premises, he shall direct the tenant or sub-tenant, as the case may be. to put the -said landlord or the said relation of the said landlord, as the case may be, in possession of the said premises within such period, not exceeding six months

from the date of the decision, as he thinks reasonable]

(7) The provisions of sub-sections (2), (3), (4) and (6) of section 13 shall, so far as may be, apply to a proceeding under this Chapter but nothing contained in sub-section (3A) of section 13 shall apply to such a proceeding.

(8) The Controller shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.

(9) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section :

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law call for the case and pass such order in respect thereto as it thinks fit

(10) Where no application has been made to the High Court on revision the Controller may exercise the powers of review in accordance with the provisions of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908.

(11) An order passed by the Controller shall be executed in such manner as may be prescribed.

Explanation. For the purposes of this Chapter the expression "landlord being a government employee" includes an employee of the Central or State Government or any local authority.

CHAPTER 7 Penalties and Miscellaneous

30. Penalty for recovering rent in excess of the fair rent :-

(1) Whoever contravenes any of the provisions of section 5, shall, on the complaint of party aggrieved or of the State Government, made to the Controller, be liable

(i) for contravention of the provisions of clause (a) of section 5. on the first occasion, to a fine which may extend to five times the amount or value of the consideration, claimed, demanded or received in excess of the fair rent, and on a second or subsequent occasion, to a fine which may extend to ten times the amount of such excess ;

(ii) for contravention of the provisions of clause (b) of section 5, on the first occasion, to a fine which extend to twice the amount claimed demanded or received in excess of one months rent, and on a second or subsequent occasion, to a fine which may extend to four times the amount so claimed demanded or received, to be imposed, in each case after inquiry, by the controller

(2) Whoever contravenes any of the provisions of section 6 shall on the complaint of the party aggrieved or of the State Government made to the Controller, be liable to a fine which may on the first occasion extend to twice the value of the furniture and on a second or subsequent occasion extend to four times such value

(3) Any tenant who contravenes the provisions of sub-section (1) of section 14, shall on the complaint of the landlord made to the Controller, and any landlord who contravenes the provisions of sub-section (2) of that section shall, on the complaint of the tenant made to the Controller, be liable to a fine which may on the first occasion extend to one hundred rupees and on a second or subsequent occasion extend to two hundred rupees.

(4) Any tenant or person who in contravention of the provisions of section 15 receives any sum or consideration, shall, on the complaint of the landlord of the premises made to the controller, be

liable to a fine which may on the first occasion extend to one hundred rupees and on a second or subsequent occasion extend to two hundred rupees

(5) Any tenant or sub-tenant who fails to give notice as required under sub-section (1) or sub-section (2) of section 16 or intentionally furnishes information in such notice which is false in any material particular shall, on the complaint of the landlord of the premises made to the Controller be liable to a fine which may extend to one thousand rupees

(6) Any landlord who after obtaining delivery of possession of any premises from the tenant in pursuance of a decree obtained under clause (ff) of sub-section (1) of section 13,

(a) contravenes the provisions of sub-section (1) of section 18 by reletting such premises within ten years of the date of obtaining delivery of possession to any person other than such tenant without the permission of the Controller, or

(b) contravenes the provisions of sub-section (3) of section 18 by letting the premises of which he was in occupation as owner thereof at the time of obtaining delivery of possession of any premises from the tenant in pursuance of a decree obtained under clause (ff) of sub-section (1) of section 13 within ten years of the date of obtaining such delivery of possession to any person other than the tenant from whom such delivery of possession was obtained without the permission of the controller, shall, on the complaint of such tenant made to the Controller, be liable to a fine which may extend to one thousand rupees.

31. Penalty for disturbances of easements, etc :-

Whoever without the previous written consent of the Controller or save for the purpose of effecting repairs or complying with any municipal requisition, wilfully disturbs any easement annexed to such premises, or removes, destroys or renders unserviceable

anything provided for permanent use therewith, or interferes with any supply or service comprised in the tenancy of such premises shall, on the complaint of the party aggrieved be liable on the first occasion, to a fine which may extend to [one thousand] rupees, and on second or subsequent extend to [two thousand] rupees, to be imposed, after inquiry by the Controller and the Controller may order immediate restoration of any supply or service which has been interfered with.

32. Payment and recovery of fine :-

Any fine imposed or any sum ordered to be paid under this Act shall be paid by the person fined or ordered to pay the same in the prescribed manner within such time as may be allowed by the Controller and the Controller may for good and sufficient reason extend the time allowed by him. In default of such payment, the amount shall be recoverable as a fine under the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), and the Controller shall be deemed to be a Magistrate under the said Code for purpose of such recovery.

