

**THE WEST BENGAL  
PREMISES TENANCY ACT, 1997**

[WEST BENGAL ACT XXXVII OF 1997]

[Assent of the President of India was first published in the *Calcutta Gazette*, Extraordinary, Part III, of the 28th December, 1998]

*An Act to provide for the regulation of certain incidents of tenancy of premises in Calcutta, Howrah and some other areas in West Bengal.*

WHEREAS it is expedient to provide for the regulation of certain incidents of tenancy of premises in Calcutta, Howrah and some other areas in West Bengal;

It is hereby enacted in the Forty-eighth Year of the Republic of India, by the Legislature of West Bengal, as follows :

CHAPTER I

**Preliminary**

1. Short title, commencement and extent.—(1) This Act may be called the **West Bengal Premises Tenancy Act, 1997**.

(2) It shall come into force on such date<sup>1</sup> as the State Government may, by notification, appoint.

(3) It extends to the areas included within the limits of the Calcutta Municipal Corporation and the Howrah Municipal Corporation and to the municipal areas within the meaning of the West Bengal Municipal Act, 1993 (West Bengal Act XXII of 1993):

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

**2. Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—

(a) "Controller" means a Controller appointed under sub-section (1) of section 38, and includes an Additional Controller or Deputy Controller appointed under sub-section (2) of that section;

(b) "fair rent" means the rent fixed under section 17;

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<sup>1</sup> 10th day of July, 2001 *vide* Notification No. 3052-L, Ref., dated 9th July, 2001 (published in the *Kolkata Gazette*, dated 9th July, 2001).

(c) "landlord" includes any person who, for the time being, is receiving, or is entitled to receive, the rent for any premises, whether on his own account or on account of, or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant;

(d) "notification" means a notification published in the Official Gazette;

(e) "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 thereto, and

(ii) any furniture supplied by the landlord 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 a hotel or a lodging house;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "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 termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and <sup>2</sup>[in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction:

Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises,

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<sup>2</sup> Subs, by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of 2002) (w.r.e.f. 10.7.2001) for the following :

"in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family and were dependent on him".

Provided further that the son, daughter parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises <sup>1</sup>[on condition of payment of fair rent]. This proviso shall apply *mutatis mutandis* to premises let out for non-residential purpose.

### **NOTES**

<sup>3</sup> **[Object of the Amendment Act, 2002.]**—The West Bengal Premises Tenancy (Amendment) Act, 2002 envisages to redefine the term 'tenant' in such a manner as to give the right for continuity on certain conditions as a tenant to the son, daughter, parent or widow of the predeceased son of the tenant (who was ordinarily residing with the tenant up to the date of death of the tenant as a member of his family in respect of the premises let out for residential purpose, as well as in respect of premises let out for non-residential purpose, to give the right for continuity of certain conditions to the spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family or a person authorised by the tenant who is in possession of such premises.

**Landlord.**—The definition of 'landlord' in clause (c) of the new Act is more exhaustive and as such, more appropriate. In both the Acts—Act of 1956 and 1997 —the definition of 'landlord' begins with the words "landlord includes .....". Hence even in the new Act the definition of 'landlord' is an inclusive definition—*B. Haider v P.M. Chakravorty* 71 CWN 152. A person who is the holder of a life interest under the Will may be a landlord—*Jibon v Taramoyee* AIR 1979 Cal 383; so also an assignee of the landlord of the lessee of the interest of the landlord—*Maya Singh v Md. Basir* 65 CWN 759; *Basumati v Sannulal* 61 CWN 903.

As singular means plural, landlord includes all joint or co-sharer landlords, sec. 14, Beng. General Clauses Act I of 1899. It represents entire body of landlords -*Kanika Devi v A.N. Roy Choudhuri*, 65 CWN 1078.

The definition of 'landlord' under section 2(c) of the Act shows that even if the rent is received by a person not on his own account but on account of any other person,

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<sup>3</sup> Ins. by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of 2002) (w.r.e.f. 10.7.2001). 2. For details Notes see Sen Gupta on *W.B. Premises Tenancy Act*.

such as his principal or his ward, he is for the purpose of the Act, a landlord (Para 6) - *Swadesh Rajan Sinha v Haradeb Banerjee*, (1991)4 SCC 572.

According to the Calcutta High Court, the definition of 'landlord' in section 2(d) is inclusive. The emphasis is on the expression 'entitled'. It speaks of the right of the person to realise rent from the tenant - *B. Halderv P. M. Chakraborty*, 71 CWN 152. A person who is the holder of a life interest under the will of the testator is also a landlord- *Jibanv Taramoyee*, AIR 1979 Cal 339.

An assignee of the landlord or the lessee of the interest of the landlord will also be a landlord - *Maya Singh v Md. Basir*, 65 CWN 759 ; *Basumativ Sannulal*, 61 CWN 909. It has been held by the Calcutta High Court that the expression 'landlord' in section 2 (a) includes such person who had been the landlord of the premises at any point of time - *Rameswarv Sadhan Chandra*, AIR 1971 Cal 383 : 75 CWN 479. As the definition is inclusive, the definition contemplates the following persons who are entitled to realise rent from the tenant of the landlords, namely, (1) owner of the premises; (2) trustee; (3) agent; and (4) a clerk who is entitled to realize rent. The heirs and legal representatives of the landlord also come within the definition of 'landlord'- *R P. Ghosh v Parmilabai*, AIR 1977 Bom 181. The definition of the landlord as given in section 2(e) of the Delhi Rent Control Act is *pari materia* with that in section 2(d) of the West Bengal Act. The Supreme Court, while interpreting the words 'for the time being' used in the definition of 'landlord' of Delhi Rent Control Act, 1958 has held that the said expression makes it clear that the landlord has to be understood *in praesenti*, that is, anyone entitled to receive rent is the landlord and it does not visualise past or future landlord. Consequently, when the original landlord died, his legal representatives would come within the definition of 'landlord'- *PokhrajJainv Padma Kashyap*, AIR 1990 SC 1133 (Delhi High Court decision in *PokhrajJain v Padma Kashyap*, AIR 1990 Del 159 affirmed).

Interpreting the definition of 'landlord' in Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the Supreme Court has also held that sub-section 2(6) of the Tamil Nadu Act shows that any person acting on his own account or on behalf of another or on behalf of himself and others is a landlord, that the definition being wide and also inclusive does not exclude a person who at all material times acted as a landlord to the knowledge of all the parties concerned and whose authority to deal with the premises has never been disputed and that a person who so acts also falls within the definition not as a mere agent as defined u/s. 182 of the Contract Act, that he may also be an agent, but not a mere agent and is much more than that particularly in the light of the facts of

this case. It has, therefore, been held that the respondent for all purposes was treated by all the parties interested in the transaction as a landlord. Such a landlord is, therefore, entitled to file a suit for eviction against the tenant on the ground of arrears of rent—*Kestur Chandv Raman Rajan*, AIR 1994 SC 217.

Clause (c) specifies that a *trustee, guardian or receiver may be a landlord*. The determining factor is whether the person, who claims to be the landlord, is entitled to receive the rent from any premises from the person who holds it as a tenant.

The question whether the person is a landlord or not within the meaning of clause (c) of sec. 2 of the new Act is essentially a question of fact—*Govind Ram v Dhansukhlal* 1969 RCJ 904 (Raj).

The Supreme Court in the context of definition of landlord in section 3(y) of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act which has defined the "landlord" in a very wide sense as has been done by the West Bengal Act has held that the expression "landlord" under that Act is not limited to denote the owner of the house but it has to be, for the purposes of the Act understood in the wide sense to include a person to whom the rent is payable as also his agent. When the sister of the owner of the house was entrusted with the management of the house and her sister was staying with her husband outside the city and it was that lady entrusted with the management inducted the respondent as a premises tenant then that lady answered the definition of "landlord"—*Vasudha Srivastava v Kamla Chauhan*, AIR 1992 SC 1454.

**Premises — which are and which are not: Illustrative cases.**—(1) A room in a hotel or lodging house has been specifically excluded from the definition of 'premises' under section 2(f) of the Act. To be a room in a hotel it must be (i) physically connected with the hotel and (ii) used for hotel purposes—*Associated Hotels of India v R. N. Kapoor*, AIR 1959 SC 1262.

(2) When the letting was of land to the tenant with the condition that the tenant would construct same C.I. shed and would remove it at the termination of the tenancy, it is the letting of the land and not premises—*Krishnapasuba v Dattatraya*. (1966)1 SCJ601.

(3) Even when the open land was let out which is surrounded by walls on four sides, it is not premises—*ShridharJewv Mohanlal*, AIR 1977 NOC 201 (Cal); *Talaram v State*, AIR 1954 SC 496.

(4) Stall or cupboard (5 1/2' x 5 1/2') fixed on the external wall of a shop room is not a premises—*Porbondurwala v G. Hossein*, AIR 1974 SC 288.

(5) A stall and the passage in a municipal market is not a premises and the allottee is not a tenant but a licensee- *Garib Das v Corporation of Calcutta*, ILR 1975 Cal 88; *Sitaram v Corporation of Calcutta*, AIR 1956 Cal 16; *Qudratwala v Municipal Board*, AIR 1974 SC 396.

