



GOVERNMENT OF WEST BENGAL

LEGISLATIVE DEPARTMENT

West Bengal Act XXIX of 1969

THE CALCUTTA *THIKA* TENANCY (SECOND AMENDMENT) ACT, 1969.

[Passed by the West Bengal Legislature.]

[Assent of the President was first published in the *Calcutta Gazette, Extraordinary*, of the 30th October, 1969.]

[30th October, 1969.]

An Act to amend the Calcutta Thika Tenancy Act, 1949.

WHEREAS it is expedient to amend the Calcutta *Thika* Tenancy Act, 1949, for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Twentieth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. This Act may be called the Calcutta *Thika* Tenancy (Second Amendment) Act, 1969.

Short title.

2. After clause (4) of section 2 of the Calcutta *Thika* Tenancy Act, 1949 (hereinafter referred to as the said Act), the following clause shall be inserted, namely:—

Amendment of section 2 of West Ben. Act II of 1949.

“(4a) “*pucca* structure” means any structure constructed mainly of brick, stone or concrete or any combination of these materials;”

3. For section 3 of the said Act, the following section shall be substituted, namely:—

Substitution of new section for section 3.

“Grounds on which a *thika* tenant may be ejected.

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

(i) on the ground that he has used the land comprised in his holding in a manner which renders it unfit for any of the purposes mentioned in clause (5) of section 2;

(Section 4.)

(ii) except during any period limited by a registered lease under which a *thika* tenant may hold the land comprised in the holding and subject to the provisions of sub-sections (2), (3) and (4), on the ground that the land is required by the landlord for his own occupation;

(iii) when he holds the land comprised in the holding under a registered lease for a purpose other than a residential purpose, on the ground that the term of the lease has expired.

(2) No landlord shall be deemed to require the land comprised in the *thika* tenant's holding for his own occupation if he has a house of his own in the city in which such land is situated and the accommodation available in such house is, in the opinion of the Controller, reasonably sufficient for him and his family.

(3) Where the landlord requires the land comprised in the *thika* tenant's holding for his own occupation and the Controller is of opinion that such requirement may be substantially satisfied by ejecting the *thika* tenant from a part only of his holding and allowing him to continue in occupation of the rest, then, if the *thika* tenant agrees to such occupation, the Controller shall make an order accordingly and fix the proportionate rent for the portion remaining in the occupation of the *thika* tenant.

(4) Where the *thika* tenant has erected or acquired a *pucca* structure for a residential purpose on the land comprised in his holding, no order for ejectment shall be made against him except in respect of such part, if any, of such land as does not appertain to the *pucca* structure."

Amend-
ment of
section 4.

4. In section 4,—

(1) in clause (a), for the words, figures and brackets "any of the grounds specified in clauses (i), (ii), (iii) and (v)", the words, figures and brackets "the ground specified in clause (i) of sub-section (1)" shall be substituted;

(2) in clause (b), for the word, figure and brackets "clause (iv)", the words, figures and brackets "clause (ii) of sub-section (1)" shall be substituted;

(3) for the proviso, the following proviso shall be substituted, namely:—

"Provided that save as otherwise provided in any contract in writing, no *thika* tenant shall be ejected from his holding on the ground specified in clause (ii) of sub-section (1) of section 3 except on payment to the *thika* tenant or on

(Sections 5—8.)

depositing with the Controller for payment to the *thika* tenant such compensation as may be agreed upon between the landlord and the *thika* tenant or, in the case where they do not agree, as may be determined in the prescribed manner by the Controller on application by the landlord or the *thika* tenant.”.