33. Limitation for complaints :-

No complaint under section 30 or section 31 shall be brought against a person after the expiration of six months from the date of the commission of the act in respect of which the complaint is brought.

34. Making of repairs and taking a measure for the maintenance of essential services :-

(1) The Controller shall, on application made to him in this behalf by any tenant in possession of any premises, cause a notice to be served in the prescribed manner on the landlord thereof requiring him to make such repairs in the premises or to take such measures for the due maintenance therein of any essential supply or service, such as measures for the maintenance for the supply of water, gas or electricity, the maintenance of conservancy or sanitary service or the maintenance of any lift, as the landlord may be bound to make or take, as the case may be. under the conditions of the tenancy or when the conditions of the tenancy do not include any provision for repairs as the Controller may consider essential.

(2) If after the service of such notice the landlord fails to show proper cause or neglects to make such repairs or to take within reasonable time such measures as the case may be, the tenant may submit to the Controller an estimate of the cost of such repairs or measures, and may apply to him for permission to make such repairs or to take such measures himself and, thereupon, the Controller may, after giving the landlord an opportunity of being heard and after considering such estimate of the cost and making such inquiries as he may consider necessary, by an order in writing, permit the tenant to make such repairs or to take such measures at such cost as may be specified in the order and it shall thereafter be lawful for the tenant to make such repairs or to take such measures himself and to deduct the cost thereof which shall in no case exceed the amount so specified, from the rent or otherwise recover it from the landlord :

Provided that the amount so deducted or recoverable in any year shall not exceed one-half of the rent payable by the tenant for that year :

Provided further that if any repairs or measures not covered by the said amount are necessary in the opinion of the Controller, and the tenant agrees to bear the excess cost himself, the Controller may permit the tenant to make such repairs or take such measures.

(3) Notwithstanding anything contained in any law for the time being in force and in the absence of any agreement to the contrary, it shall be the duty of every landlord to keep any premises let out for residential purposes wind-and water-tight. If the landlord fails to do so, the provisions of subsection (1) and sub-section (2) shall apply. In such a case, however, the landlord shall be entitled to apply to the Controller to revise the rent payable for the premises and to fix the fair rent after taking into consideration the cost of such repairs. Rent so fixed shall be deemed to be fair rent for purposes of this Act.

(4) Where under the conditions of the tenancy, the tenant is bound

to make any repairs, but fails to do so, the Controller shall, on application made to him in this behalf by the landlord of the premises, cause a notice to be served in the prescribed manner on the tenant requiring him to make such repairs, and if the tenant fails to show proper cause or neglects to make such repairs within the time specified in the notice or allowed by the controller, the landlord will be entitled, notwithstanding anything contained in this Act or in any contract, to sue the tenant for recovery of possession of the premises and such cost of such repairs as may be assessed by the Court.

35. Taking of measures by tenant in case of emergency :-

If the necessity for making repairs or for taking any measures referred to in section 34, is so urgent that any delay involved in the procedure referred to therein is likely to subject the tenant to personal loss, damage or serious inconvenience, then notwithstanding such procedure, the tenant may himself cause the notice referred to in section 34 to be served in the prescribed manner on the landlord requiring him to undertake such repairs or to take such measures within seventy-two hours of the service of such notice and shall in every such case submit, at the same time, a copy of such notice to the Controller together with an estimate of the cost of such repairs or measures to enable the Controller to make such enquiries as he may consider necessary about the necessity of such repairs or measures and the correctness of the estimate so submitted. The Controller shall make immediate enquiry and order the tenant to undertake such repairs or take such measures if the landlord fails to undertake such repairs or take such measures within the time mentioned in the notice. After the completion of such repairs or measures the tenant shall submit to the Controller a statement of the costs thereof and thereafter the Controller, after giving the landlord an opportunity of being heard and making such further inquiries as he may consider necessary, may by an order in writing, determine the amount of the costs which the tenant is entitled to recover from the landlord and the tenant may thereupon deduct the amount so determined from the rent or otherwise recover it from the landlord subject to such limits as are referred to in section 34.

36. Tenant may get supply of electricity to the premises without permission of the landlord :-

(1) If a landlord refuses or withholds his consent to the supply of electricity to a tenant, the tenant desiring to get such supply from a licensee, as defined in clause (h) of section 2 of the Indian Electricity Act, 1910 (IX of 1910), may apply to the Controller setting out the scheme for such supply.

(2) On receipt of such application, the Controller may, after giving the landlord and the owner of the premises, if he be not the landlord, an opportunity of being heard, permit the tenant to get the supply in accordance with the scheme set out in the tenant's application or in accordance with any modified scheme

(3) On such permission being given, notwithstanding anything contained in any other law for the time being in force, the owner shall be deemed 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 owner for trespass for steps taken for supply of electricity according to the said permission.