(6) A lease for running a factory comprising costly machineries for the purpose of manufacturing is not a premises- *Alliance Jute Mills v Alliance & Co.*, 82 CWN 1055; *Venkaya v Subba Rao*, AIR 1957 AP 619 : (1956)2 Andh WR 1093.

(7) Space on roof parapet on the outer wall let out for hoarding or advertisement is not a premises for which a tenancy can be granted- *Durjendra v K. Shaw*, AIR 1953 Cal 147: ILR (1954)1 Cal 201.

(8) An undivided share of property is not a premises within the meaning of the Act, even though it may be a subject-matter of tenancy- *Harendra v Shibendra*, 83 CWN 190.

(9) When an open land had been allotted by the Custodian of Evacuee Property to the appellant who had put up a temporary shed thereon and the property was later on sold by the custodian to the respondent, by virtue of such sale the right, title and interest only of the open land was transferred to the respondent who became owner thereof but not of the superstructure thereon. Such a plot of land is not covered by the definition of "premises" under section 2(/) of the Delhi Rent Control Act and the appellant was, therefore, not entitled to protection of the Delhi Rent Control Act. So the suit for eviction filed by the respondent against the appellant before a civil court under the Transfer of Property Act read with the Code of Civil Procedure is maintainable- *Prabha Mfg. Industrial Coop. Society v Banawarilal*, AIR 1989 SC 1101 : (1989)2 SCC 69.

(10) But the definition of 'building' in the Rent Act will take in any shed, hut or other crude or third class construction consisting of an enclosure made by mud or by poles supporting a tin or asbestos roof that can be put to use for any purpose, residential or non-residential and such structure shall answer the description of building. When that shed in question was a material structure let out as such to the lessee for residential purposes covering 600 sq. ft. along with vacant land measuring 3600 sq. ft., it was a lease for both land and building and the letting would, therefore, be building within the meaning of the Rent Control Act- *Surya Kumar Govindv Krishnamal*, (1990)4 SCC 343.

(11) Tin shed is a building if the said shed was constructed by the landlord. If the tin shed was constructed by the tenant on the open land let out by the landlord, the lease would really be of the open land and not a building- *Harish Chandra v Md. Ismail*, (1990)4 SCC 493.

(12) Only because the vacant land which had been let out was bounded by a boundary wall it cannot be held that the said vacant land bounded by walls is a premises. This is expressed by the learned Judge of Delhi High Court while dealing with the similar definition of premises of section 2(/) of the Delhi Rent Control Act, 1958 - *M/s. Umika Agencies v Suresh Talwar*, AIR 1994 NOC 349 (Del).

**Fair rent, what is.**- "Fair rent" has not been defined but mode of fixation has been prescribed in sec. 17. It means rent fair both to the landlord and tenant and must also satisfy reason of conscience of the Judge - *Ekin Box v Dharampal*, 89 CWN 158.

It is submitted that the observation of the Calcutta High Court in the above case holds good when fair rent is fixed under sub-sec. (6) of sec. 17 of the Act of 1997. In other cases, especially where fair rent is fixed under sub-sees. (2) and (3), the Controller has no discretion. He must follow the mode of fixation even it is against his conscience.

**Fair and reasonable rent-meaning of.**- Rent, at least theoretically, must be fair both to the landlord and tenant and must also satisfy reason of conscience of the Judge. What is not fair to the parties cannot satisfy the reason. So rent, fair to the parties, is reasonable, but where rent fair to the landlord and rent fair to the tenant works out differently, the mean between them would be fair and reasonable- *Ekim Box Mollah v Dharam Pal*, 59 CWN 158 ; *Manik Lai Roy v Birendra K. Saha*, 59 CWN 137.

**3. Exemption.**—Nothing contained in this Act shall apply to—

- (a) any premises owned by—
  - (i) the Central Government, or
  - (ii) any State Government, or
  - (iii) a Government undertaking or enterprise, or
  - (iv) a statutory body which is not a local authority, or
  - (v) a Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924), or
  - (vi) a local authority;
- (b) any tenancy created by the Central Government, or any State Government in respect of the premises taken on lease or requisitioned by that Government;
- <sup>4</sup>[(c) any tenancy where the lease with due consent of the tenant has been registered under the Registration Act, 1908 (16 of 1908), after the commencement of this Act, and the fact of such consent has been recorded in the instrument so registered;]

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<sup>4</sup> . Subs, by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of 2002) (w.r.e.f. 10.7.2001) for the following:

- (d) any premises rented to a foreign mission or international agency;  
<sup>5</sup>[(da) any tenancy created by a foreign mission or an international agency, either by way of lease or otherwise;]
- (e) any premises let out for residential purpose, not being a premises within the purview of clause (c), which carries more than—
- (i) <sup>6</sup>[six thousand and five hundred rupees] as monthly rent in the areas included within the limits of the Calcutta Municipal Corporation or the Howrah Municipal Corporation, or
- (ii) <sup>7</sup>[three thousand rupees] as monthly rent in other areas to which this Act extends.
- (f) any premises let out for non-residential purpose, which carries more than—
- (i) <sup>8</sup>[ten thousand rupees] as monthly rent in the areas included within the limits of the Calcutta Municipal Corporation or the Howrah Municipal Corporation, or
- (ii) <sup>9</sup>[five thousand rupees] as monthly rent in other areas to which this Act extends;

*Explanation.*—Where any premises is let out partly for residential purpose and partly for non-residential purpose, the provisions of clause (/) shall apply to such premises in proportion to respective areas.

## NOTES

**Object of the Amendment Act, 2002.**—The West Bengal Premises Tenancy (Amendment) Act, 2002 envisages—to exclude from the purview of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act) any tenancy where the lease with due consent of the tenant has been registered under the Registration Act, 1908, after the commencement of the said Act and the fact of such consent has been recorded in the instrument so registered;

to extend the application of the said Act to the premises let out for residential purpose and non-residential purpose having monthly rent up to six thousand and five hundred rupees and ten thousand rupees respectively situated within the limits of the Kolkata Municipal Corporation or the Howrah Municipal Corporation as well as to extend

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"(c) any tenancy where the lease has been registered under the Registration Act, 1908 (16 of 1908), before or after the commencement of this Act".

<sup>5</sup> Ins. by W.B. Premises Tenancy (Amendment) Act, 2006 (W.B. Act 12 of 2006) (w.e.f. 1.6.2006).

<sup>6</sup> Subs, by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of 2002) for "two thousand rupees" (w.r.e.f. 10.7.2001).

<sup>7</sup> Subs, by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of 2002) (w.r.e.f. 10.7.2001) for "one thousand rupees".

<sup>8</sup> Subs., *ibid*, for "three thousand rupees" (w.r.e.f. 10.7.2001).

<sup>9</sup> Subs., *ibid*, for "one thousand and five hundred rupees" (w.r.e.f. 10.7.2001).



the application of the said Act to the premises let out for residential purpose and non-residential purpose having monthly rent up to three thousand rupees and five thousand rupees respectively situated in other areas to which the said Act extends.

## CHAPTER II

### Obligations of landlord and tenant

**4. Obligations Of landlord.**—(1) Every landlord or his authorised agent shall issue a written receipt in the prescribed form signed by him forthwith on receipt of the amount of rent and the charges relating to the maintenance of premises from the tenant.

(2) Every landlord shall be bound to keep the premises in good and tenantable condition.

(3) Every landlord shall be bound to take measures for due maintenance of essential supply or service comprised in the tenancy.

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

**5. Obligations of tenant.**—(1) Every tenant shall pay rent to the landlord or his authorised agent within the prescribed period.

(2) Every tenant shall use the premises for the purpose for which it was let out to him.

(3) Every tenant shall allow the landlord or his authorised agent to enter upon the premises and inspect the condition thereof after the service of a notice on him by the landlord or his authorised agent in this behalf.

(4) No tenant shall make any addition to, or alteration in, the premises without the written consent of the landlord.

(5) No tenant shall sublet the premises without consent of the landlord in writing.

(6) No tenant shall, without the previous consent in writing of the landlord, transfer or assign his right in the tenancy or any part thereof.

(7) Every tenant shall pay the charges relating to the maintenance and amenities of the premises at the rate of ten per cent of the fair rent or agreed rent, as the case may be.

<sup>10</sup> [(8) Every tenant shall pay his share of municipal tax as an occupier of the premises in accordance with the provisions of the Kolkata Municipal Corporation Act, 1980 (West Bengal Act LIX of 1980) or the West Bengal Municipal Act, 1993 (West Bengal Act XXII of 1993).

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<sup>10</sup> Ins. by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of 2001) (w.r.e.f. 10.7.2001).

*Explanation.*—For the purposes of this sub-section, the term 'occupier' means an occupier as defined in clause (60) of section 2 of the Kolkata Municipal Corporation Act, 1980 or clause (43) of section 2 of the West Bengal Municipal Act, 1993].