5. In sub-section (2) of section 5 of the said Act, the words, figure and brackets “clause (i) of” shall be omitted. Amendment of section 5.
6. Section 6 of the said Act shall be omitted. Omission of section 6
7. In section 7 of the said Act,—
- (1) for the words, figure and brackets “any of the grounds specified in clause (iv)”, the words, figure and brackets “the ground specified in clause (ii) of sub-section (1)” shall be substituted;
- (2) the words “or commence the building on, or the development of, the land” shall be omitted;
- (3) the proviso shall be omitted.
8. After section 7 of the said Act, the following section shall be inserted, namely:— Insertion of new section 7A.
- “Power of the Controller to set aside order for ejection in certain cases. 7A. (1) Where an order for ejection of a *thika* tenant from his holding has been made by the Controller under section 5 before the date of commencement of the Calcutta *Thika* Tenancy (Second Amendment) Act, 1969, but the possession of the land comprised in the holding has not been recovered by the landlord from the *thika* tenant, the *thika* tenant may, within sixty days from such date, apply to the Controller for setting aside the order.
- (2) On receipt of an application under sub-section (1) the Controller shall cause a notice thereof to be served on the landlord, and if after considering such evidence as the parties may adduce,—
- (a) the Controller is satisfied that the order for ejection would have been made against the *thika* tenant even if the Calcutta *Thika* Tenancy (Second Amendment) Act, 1969, had been in force on the date on which such order was made, the Controller shall dismiss the application with such costs as the Controller may allow to the landlord; or
- (b) the Controller is satisfied that no order for ejection would have been made against the *thika* tenant if the Calcutta *Thika* Tenancy (Second Amendment) Act, 1969, had been in

(Sections 9, 10.)

force on the date on which such order was made, the Controller shall determine the amount which would have been payable by the *thika* tenant for the period commencing from such date and ending with the date of the order to be made under this sub-section, if the *thika* tenant had to pay rent at the rate at which it was last paid during such period and after deducting therefrom all such sums as the *thika* tenant may have deposited with the Controller or paid to the landlord on account of rent for such period, the Controller shall direct the *thika* tenant, by order, to deposit the remaining amount, together with such further amount as the Controller may allow to the landlord as his costs of the proceeding arising out of the application under sub-section (1) of section 5, within such time, not exceeding sixty days from the date of the order, as the Controller may fix.

(3) If the *thika* tenant deposits the amounts ordered by the Controller under clause (b) of sub-section (2) within the time fixed by him, the Controller shall allow the application under sub-section (1) and set aside the order of ejectment and dispose of the application of the landlord under sub-section (1) of section 5.

(4) If the *thika* tenant fails to deposit such amounts within such time, his application under sub-section (1) shall be dismissed with such costs as the Controller may award to the landlord."

Amend-
ment of
section 10.

9. In sub-section (2) of section 10 of the said Act,—

(1) for the words, figure and brackets "any of the grounds specified in clause (iv)"; the words, figures and brackets "the ground specified in clause (ii) of sub-section (1)" shall be substituted;

(2) for the words, figures and brackets "West Bengal Premises Rent Control (Temporary Provisions) Act, 1948", occurring at two places, the words and figures "West Bengal Premises Tenancy Act, 1956" shall be substituted.

Insertion
of new
section
10A.

10. After section 10 of the said Act, the following section shall be inserted, namely:—

"Right of *thika*
tenant to erect
pucca structures.

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

(Section 11.)

(2) On an application made by a *thika* tenant in this behalf, the Controller may grant him permission to erect a *pucca* structure, if the Controller is satisfied that the *thika* tenant—

- (a) is using the structure existing on the land comprised in his holding for a residential purpose,
- (b) intends to use the *pucca* structure to be erected on such land for a similar purpose, and
- (c) has obtained sanction of a building plan to erect the *pucca* structure from the municipal authorities of the area in which such land is situated.

(3) No *thika* tenant shall be entitled to eject a *Bharatia* from the structure or part thereof in the possession of the *Bharatia* for the purpose of erecting a *pucca* structure:

Provided that the *thika* tenant may by providing temporary alternative accommodation to a *Bharatia* obtain from him vacant possession of the structure in his possession on condition that immediately on the completion of the construction of the *pucca* structure the *thika* tenant shall offer the *Bharatia* accommodation in the *pucca* structure at a rent which shall in no case exceed by more than twenty-five *per centum* the rent which the *Bharatia* was previously paying.”