37. Controller to be a public servant :-

A Controller appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

38. Execution of order passed by Controller :-

Save as otherwise provided in section 32, an order passed by the Controller under the provisions of this Act [or an order passed on appeal, revision or review therefrom] 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

39. Application of the Indian Limitation Act, 1908, to suits, appeals and proceedings :-

Subject to the provisions in this Act relating to limitation, all the

provisions of the Indian Limitation Act, 1908 (IX of 1908) shall apply to suits, appeals and proceedings under this Act

40. Repeal and savings :-

(1) The West Bengal Premises Rent Controller (Temporary Provisions) Act, 1950 [West Ben, Act XVII of 1950 (in this section) referred to as the said Act], is hereby repealed.

(2) Notwithstanding the repeal of the said Act

(a) any proceeding pending on the 31st day of March, 1956, may be continued or

(b) any proceeding or remedy in respect of any right, privilege, obligation liability, penalty, forfeiture or punishment under the said Act and relating to the period before such repeal may be instituted [or enforced] as if the said Act had been in force and had not been repealed or had not expired

Provided that for any of the purposes aforesaid a Controller, an Additional Controller or a Deputy Controller appointed under this Act shall be deemed to be a Controller an Additional Controller or a Deputy Controller appointed under the said Act.

Explanation In this section "proceeding" includes any suit, appeal, review or revision application for execution, or any other proceedings whatsoever under the said Act.

[(2A) For the removal of doubts it is hereby declared that notwithstanding any decision of any court to the contrary, any proceedings pending on the 31st day of March, 1956 which was continued after the date and any decree passed or order made after that date in accordance with the provisions of the said Act in any such proceeding, shall be deemed to have been validly

continued, passed or made as if the said Act had been in force and had not been repealed or had not expired, and no such proceeding, decree or order shall be called in question in any manner merely on the ground that the said Act was not in force when such proceeding was continued, decree was passed or order was made]

(3) In computing the period of limitation for the institution of any proceeding [* * *] the period beginning with the 31st day of March 1956 and ending with the 30th day after the commencement of the West Bengal Premises Tenancy (Amendment) Act, 1956, shall be excluded]

40A. Saving of pending proceedings :-

Notwithstanding anything contained in this Act,

(1) all proceedings under this Act, except the proceedings under Chapter IV thereof, in respect of any premises in any area included within the limits of Calcutta, which, immediately before the 4th day of January, 1984, was comprised in the municipality of Jadavpur, South Suburban or Garden Reach, pending before the Rent Controller, 24-Parganas, having jurisdiction, at the date of commencement of the West Bengal Premises Tenancy (Amendment) Act, 1986 (hereinafter referred to in this section as the said Act), shall, with effect from the date of coming into force of the said Act, stand transferred to the rent Controller, Calcutta :

Provided that any order passed by the Rent Controller, 24-Parganas, in any such proceeding on or after the 4th day of January, 1984, shall be deemed to have been passed by the Rent Controller, Calcutta ;

(2) any proceeding under Chapter IV of this Act in respect of any premises as aforesaid, pending before the Rent Controller, 24-Parganas, having jurisdiction, at the date of commencement of the said Act, shall be disposed of by him in accordance with the provisions of this Act and the rules made thereunder.]

41. Bar of proceedings :-

No suit, prosecution or other legal proceeding shall lie against any officer of Government for anything in good faith done or intended to be done under this Act and the rules made thereunder.

42. Power to make rules :-

(1) The State Government may, subject to the condition of previous publication, make rules for carrying out the purposes of the Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the matters which under any provision of this Act, are required to be prescribed or to be provided for by rules including charging or remitting of costs and fees and the fixation of the scale of costs and fees.

(3) All rules made under this Act shall, as soon as may be after they have come into force, be laid before the State Legislature.

Calcutta,

i) where the value of the suit exceeds ten lakh rupees to the

Calcutta ;

lakh rupees but exceeds thirty thousand rupees to the City Civil Court established under section 3 of the City Civil Court Act, 1953 (West Bengal Act XXI of 1953)

instance]

[See section 29B(2)]

description and place of residence of the tenant/sub-tenant) Whereas Shri has filed an application (a copy of which is annexed) for your eviction from (here insert the particulars of the premises) on the ground specified in clause (ff) of sub-section (1) of the section 3. You are hereby summoned to appear before the Controller within fifteen days of the service hereof and to obtain the leave of the Controller to contest the application for eviction on the ground aforesaid, in default whereof, the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said premises. Leave to appear and contest the application may be obtained on an application to the Controller supported by an affidavit as is referred to in sub-section (5) of section 29B. Given under my hand and seal. This day of 19 Controller.