### **NOTES**

**Object of the Amendment Act, 2002.**—The West Bengal Premises Tenancy (Amendment) Act, 2002 envisages to make every tenant liable to pay his share of municipal taxes as an occupier of the premises in accordance with the provisions of the Kolkata Municipal Corporation Act, 1980 or the West Bengal Municipal Act, 1993, in respect of the premises let out.

**Occupier, meaning of.**—"Occupier" includes any person for the time being paying or liable to pay to the owner the rent or fee or contractual payment of adjustment of rent or fee or any portion thereof or damages on account of the occupation of any land or building, and also includes a rent-free tenant:

Provided that an owner living in or otherwise using his own land or building shall be deemed to be the occupier thereof.

### **CHAPTER III**

#### **Control of eviction of tenants**

**6. Protection of tenant against eviction.**—(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract, no order or decree for the recovery of the possession of any premises shall be made <sup>11</sup>[by the Civil Judge having jurisdiction] in favour of the landlord against the tenant, <sup>12</sup>[except on a suit being instituted by such landlord] on one or more of the following grounds:—

(a) where the tenant has sublet, assigned or otherwise parted with the possession of whole or any part of the premises without obtaining the consent in writing of the landlord or the tenant has used the premises for a purpose other than that for which it was let out without obtaining the consent in writing of the landlord;

(b) where the tenant has made default in payment of rent for three months within a period of twelve months, or for three rental periods within a period of three years where the rent is not payable monthly;

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<sup>11</sup> Subs, by the W.B. Premises Tenancy (Amendment) Act, 2005 (W.B. Act 6 of 2005) for "by the Controller" (w.e.f. 19.3.2005).

<sup>12</sup> Subs, by W.B. Premises Tenancy (Amendment) Act, 2006 (W.B. Act 12 of 2006) for "except on an application made to him by the landlord in the prescribed manner" (w.e.f. 1.6.2006).

(c) where the premises is required by the landlord for the purpose of building or rebuilding or for making substantial addition or alteration thereto and such building or rebuilding or substantial addition or alteration cannot be carried out without the premises being vacated;

<sup>13</sup> [(d) where the landlord or any person, for whose benefit the premises is held, reasonably requires the premises for his own occupation and the landlord or such person is not in possession of any suitable accommodation within the same Municipal Corporation or Municipality or in any other area within ten kilometres from such premises where this Act extends;]

(e) 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;

<sup>14</sup>[(f) where the tenant or any person residing in the premises let out 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 (4 of 1882);]

(g) 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 purpose;

(h) where 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;

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

(j) where the tenant has acquired or constructed, or has been allotted, a house or flat, provided a moratorium for one year is allowed for vacating the premises;

<sup>15</sup>[*Explanation*.—This clause shall not apply to premises let out for nonresidential purpose and used for commercial purpose;]

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<sup>13</sup> Subs., by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of 2002) (w.r.e.f. 10.7.2001) for the following:

"(d) where the premises is 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 is held and the landlord or such person is not in possession of any suitable accommodation within the same Municipal Corporation or Municipality or within ten kilometers from such premises in any other area where this Act extends;"

<sup>14</sup> Subs., *ibid*, (w.r.e.f. 10.7.2001) for the following:

"(f) where the tenant or any person residing in the premises let out to the tenant has done any act contrary to the provisions of clause (m), clause (n) or clause (o) of section 108 of the Transfer of Property Act, 1872 (4 of 1882);"

<sup>15</sup> Ins. by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of 2002) (w.r.e.f. 10.7.2001).

(k) where the landlord is a member of the Armed Forces of the Union of India and requires it for 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 conditions within the meaning of section 3 of that Act or is posted in a non-family area.

(l) where the tenant, or his spouse, or son, or daughter, or parent, or the widow of his predeceased son, who is dependent on him, does not reside in the premises <sup>16</sup>[ten months] and keeps the premises under lock and key.

(2) Where a landlord has acquired his interest in the premises by transfer, no <sup>17</sup>[suit] for the recovery of possession of the premises on the ground of requirement for building or rebuilding or addition or alteration or requirement for own occupation shall be instituted by the landlord before the expiration of a period of one year from the date of acquisition of such interest.

(3) Where the landlord requires the premises on the ground of building or rebuilding or addition or alteration or for his own occupation and <sup>18</sup>[the Civil Judge] is of the opinion that such requirement may be substantially satisfied by ejecting the tenant or a sub-tenant from a part of the premises and allowing the tenant or the sub-tenant to continue in occupation of the rest of the premises, then, if the tenant or the sub-tenant agrees to such occupation, <sup>18</sup>[the Civil Judge] 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 the purposes of this Act. If the tenant does not agree, but the sub-tenant agrees, to such occupation, no decree or order for ejectment shall be passed against the sub-tenant who shall become, with effect from the date of the decree or order, a tenant directly holding under the landlord.

(4) Notwithstanding anything in any other law for the time being in force, no [suit]<sup>17</sup> for the recovery of possession of any premises on any of the grounds as aforesaid, except on the ground mentioned in clause (e) of sub-section (1), shall be instituted by the landlord unless he has given to the tenant one month's notice expiring with a month of the tenancy.

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<sup>16</sup> Subs, *ibid*, (w.r.e.f. 10.7.2001) for the words "for the most part of a year".

<sup>17</sup> Subs, by the W.B. Premises Tenancy (Amendment) Act, 2006 (W.B. Act 12 of 2006) for "proceeding" (w.e.f. 1.6.2006).

<sup>18</sup> Subs, by the W.B. Premises Tenancy (Amendment) Act, 2005 (W.B. Act 6 of 2005) (w.e.f. 19.3.2005) for "the Controller.

(5) Notwithstanding anything contained in this Act or in any other law for the time being in force, no suit or proceeding shall be instituted by the landlord within two years from the date of commencement of this Act for recovery of possession of any premises to which the provisions of the West Bengal Premises Tenancy Act, 1956 did apply but the provisions of this Act do not apply.

### **NOTES**

**Suitable accommodation elsewhere.**-In order to succeed under clause (c/) of sec. 6(1) of the Act, the landlord must satisfy two conditions, namely, (1) that he requires the premises in question for his own use and occupation, and (2) that he has no other suitable accommodation "within the same Municipal Corporation or Municipality or within ten kilometres from such premises in any other area where the Act extends". This does not mean that if the landlord does not have any accommodation within the same Municipal Corporation or Municipality or within ten kilometres from the suit premises, as the case may be, he is not required to establish his requirement for occupation of the suit premises. Even under such circumstance the landlord Would be required to establish his plea of requirement. The Act of 1956 suffered from a serious lacuna. In order to establish a claim under sec. 13(1)(ff) of the said Act, the landlord was to establish that he was not in possession of *any reasonably suitable accommodation*. This led the court to consider whether the existing accommodation irrespective of its location and distance from the suit premises could be considered reasonable accommodation under the facts and circumstances of a given case. Under the new Act where the landlord has no accommodation within the same Municipal Corporation or Municipality or, in other cases, within ten kilometers from the suit premises, the Controller will not be called upon to decide whether the existing accommodation serves or not the landlord's requirement. Conversely, if the landlord's present accommodation is within the area as mentioned in clause (d), the landlord's claim for ejectment under sec. 6(1 )(d) cannot be turned down merely on that ground. Under such circumstance the Controller shall consider whether the existing accommodation of the landlord is sufficient to meet his requirement. The onus to establish the plea of requirement is always upon the landlord. It may be said that discharge of this onus becomes more onerous when the landlord is found to have an alternative accommodation within the area mentioned in the section. The landlord's claim will fall to ground if he has any alternative "suitable accommodation." The Delhi High Court has also similar provisions and it has been held that unless both these conditions are cumulatively satisfied, no order for eviction can be

passed in favour of the landlord and the fact that he is not having any other suitable accommodation will provide an occasion and justification for his requiring the premises in question and will, therefore, constitute the strong evidence of the reasonableness of his requirement-Firm *Ramsewak v Sain Datta*, AIR 1967 Del 113. The question may arise as to what, shall be the reasonably suitable accommodation. To satisfy the test, such accommodation must be one in which the landlord can live according to his own standard of living. Therefore, a room which does not have proper sunlight and ventilation cannot be said to be a reasonably suitable accommodation-Han v *Gopal*, 1972 RCJ 59 (SN).

The Division Bench of the Calcutta High Court has observed that section 13(1)(ff) of the 1956 Act as amended in 1969 has imposed a statutory obligation on the landlord to plead and to prove that he 'is not in possession of any reasonably suitable accommodation elsewhere' in order to entitle him to recover possession of any tenanted premises for his own occupation- *Deokinandan Boobna v Hara Sundar Sarkar*. (1988) 1 Cal LJ 278: (1981) 1 CHN 180. But another Division Bench has observed that the condition imposed by the amendment may not be strictly followed in a case wherein the landlord is already in occupation of a portion of the house and sues for eviction of a tenant from another portion of the house-*Bivabati Ghosh v Panchugopal Pal*, AIR 1989 Cal 244: (1988) 2 RCJ 173. In another Division Bench decision it has been held that when the persons grow old, they constantly need the company of close relatives if available and in the aforesaid premises the plaintiff not having any male issue but a married daughter who could look after him, but who could not properly look after him as the landlord was living in a rented accommodation far away from the flat occupied by the married daughter, then in such a case the rented accommodation of the plaintiff cannot be treated to be a reasonably suitable accommodation elsewhere to disentitle the landlord to get the decree for eviction on the ground of reasonable requirement->*4rora & Sons v Devi Prasad Khanna*, (1989) 2 CHN 274: AIR 1990 Cal 216: (1990) 1 Cal IT (HC) 11.