11. After section 23 of the said Act, the following sections shall be inserted, namely:—

Insertion
of new
sections
23A and
23B.

“Suit for arrears
of rent.

23A. (1) Notwithstanding anything contained in any other law for the time being in force, no suit for the recovery of arrears of rent shall be instituted against a *thika* tenant unless the *thika* tenant has defaulted in the payment of rent for more than two months or periods.

(2) If in any suit instituted for the recovery of arrears of rent, it appears to the Court that the *thika* tenant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the landlord in addition to the amount decreed for rent and costs such damages not exceeding twelve and a half *per centum* on the amount of rent decreed, as he thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section.

(3) If in any suit instituted for the recovery of arrears of rent, it appears to the Court that the landlord has instituted the suit without reasonable or probable cause

(Section 12.)

the Court may award to the *thika* tenant, by way of damages, such sum not exceeding twelve and a half *per centum* on the whole amount claimed by the landlord as he thinks fit.

Right of landlord to purchase holding in case of execution-sale.

23B. (1) Where any land comprised in the holding of a *thika* tenant is sold in execution of a decree obtained against him, the landlord may, within two months of the date of the sale, apply to the executing Court for the transfer of such land to him.

(2) The application shall be dismissed, unless the landlord at the time of making it, deposit in Court the amount of the price for which such land was sold together with compensation at the rate of five *per centum* of such amount.

(3) If such deposit is made the Court shall give the auction-purchaser notice of the application and an opportunity of being heard. If the Court is satisfied that the conditions referred to in sub-section (1) have been fulfilled, the Court shall make an order directing that the deposit made under sub-section (2) shall be paid to the auction-purchaser.

(4) From the date of the making of the order under sub-section (3) the right, title and interest in the land comprised in the holding accruing to the auction-purchaser by his purchase at the execution-sale shall be deemed to have vested in the landlord free from any encumbrance which may have been created after the date of such sale and the Court may, on further application of the landlord, place him in possession of the land vested in him."

Insertion of new section 32B.

12. After section 32A of the said Act, the following section shall be inserted, namely:—

"Duty of *thika* tenant to provide essential amenities for *Bharatias*.

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

(2) Where the Controller is, on an application filed by a *Bharatia*, satisfied that any structure let out to the *Bharatia* is unfit for habitation or that essential provisions for water-supply, conservancy and sanitary services therein have not been made or if made, are not

(Sections 13, 14.)

adequate, the Controller shall cause a notice to be served in the prescribed manner on the *thika* tenant requiring him to carry out within such time as may be specified in the notice, such works as, in his opinion, are necessary for making such structure fit for habitation or for securing such water-supply, conservancy and sanitary services as are essential.

(3) If after the service of such notice the *thika* tenant fails to show cause or neglects to carry out such works within the specified time, the Controller may, after giving the *thika* tenant an opportunity of being heard and after making such inquiries as he may consider necessary, make an order in writing specifying the works to be done and giving an estimate of costs of such works, and get such works executed by such agency as he may consider fit and thereafter all expenses incurred in executing the works together with interest thereon at the rate of six and a quarter *per centum per annum* from the date on which demand for expenses is made until payment, may be recovered by the Controller from the *thika* tenant as a public demand."

13. The amendments made to the said Act by this Act shall have effect in respect of all applications for ejection of *thika* tenants, and all appeals from orders made on such applications, under the provisions of the said Act which are pending at the commencement of this Act.

Provisions to apply to pending applications and appeals.

14. The Calcutta *Thika* Tenancy Stay of Proceedings (Temporary Provisions) Act, 1969, is hereby repealed.

Repeal.