**7. When a tenant can get the benefit of protection against eviction.**—(1) (a) On a <sup>19</sup>[suit] being instituted by the landlord for eviction on any of the grounds referred to in section 6, the tenant shall, subject to the provisions of sub-section (2) of this section, pay

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<sup>19</sup> Subs, by the W.B. Premises Tenancy (Amendment) Act, 2006 (W.B. Act 12 of 2006), (w.e.f. 1.6.2006) for the word "proceeding".

to the landlord or deposit with <sup>20</sup>[the Civil Judge] all arrears of rent, calculated at the rate at which it was last paid and upto the end of the month previous to that in which the payment is made together with interest at the rate of ten per cent *per annum*.

(b) Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the [suit] without the summons being served upon him, within one month of his appearance.

(c) The tenant shall thereafter continue to pay to the landlord or deposit with [the Civil Judge] month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) If in any [suit] referred to in sub-section (1 ), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that sub-section, deposit with [the Civil Judge] the amount admitted by him to be due from him together with an application 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 the application, [the Civil Judge] shall, 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, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order:

Provided that having regard to the circumstances of the case an extension of time may be granted by [the Civil Judge] only once and the period of such extension shall not exceed two months.

(3) If the tenant fails to deposit or pay any amount referred to In sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, <sup>21</sup>[the Civil Judge] shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the <sup>22</sup>[suit].

(4) If the tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no order for delivery of possession of the premises to the landlord on the ground of

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<sup>20</sup> Subs, *ibid*, for the words "the Controller or the Civil Judge" (w.e.f. 1.6.2006).

<sup>21</sup> Subs, by the W.B. Premises Tenancy (Amendment) Act, 2005 (W.B. Act 6 of 2005) for "the Controller" (w.e.f. 19.3.2005).

<sup>22</sup> Subs, by the W.B. Premises Tenancy (Amendment) Act, 2006 (W.B. Act 12 of 2006) for "proceeding" (w.e.f. 1.6.2006).

default in payment of rent by the tenant, shall be made by <sup>23</sup>[the Civil Judge], but he may allow such cost as he may deem fit to the landlord:

Provided that the tenant shall not be entitled to any relief under this subsection if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly.

## CHAPTER IV

### Recovery of immediate possession

**8. Chapter IV to have overriding effect.**—The provisions of this Chapter or the rules made there under shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force.

**9. Right to recover immediate possession.**—(1) Notwithstanding anything contained elsewhere in this Act or any other law for the time being in force or in any contract to the contrary, the right to recover immediate possession of any premises let out shall accrue to the landlord who—

- (a) is a Government employee or retired Government employee,
- (b) is in occupation of any residential premises allotted to him by his employer,
- (c) is required by, or in pursuance of, an order made by his 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 dependent child at or near the place of posting, and
- <sup>23</sup>[(d) has reasonable requirement of the premises for his own occupation].

(2) Where the landlord is a released or retired person from the Army, Navy or Air Force or will retire within a period or less than one year as a member of the Army, Navy or Air Force and the premises let out by him are required for his own occupation or where the landlord is the parent or wife of a member of the Army, Navy or Air Force who dies while in service or within five years of retirement and the premises let out by such member are required for the occupation of the family of such member, <sup>24</sup>[the landlord may institute a suit before the Civil Judge] for recovery of immediate possession of such premises.

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<sup>23</sup> Subs, by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of 2002) (w.r.e.f. 10.7.2001) for the following:

"(d) has requirement of the premises for his own occupation."

<sup>24</sup> Subs, by the W.B. Premises Tenancy (Amendment) Act, 2006 (W.B. Act 12 of 2006) for the words "the landlord may apply to the Civil Judge" (w.e.f. 1.6.2006).



(3) Whenever <sup>25</sup>[any suit is instituted before the Civil Judge] by a landlord under sub-section (1) or sub-section (2), <sup>26</sup>[the Civil Judge] shall issue summons in the form specified in Schedule I, provided that—

(a) where the landlord has retired or will retire within a period of less than one year as a member of the Army, Navy or Air Force, a certificate by the Area or Sub-Area Commander within whose jurisdiction the premises is situated or by the head of his service or by his Commanding Officer that he retired or will retire as such member and that he requires the premises for his own occupation or for the occupation of his family after retirement, or (b) where the landlord is the parent or wife of such member of the Army, Navy or Air Force, a certificate by the Area or Sub-Area Commander within whose jurisdiction the premises is situated or the Area or Sub-Area Commander under whom such member serves that he or she is the parent or wife, as the case may be, of such member of the Army, Navy or Air Force, and that he or she requires the premises for his or her occupation or for the occupation of his or her family after the retirement of such member, shall be produced before <sup>3</sup>[the Civil Judge] <sup>4</sup>[while instituting such suit].

*Explanation.*—For the purposes of this sub-section, Area or Sub-Area Commander shall include (a) in the case of persons retired from the Navy, Flag Officer Commanding and Chief of Naval Command and (b) in the case of persons retired from the Air Force, the Air Force Station Commander.

(4) In addition to, and simultaneously with, the issue of summons for service on the tenant and the sub-tenant, if any, <sup>27</sup>[the Civil Judge] shall also direct the summons to be served by registered post with acknowledgment due, duly addressed to the tenant and the sub-tenant or their agents empowered to accept the service at the place where the tenant and the 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.

(5) When acknowledgment purporting to be signed by the tenant and the sub-tenant or their agents is received by [the Civil Judge] or the registered article containing the

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<sup>25</sup> Subs, by the W.B. Premises Tenancy (Amendment) Act, 2006 (W.B. Act 12 of 2006) for the words "any application is filed before the Civil Judge" (w.e.f. 1.6.2006).

<sup>26</sup> Subs, by the W.B. Premises Tenancy (Amendment) Act, 2005 (W.B. Act 6 of 2005) for "the Controller" (w.e.f. 19.3.2005).

<sup>27</sup> Subs, by the W.B. Premises Tenancy (Amendment) Act, 2006 (W.B. Act 12 of 2006) for the words "while filing the application" (w.e.f. 1.6.2006).

summons is received back with endorsement purporting to have been made by a postal employee to the effect that the tenant and the sub-tenant or their agents refused to take delivery of the registered article, <sup>28</sup>[the Civil Judge] may declare that there has been valid service of the summons.

(6) The tenant and the sub-tenant on whom the summons is duly served, shall not contest the prayer for eviction from the premises unless they file an affidavit within two months of service of summons stating the ground on which they seek to contest the application for eviction and obtain leave from [the Civil Judge] and in default of their appearance in pursuance of the summons 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 basis of the statement as aforesaid.

(7) '[The Civil Judge] shall, within fifteen days from the date of filing of the affidavit by the tenant or the sub-tenant, as the case may be, grant to the tenant or the sub-tenant leave to contest the application if the affidavit filed by the tenant or the sub-tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in clause (d) of sub-section (1) of section 6.

(8) Where leave is granted to the tenant or the sub-tenant to contest the application,<sup>29</sup>[the Civil Judge] shall commence 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 three months from the date of commencement of hearing.

(9) Where <sup>29</sup>[the Civil Judge] decides at the conclusion of the hearing that the tenant or the sub-tenant of any premises shall put the landlord in possession of the said premises, he shall direct the tenant or the sub-tenant, as the case may be, to put the said landlord in possession of the said premises within such period, not exceeding six months from the date of decision, as he thinks reasonable.

<sup>30</sup> [(10)\* \* \*]

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<sup>28</sup> Subs, by W.B. Premises Tenancy (Amendment) Act, 2005 (W.B. Act 6 of 2005) for "The Controller" (w.e.f. 19.3.2005).

<sup>29</sup> Subs., *ibid*, for "the Controller" (w.e.f. 19.3.2005).

<sup>30</sup> Omitted, *ibid*, (w.e.f. 19.3.2005) Before omission it stood as under:

(11) The provisions of sub-section (3) and sub-section (4) of section 6 shall, as far as possible, be applied to a proceeding under this Chapter but nothing contained in sub-section (2) of section 6 shall apply to such proceeding.

(12) No appeal shall lie against an order for the recovery of possession of any premises made by <sup>2</sup>[the Civil Judge] in accordance with the provisions of this section, provided the High Court or the Tribunal, as <sup>2</sup>the case may be, may, for the purpose of satisfying itself that an order made by [the Civil Judge] under this section is according to law, call for the case and pass such order in respect thereto as it thinks fit.

(13) Where no application has been made to the High Court or the Tribunal for revision, <sup>2</sup>[the Civil Judge] may exercise the power of review in accordance with the provisions of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

(14) An order passed by [the Civil Judge] shall be executed <sup>31</sup>[in accordance with the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).]

### **NOTES**

Own occupation.—See Sengupta's *W.B. Premises Tenancy Act*.

Reasonable requirement.—See Sengupta's *W.B. Premises Tenancy Act*.

### **CHAPTER V**

#### Restoration of possession and compensation

**10. 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 (c) or clause (d) of sub-section (1) of section 6 and the building or rebuilding or addition or alteration is not commenced or the premises is not occupied by the landlord or any person for whose benefit the premises is 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 is held, is re-let within five 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 has been relet within five years, within twelve months of such re-letting and, after giving the landlord an

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"(10) The Controller shall, while holding an inquiry in a proceeding, follow the practice and procedure of a Court of Small Causes including the recording of evidence. An order passed by the Controller shall be executed in such manner as may be prescribed."

<sup>31</sup> Subs., *ibid* (w.e.f. 19.3.2005) for "in such manner as may be prescribed".

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 by the Controller in case the premises has been re-let.

(2) If upon an order 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 taking 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 delivery of 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 (d) of sub-section (1) of section 6 was, at the time of obtaining such delivery of possession, in occupation of some other premises as owner thereof, he shall not, within five 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 subsection, the Controller may, on the application of such tenant made within six 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 the circumstances of the case.

**11. Restoration of tenancy where decree for recovery of possession is passed under clause (c) of sub-section (1) of section 6.—**(1) Where <sup>32</sup>[the Civil Judge] passes a decree for the recovery of possession of any premises on the ground

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<sup>32</sup> Subs, by the W.B. Premises Tenancy (Amendment) Act, 2005 (W.B. Act 6 of 2005) for "the Controller" (w.e.f. 19.3.2005).

mentioned in clause (c) of subsection (1) of section 6, he shall specify the period within which the building or rebuilding of, or addition to, or alteration of, 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, provided the aggregate of such periods shall not exceed two years.

(2) On the completion of building or rebuilding of, or addition to, or alteration of, such premises, the Controller may, on the application of the tenant, who has been evicted 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 deliver to such tenant 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 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.

(4) 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 under sub-section (2) or sub-section (3), as the case may be.

**12. Provisions regarding notice of giving up possession by tenants under contracts—** (1) Every 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 such 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 the 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 month's notice expiring with a month of the tenancy.

## CHAPTER VI

### Provision regarding rent

**13. Rent in excess of fair rent not chargeable.—**(1) (a) No tenant shall, notwithstanding any agreement to the contrary, be liable to pay to the landlord for the occupation of any premises any amount in excess of fair rent of the premises, unless

such amount is lawful increase of the fair rent in accordance with the provision of this Act.

(b) Subject to the provisions of clause (a), any agreement for payment of rent in excess of fair rent shall be construed as an agreement for the payment of fair rent only.

(2) Fair rent shall be paid within the time fixed by the contract or, in the absence of any such contract, by the fifteenth day of the next month following the month for which it is payable, provided the tenant may pay the rent payable for any month at any time during such month before it falls due.

**14. Restriction on claim, demand or receipt of premium or Other consideration.—**

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

(a) claim, demand or receive any sum as premium, or claim, demand or receive any consideration whatsoever, in cash or in kind in addition to rent;

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

(2) It shall not be lawful for the tenant or any other person acting on behalf of the tenant to claim or receive any payment in consideration of the relinquishment, transfer or assignment of his tenancy, as the case may be, of any premises.

**15. Restriction on the sale of furniture in any premises let to a tenant.—**(1) No landlord shall make the purchase by any person of any furniture in any premises 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 any advertisement—

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

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

**16. Refund of rent, premium, etc. not chargeable under this Act.—**Where any sum or other consideration has been paid by or on behalf of the 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, by order, direct the landlord to refund such sum or the value of such consideration to the tenant or

to adjust such sum or the value of such consideration against the rent payable by the tenant.

**17. Fixation Of fair rent.**—(1) The Controller shall, on application made to him either by the landlord or by the tenant in the prescribed manner, fix the fair rent in respect of any premises in accordance with the provisions of this Act.

(2) The fair rent for a year in respect of any premises constructed and let out after the year 1984, shall be fixed '[on the basis of annual payment of an amount equal to six and three-fourth 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.]

*Explanation.*—The cost of construction of a premises shall include the cost of water supply and sanitary and electric installation and shall be determined with due regard to the rates adopted for the purpose of estimate by the Public Works Department of the State Government for the area concerned. The Controller may allow or disallow the variation of estimates upto ten per cent, having regard to the nature of the premises :

Provided that while calculating the market value of the site on which the premises was constructed, the Controller shall take into account only the portion of the site on which the premises was constructed and sixty per cent of the portion of the vacant land, if any, appurtenant to such premises, the excess portion of the vacant land being treated as amenity.

(3) Where a tenancy subsists for twenty years or more in respect of the premises constructed in or before the year 1984, the fair rent shall be determined by adding to the rent as on 1.7.1976 not more than three times, and then deducting the increase, if any, in the manner provided in Schedule II, or by accepting the existing rent if such rent is more than the increased rent determined according to that Schedule.

(4) Where a tenancy subsists for ten years or more but less than twenty years in respect of the premises constructed in or before the year 1984, the fair rent shall be determined by adding to the rent as on 1.7.1986 not more than two times, and then deducting the increase, if any, in the manner provided in Schedule III, or by accepting the existing rent if such rent is more than the increased rent determined according to that Schedule.

<sup>33</sup>[(4A) Where a tenancy subsist for twenty years or more in respect of the premises constructed in or before the year 1984 and used for commercial purpose, the fair rent shall be determined by adding t the rent as on 1.7.1976 five times or by accepting the

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<sup>33</sup> Subs, by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of 2002) (w.r.e.f. 10.7.2001) for the following :

"on the basis of ten per cent of cost of construction of the premises and the market value of the land at the time of commencement of the construction."

existing rent if such rent is more than the increased rent determined under this sub-section.

(4B) Where a tenancy subsists for ten years or more but less than twenty years in respect of the premises constructed in or before the year 1984 and used for commercial purpose, the fair rent shall be determined by adding to the rent as on 1.7.1986 three times or by accepting the existing rent if such rent is more than the increased rent determined under this sub-section.]<sup>34</sup>

(5) Where at the commencement of this Act, any proceeding is pending for fixation of the fair rent of such premises under the West Bengal Premises Tenancy Act, 1956; the rent fixed under the said proceeding shall be the fair rent under this Act.

(6) Where none of the foregoing provisions of this section applies to any premises, the fair rent shall be such 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.

**18. Revision Of fair rent.**—The fair rent initially fixed shall be automatically increased by five per cent every three years :

Provided that the State Government may issue notification varying such rate of increase every four years from the date of commencement of this Act.

**19. When fair rent fixed by the Controller takes effect.**—When in fixing the fair rent or revising the fair rent, the rent which was being paid at the time of 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 by installment or otherwise as the Controller may, by order, direct;

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

**20. Notice of increase Of rent.**—Where a landlord intends to increase the rent of any premises, he shall give to the tenant the notice of his intention so to do in so far as such increase is permissible under this Act; the increase of rent shall be due and recoverable

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<sup>34</sup> Ins., *ibid*, (w.r.e.f. 10.7.2001).



from the month or period of tenancy next after the expiry of thirty days from the date on which the notice is given.

**21. Deposit Of rent by tenant—**(1) Where the landlord does not accept any rent tendered by the tenant within the prescribed period, the tenant shall remit the rent to the landlord by postal money order within fifteen days of such refusal.

(2) Where any tenant remits rent to the landlord by postal money order within the prescribed period and it is returned to the tenant by the postal authority as undelivered, either on account of the landlord having refused to accept the payment thereof or for any other reason, the tenant may deposit such rent with the Controller within fifteen days from the date on which it is so returned to the tenant.

(3) Where there is a *bona fide* doubt as to the person or persons to whom rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner.

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

(a) the premises for which the rent is to be deposited and description of the premises sufficient for identifying the same;

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

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

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

(5) The tenant shall also produce for scrutiny by the Controller the last rent receipt and money order form returned by the postal authority. In the case of deposit of rent for successive months during any continuous period, no affidavit in support of the application shall be required after the first deposit, if the reasons and the circumstances which led the tenant to make the first deposit remain the same.

(6) 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.

(7) On such deposit of the rent, the Controller shall send in the prescribed manner the copy or copies of the application to the landlords or persons claiming to be entitled to the rent with an endorsement showing the date of deposit, such endorsement being authenticated by the seal of the office, and the signature, of the Controller or some other

officer authorized by him in this behalf. Such authenticated copy of the application shall be admissible in evidence in any Court.

(8) Where rent for any month has been deposited on the ground that postal money order was returned, then the tenant may, without further tender of rent by postal money order to the landlord, continue to deposit the rent with the Controller 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 prescribed period.

**22. The time-limit for making deposit and consequence of incorrect particulars in application for deposit.**—(1) No rent deposited with the Controller shall be considered to have been validly deposited under section 21 unless deposited within fifteen days of the time fixed by any contract in writing for payment of the rent or, in the absence of any such contract in writing, unless deposited within the last day of the month following the month for which rent was payable, provided where any rent remitted to the landlord by postal money order within the prescribed period is returned to the tenant by the postal authority as undelivered or on account of the landlord having refused to accept the rent or for any other reason, such rent may also be validly deposited within fifteen days from the date on which it is so returned to the tenant.

(2) No deposit of rent shall be considered to have been validly made for **the** purpose of section 22, if the tenant wilfully or negligently makes any false statement in his application for depositing the rent unless the landlord has withdrawn, or makes an application in the prescribed form to 'withdraw, the amount deposited before the date of institution of proceeding for the recovery of possession of the premises from the tenant.

(3) If the rent is deposited in accordance with the provisions of sub-section (1) and does not cease to be a valid deposit under that sub-section, the deposit shall constitute the payment of rent to the landlord as if the amount deposited had been a valid legal tender of rent to the landlord on the date fixed by contract for payment of the rent when there is such a contract or, in the absence of any contract, on the fifteenth day of the month next following the month for which the rent is payable.

**23. Payment of rent.**—If an application is made in the prescribed manner for the withdrawal of any deposit of rent, the Controller shall, if he is satisfied that the applicant is the person entitled to receive the rent deposited, by order, direct the payment of the amount of the rent to him :

Provided that no such order for payment of any deposit of rent shall be made by the Controller without giving all persons named by the tenant in his application for deposit of

rent as claiming to be entitled to the payment of such rent, an opportunity of being heard, and such order shall be without prejudice to the right of such person to receive such rent being decided by a Court of competent jurisdiction.

**24. Savings as to acceptance of rent.**—The withdrawal of rent deposited in the prescribed manner shall not operate as an admission against the person withdrawing it of the correctness of the rent or the rate thereof, the period of default, the amount due or any other fact stated in the application of the tenant for depositing the rent under sub-section (1) of section 22, nor shall it operate as a waiver of any notice to quit given by him to the tenant.

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

## **CHAPTER VII**

### **Sub-tenancies**

**26. Creation and termination of sub-tenancy to be notified.**—(1) Where after the commencement of this Act, any premises is 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 is 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 sub-tenancy within one month of such termination.

(2) Where before the commencement of this Act, the tenant has, with or without the consent of the landlord, sublet any premises either in whole or in part the tenant and every sub-tenant to whom the premises has been sublet, shall give notice to the landlord of such subletting in the prescribed manner within <sup>35</sup>[two years] 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 referred to in sub-section (2), there is no consent in writing of the landlord, and the landlord denies that he gave any oral consent, the Controller shall, on an application made to him in this behalf either by the landlord or by the sub-tenant

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<sup>35</sup> Subs, by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of 2002) (w.r.e.f. 10.7.2001) for the following :  
"within six months of the commencement of this Act".

within two months of the date of 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 interest of the tenant 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 the sub-tenant to the landlord from the date of the order. Rent so fixed shall be deemed to be the fair rent for the purposes of this Act.

### **NOTES**

**Object of the Amendment Act, 2002.**—The West Bengal Premises Tenancy (Amendment) Act, 2002 envisages to amend sub-section (2) of section 26 of the said Act so as to enable the tenant and every sub-tenant to give notice of sub-letting to the landlord within two years of the commencement of the said Act.

**Manner of giving notices relating to sub-tenancies under section 26.**—Notices of creation and termination of sub-tenancies under sub-section (1) of section 26, and where, before the commencement of the Act, a tenant has sublet any premises, notices of such subletting and the termination of such sub-tenancies under sub-section (2) of that section shall be given by the tenant and the subtenant to the landlord by registered post with acknowledgment due and shall contain the following particulars:—

(a) location of the premises let to the tenant with description thereof sufficient for identifying the same (for example, number of the premises and description thereof, if there is any, name of the street, postal zone, and police station);

(b) name of the tenant;

(c) name of the subtenant;

(d) details of the portion sublet; (e) rent payable by the subtenant; (f) date of creation/termination of the sub-tenancy; and (g) any other relevant information.

(2) No deposit of rent shall be considered to have been validly made for the purpose of section 22, if the tenant wilfully or negligently makes any false statement in his application for depositing the rent unless the landlord has withdrawn, or makes an application in the prescribed form to 'withdraw, the amount deposited before the date of institution of proceeding for the recovery of possession of the premises from the tenant.

(3) If the rent is deposited in accordance with the provisions of sub-section (1) and does not cease to be a valid deposit under that sub-section, the deposit shall constitute the payment of rent to the landlord as if the amount deposited had been a valid legal tender of rent to the landlord on the date fixed by contract for payment of the rent when there is

such a contract or, in the absence of any contract, on the fifteenth day of the month next following the month for which the rent is payable.

**23. Payment of rent.**—If an application is made in the prescribed manner for the withdrawal of any deposit of rent, the Controller shall, if he is satisfied that the applicant is the person entitled to receive the rent deposited, by order, direct the payment of the amount of the rent to him :

Provided that no such order for payment of any deposit of rent shall be made by the Controller without giving all persons named by the tenant in his application for deposit of rent as claiming to be entitled to the payment of such rent, an opportunity of being heard, and such order shall be without prejudice to the right of such person to receive such rent being decided by a Court of competent jurisdiction.

**24. Savings as to acceptance of rent.**—The withdrawal of rent deposited in the prescribed manner shall not operate as an admission against the person withdrawing it of the correctness of the rent or the rate thereof, the period of default, the amount due or any other fact stated in the application of the tenant for depositing the rent under subsection (1) of section 22, nor shall it operate as a waiver of any notice to quit given by him to the tenant.

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(2) Where before the commencement of this Act, the tenant has, with or without the consent of the landlord, sublet any premises either in whole or in part the tenant and every sub-tenant to whom the premises has been sublet, shall give notice to the landlord

of such subletting in the prescribed manner within <sup>36</sup>[two years] 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 referred to in sub-section (2), there is no consent in writing of the landlord, and the landlord denies that he gave any oral consent, the Controller shall, on an application made to him in this behalf either by the landlord or by the sub-tenant within two months of the date of 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 interest of the tenant 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 the sub-tenant to the landlord from the date of the order. Rent so fixed shall be deemed to be the fair rent for the purposes of this Act.

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**Manner of giving notices relating to subtenancies under section 26.**—

Notices of creation and termination of subtenancies under sub-section (1) of section 26, and where, before the commencement of the Act, a tenant has sublet any premises, notices of such subletting and the termination of such subtenancies under sub-section (2) of that section shall be given by the tenant and the subtenant to the landlord by registered post with acknowledgment due and shall contain the following particulars:—

- (a) location of the premises let to the tenant with description thereof sufficient for identifying the same (for example, number of the premises and description thereof, if there is any, name of the street, postal zone, and police station);
- (b) name of the tenant;
- (c) name of the subtenant;
- (d) details of the portion sublet;
- (e) rent payable by the subtenant;
- (f) date of creation/termination of the subtenancy; and

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<sup>36</sup> Subs, by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of 2002) (w.r.e.f. 10.7.2001) for the following: "within six months of the commencement of this Act".

(g) any other relevant information.

**CHAPTER VIII**  
**Penalties**

**27. Penalty for cutting off or withholding of essential supply or service.**—(1) No landlord, either himself or through any person purporting to act on his behalf, shall, without any prior permission of the Controller, cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let out to him.

(2) If the landlord contravenes the provisions of sub-section (1), the tenant may make an application to the Controller complaining of such contravention within six months.

(3) (a) If the Controller is satisfied that the essential supply or service was cut off or withheld by the landlord or his agent, the Controller may pass an order directing the landlord to restore such supply or service immediately pending the inquiry referred to in sub-section (4).

(b) Notwithstanding anything contained in clause (a), the Controller may pass an interim order without giving any notice to the landlord.,

(4) If the Controller, on inquiry, finds that the essential supply or service enjoyed by the tenant in respect of the premises was cut off or withheld by the landlord without prior permission of the Controller, he shall pass an order directing the landlord to restore such supply or service.

(5) The Controller may direct that compensation, not exceeding five thousand rupees, be paid—

(a) to the landlord by the tenant, if the application was made frivolously or vexatiously, or

(b) to the tenant by the landlord, if the landlord or his agent had cut off or withheld such supply or service without prior permission of the Controller.

*Explanation I.*—'Essential supply or service" shall include supply of water, electricity, light in passage, staircase, and conservancy and sanitary service.

*Explanation II.*—For the purposes of this section, "withholding of essential supply or service" shall include acts or omissions attributable to the landlord, on account of which the essential supply or service is cut off by the local authority or any other competent authority.

**28. Penalty for charging rent in excess of fair rent.**—(1) Who ever contravenes any of the provisions of section 13 shall, on a complaint made to the Controller by the party aggrieved, be liable to a fine which may extend to five times the amount or the value of the consideration claimed or demanded or received in excess of the fair rent for the first

occasion and, for the second or subsequent occasion, to a fine which may extend to ten times the amount of such excess.

(2) Whoever contravenes any of the provisions of section 15 shall, on the complaint made to the Controller by the party aggrieved or by the State Government, be liable to a fine which may, for the first occasion, extend to twice the value of the furniture and, for the second or subsequent occasion, extend to four times such value.

**29. Penalty for contravention of provisions for restriction on subletting.**—Whoever contravenes the provisions for restriction on subletting shall, on a complaint made to the Controller, be liable to a fine which may extend to five thousand rupees.

**30. Penalty for contravention of section 14.**—Any tenant or landlord or any other person who, in contravention of the provisions of section 14, receives any sum or consideration for relinquishment of tenancy or as premium or advance rent in excess of one month's rent, as the case may be, shall, on a complaint made to the Controller by the landlord, be liable to pay fine which may extend to fifty thousand rupees.

**31. Penalty for contravention of provisions of section 10.**—Any landlord who—

(a) after obtaining the delivery of possession of any premises from the tenant in pursuance of a decree obtained under clause (c) of sub-section (1) of section 6, contravenes the provision of sub-section (1) of section 10 by re-letting such premises within five years of the date of obtaining the delivery of possession thereof to any person other than such tenant without the permission of the Controller, or

(b) contravenes the provisions of sub-section (3) of section 10 by letting the premises, of which he was in occupation as owner thereof at the time of obtaining the delivery of possession of such premises from the tenant in pursuance of a decree, within five years from 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 a complaint made to the Controller by such tenant within six months of such letting, be liable to a fine which may extend to twenty-five thousand rupees.

**32. Penalty for refusal by landlord to grant receipt for rent paid.**—If the landlord refuses to deliver to the tenant a receipt 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, by order, direct the landlord to pay to the tenant, by way of damages, such sum, not exceeding three times the amount of rent paid by the



tenant, as the Controller may determine, and the cost of application, and shall issue a certificate to the tenant in respect of the rent paid.

**33. Penalty for untrue statement in the application of tenant for deposit of rent. —**

If within thirty days from the date of receipt

of the notice of deposit, the landlord complains to the Controller that the statement in the tenant's application of the reasons and circumstances which led him to deposit the rent is untrue, 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 thousand rupees, whichever is greater, provided he is satisfied that the said statement was materially untrue, and may, by order, direct that a sum out of the fine realised, as may be determined by him, be paid to the landlord as compensation.

**34. Penalty for refusal to accept rent without reasonable cause.—**

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 thousand rupees, whichever is greater, if he is satisfied that the landlord, without any reasonable cause, refused to accept the rent though tendered to him within the prescribed period and may, by order, direct that a sum out of the fine realised, as may be determined by him, be paid to the tenant as compensation.

## **CHAPTER IX**

### **Essential repairs**

**35. Making of repair and taking of measures for maintenance of essential**

**service.—**(1) If the landlord neglects or fails to make tenantable repair of the premises or to take measures for due maintenance of essential supply or service comprised in the tenancy, the Controller shall, on application made to him by the tenant in possession of the premises, cause a notice to be served in the prescribed manner on the landlord requiring him to make such repair or take such measures for due maintenance therein of the essential supply or service.

(2) If after the service of notice under sub-section (1), the landlord fails to show proper cause or neglects to make such repair 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 repair or measures with application for permission to make such repair or take such measures himself, and thereupon the Controller may, after giving the landlord an opportunity of being heard and after considering such estimate and making

such inquiries as may be considered necessary, by order in writing, permit the tenant to make such repair or take such 'measures at such cost as may be specified in the order.

*Explanation.*—"Essential supply or service" shall have the same meaning as in *Explanation* /to sub-section (5) of section 27.

**36. Taking of measures by tenant in case of emergency.**—(1) If the necessity for making any repair or taking any measures referred to in section 35 is so urgent that any delay is likely to subject the tenant to personal loss, damage or serious inconvenience, then, notwithstanding anything contained in that section, the tenant may himself cause the notice to be served in the prescribed manner on the landlord requiring him to undertake such repair or take such measures within seventy-two hours of the service of such notice.

(2) If the landlord neglects or fails to make such repair or take such measures within seventy-two hours as aforesaid, the tenant may submit an application along with a copy of the notice and an estimate of cost of such repair or measures of the Controller. The Controller shall thereupon make such inquiries as he may consider necessary about the necessity of such repair or measures and the correctness of the estimate so submitted and, on being satisfied, may, by order, direct the tenant to undertake such repair or take such measures at such cost as may be specified in the order.

(3) After the completion of the repair or measures under sub-section (2) of section 35 or sub-section (2) of this section, the tenant shall submit to the Controller a statement of cost thereof and thereafter the Controller, after giving the landlord an opportunity of being heard and after making such further inquiries as may be considered necessary, may, by order in writing, determine the amount of the cost 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 :

Provided that the amount which the tenant may so deduct or recover in any year shall not exceed one half of the rent payable by the tenant for that year.

**37, Tenant may get supply of electricity to the premises without permission of the landlord.**—(1) If any landlord refuses or withholds his consent for obtaining a separate electric connection 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 (9 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, give

permission to the tenant to get the supply in accordance with the scheme set-out in the application or any modified scheme.

(3) On such permission being given, the landlord or the owner, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, 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 landlord or the owner for trespass for the steps taken for the supply of electricity in accordance with the provisions of this section.

## CHAPTER X

### Appointment of Controller and other officers

**38. Appointment of Controller, Additional Controller, Deputy Controller and Registrar.**—(1) The State Government may, by notifica-

tion, appoint a person to be the Controller for any area or part of any 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 an 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 shall 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) A Controller, an Additional Controller or a Deputy Controller appointed under this section shall be a member of the Indian Administrative Service or Executive <sup>37</sup>[\* \* \*] Branch of the State Civil Service.

**39. Powers of Controller.**—(1) The Controller may transfer any proceeding pending before him for disposal to any Additional Controller or Deputy Controller or withdraw any

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<sup>37</sup> The words "or Judicial" omitted by the W.B. Premises Tenancy (Amendment) Act, 2005 (W.B. Act 6 of 2005) (w.e.f. 19.3.2005).

proceeding pending before any Additional Controller or Deputy Controller and dispose of such proceeding himself or transfer such proceeding for disposal to any other Additional Controller or Deputy Controller.

(2) The Controller shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), for the purposes of—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of document;
- (c) issuing commission for examination of witness;
- (d) issuing commission for local investigation;
- (e) such other matters as may be prescribed.

(3) For the purposes of holding an inquiry or discharging any duty under this Act, the Controller may,—

- (a) after giving not less than twenty-four hours notice in writing, enter and inspect, or authorize 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 books or other documents relevant to the inquiry, at such time and at such place as may be specified in the order.

(4) The Controller may, if he thinks fit, appoint one or more person having special knowledge of the matter under consideration as assessor or valuer to advise him in the proceeding before him.

<sup>38</sup> [(5)\*\*\*]

<sup>39</sup> [(6) \* \* \* ]

(7) Any clerical or arithmetical mistake in any order passed by the Controller or any error arising out of any accidental omission may, at any time, be corrected by the Controller on an application received by him in this behalf from any of the parties or otherwise.

(8) The Controller may exercise the powers of a Judicial Magistrate for the recovery of the fine under the provisions of the Code of Criminal Procedure, 1973 (2 Of 1974).

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<sup>38</sup> Omitted by the W.B. Premises Tenancy (Amendment) Act, 2005 (W.B. Act 6 of 2005) (w.e.f. 19.3.2005). Before omission it stood as under:

"(5) The Controller may appoint a guardian for a minor defendant in any proceeding pending before him."

<sup>39</sup> Omitted, *ibid* (w.e.f. 19.3.2005). Before omission it stood as under:

"(6) The Controller may grant temporary injunction in such cases as may be prescribed."

(9) Save as otherwise provided in the foregoing provisions of this section, an order passed by the Controller under any provision of this Act or <sup>40</sup>[an order other than that under section 6 passed on an appeal, revision or review therefrom] shall be executed 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.

(10) The Controller may, for sufficient reason, direct any document or book produced before him in any proceeding to be impounded and kept in the custody of an officer under him for such period, and subject to such condition, as he may think fit.

(11) The Controller may, at any stage of a proceeding, allow either party to amend his pleadings in such manner and at such time as he may deem just. All such alterations or amendments as may be necessary shall be made for the purpose of determining the question in dispute between the parties.

(12) The Controller may, at any stage of a proceeding, either on his own motion or upon the application of either party and on such terms as may appear to him to be just, order that the name of any party improperly joined be struck out and that the name of any person who ought to have been joined, whether as a petitioner or as an opposite party or whose presence before him may be necessary in order to enable him effectively and completely to adjudicate upon and settle all the questions involved in the proceedings, be added.

(13) The Controller, may, for sufficient reason to be recorded in writing, by order, require the personal appearance of either party.

(14) The Controller may set aside an order passed *ex parte* if the aggrieved party files an application and satisfies him that notice was not duly served or that he was prevented by any sufficient cause from appearing when the case was called for hearing.

(15) The Controller may, <sup>41</sup>[for causing delivery of possession of any premises to a landlord or tenant], send a requisition, in writing, to the officer-in-charge of the police station within the jurisdiction of which the premises is situate or to any police officer superior to such officer-in-charge in rank and, on receipt of such requisition, the officer-in-charge or the police officer, as the case may be, shall render all necessary and lawful assistance to the Controller for effecting the delivery of possession of such premises.

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<sup>40</sup> Subs., *ibid* (w.e.f. 19.3.2005), for "an order passed on an appeal, revision or review therefrom".

<sup>41</sup> Subs., *ibid* (w.e.f. 19.3.2005), for "for causing delivery of possession of any premises to a landlord or tenant, as the case may be, and for causing eviction of any person in occupation of such premises,"

40. Application of the Limitation Act, 1963 to proceedings **and appeals**.—Subject to the provisions of this Act relating to limitation, the provisions of the Limitation Act, 1963 (36 of 1963), shall apply to proceedings and appeals under this Act.

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

**42. Final hearing of applications.**—The hearing of every application made to the Controller under this Act shall be completed within a period of six months unless, for reasons to be recorded by the Controller in writing, it is not possible for him to complete the hearing within that period.

## CHAPTER XI

### Appeal, revision and review

**43. Appeal, revision and review.**—(1) An appeal shall lie from a final order of the Controller to the Tribunal as the State Legislature may, by law, provide:

Provided that until a Tribunal is so provided, an appeal from the final order of the Controller shall lie to the High Court.

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

(3) The Controller or the Tribunal shall in dealing with proceedings under this Act be deemed to be a court for the exercise of powers under section 151 or section 152 of, or Order XL VII of the First Schedule to, the Code of Civil Procedure, 1908 (5 of 1908).

(4) The Controller or the Tribunal shall in dealing with the proceedings under this Act follow such procedure as may be prescribed.

(5) Every proceeding before the Controller or the Tribunal shall be deemed to be a judicial proceeding within the meaning of section 175, section 193 and section 228 of the Indian Penal Code (45 of 1860).

(6) The Controller or the Tribunal shall be deemed to be a court for the purpose of section 195 of the Code of Criminal Procedure, 1973 (2 of 1974).

(7) The Controller shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

**44. Jurisdiction of civil courts barred in respect of certain matters save as otherwise expressly provided in the Act.**—<sup>42</sup>[Save as otherwise provided in the Act,

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<sup>42</sup> Subs, by W.B. Premises Tenancy (Amendment) Act, 2005 (W.B. Act 6 of 2005) (w.e.f. 19-3.2005) for the following: No civil court shall entertain any suit or proceeding in so far as it relates

no civil court shall entertain any suit or proceeding in so far as it relates to fixation of fair rent in relation to any premises to which this Act applies] or to any other matter which the Controller is empowered by or under this Act to decide and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil court.

## CHAPTER XII

### Miscellaneous

**45. Repeal and savings.**—(1) The West Bengal Premises Tenancy Act, 1956 (West Ben. Act XII of 1956)(hereinafter referred to in this Chapter as the said Act), is hereby repealed.

(2) Notwithstanding such repeal, all suits and other proceedings under the said Act pending at the commencement of this Act before any court or any other authority shall be continued and disposed of in accordance with the provisions of the said Act as if the said Act had continued in force and this Act had not been passed:

Provided that the provisions for appeal under the said Act shall continue in force in respect of the suit or proceeding disposed of thereunder:

Provided further that for any of the purposes as aforesaid, the Controller or the Additional Controller or the Deputy Controller appointed under this Act shall be deemed to be the Rent Controller or 'Additional Rent Controller or Deputy Rent Controller, as the case may be, appointed under the said Act.

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

**46. Proceedings to be deemed to have been validly continued.**—For the removal of doubt it is hereby declared that notwithstanding any decision of any court to the contrary, any proceeding pending at the commencement of this Act, which was continued after that 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, 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, such decree was passed or such order was made.

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to fixation of fair rent in relation to any premises to which this Act applies or to eviction of any tenant there from".

**47. Power to make rules.**—(1) The State Government may, by notification, make rules for carrying out the purposes of this 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.

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

### **SCHEDULE I**

[See section 9(3)]

#### **Form of summons in a case where recovery of possession of premises is prayed for on the ground of requirement by landlord**

To

(Name, 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 (d) of sub-section (1) of section 6; read with sub-section (1), and sub-section (2) of section 9;

You are hereby summoned to appear before [the Civil Judge] within two months of the service hereof and to obtain the leave of [the Civil Judge] to contest the application for eviction on the ground aforesaid; in default whereof, the applicant will be entitled at anytime after the expiry of the said period of two months to obtain an order for your eviction from the said premises.

Leave to appear and contest the application may be obtained from <sup>43</sup>[the Civil Judge] by filing an affidavit as is referred to in sub-section (6) of section 9.

Given under my hand and seal this.....day of.....20....

*Controller*

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<sup>43</sup> Subs, by the W.B. Premises Tenancy (Amendment) Act, 2005 (W.B. Act 6 of 2005) for "the Controller" (w.e.f. 19.3.2005).



## SCHEDULE II

[See section 17(3)]

Premises having floor space of	Increase over rent as on 1.7.1976	Payable in			
		1st year	2nd year	3rd year	4th year
(1)	(2)	(3)			
<sup>44</sup> [Upto 25 square metres	100%	25% minus the increase if it be less	25% minus the increase if it be less	25% minus the increase if it be less	25% minus the increase if it be less
Above 25 sq. mtrs. upto 30 sq. mtrs.	110%	30% "	30% "	25% "	25% "
Above 30 sq. mtrs. upto 35 sq. mtrs.	120%	30% "	30% "	30% "	30% "
Above 35 sq. mtrs. upto 40 sq. mtrs.	130%	35% "	35% "	30% "	30% "
Above 40 sq. mtrs. upto 45 sq. mtrs.	140%	40% "	40% "	30% "	30% "
Above 45 sq. mtrs. upto 50 sq. mtrs.	150%	40%	40% "	35% "	35% "
Above 50 sq. mtrs. upto 55 sq. mtrs.	160%	45% "	45% "	35% "	35%- "
Above 55 sq. mtrs. upto 60 sq. mtrs.	170%	50% "	50% "	35% "	35% "
Above 60 sq. mtrs. upto 65 sq. mtrs.	180%	60% "	60% V	60% "	—
Above 65 sq. mtrs. upto 70 sq. mtrs.	190%	70% "	60% "	60%	
Above 70 sq. mtrs. upto 75 sq. mtrs.	200%	75% "	75% "	50% "	
Above 75 sq. mtrs.]	300%	100%	100% "	100% "	—

<sup>44</sup> Subs, by W.B. Premises Tenancy (Amendment) Act, 2002 (WB Act 14 of (w.r.e.f. 10.7.2001).

### SCHEDULE III

[See section 17(3)]

Premises having floor space of	Increase over rent as on 1.7.1986	Payable in		
		1st year	2nd year	3rd year
(1)	(2)	(3)		
<sup>45</sup> [Upto 25 square metres	50%	20% minus the increase if it be less	20% minus the increase if it be less	10% minus the increase if it be less
Above 25 sq. mtrs. upto 30 sq. mtrs.	60%	20% "	20% "	20% "
Above 30 sq. mtrs. upto 35 sq. mtrs.	70%	25% "	25% "	20% "
Above 35 sq. mtrs. upto 40 sq. mtrs.	80%	30% "	25% "	25% "
Above 40 sq. mtrs. upto 45 sq. mtrs.	90%	30% "	30% "	30% "
Above 45 sq. mtrs. upto 50 sq. mtrs.	100%	40% "	30% "	30% "
Above 50 sq. mtrs. upto 55 sq. mtrs.	110%	40% "	40% "	30% "
Above 55 sq. mtrs. upto 60 sq. mtrs.	120%	45% "	45% "	30% "
Above 60 sq. mtrs. upto 65 sq. mtrs.	130%	45% "	45% "	40% "
Above 65 sq. mtrs. upto 70 sq. mtrs.	140%	50% "	50% "	40% "
Above 70 sq. mtrs. upto 75 sq. mtrs.	150%	50% "	50% "	50% "
Above 75 sq. mtrs.]	200%	75% "	75% "	50% "

#### STATEMENT OF OBJECTS AND REASONS

The present Bill viz. "The West Bengal Premises Tenancy Bill, 1996 is meant to replace" The West Bengal Premises Tenancy Act, 1956; with the abject of regulating the incidence of tenancies of premises and relationship between the landlords and tenants of the premises in the changed circumstances.

The National Housing Policy approved by the Central Government recommended that appropriate amendment in existing laws and regulations be carried out for creating enabling atmosphere for housing activities in the country. A number of expert bodies such as the Economic Administration Reform Commission and the National Commission on Urbanization have recommended reforming the rent legislation in a way that balances

<sup>45</sup> Subs, by W.B. Premises Tenancy (Amendment) Act, 2002 (W.B. Act 14 of (w.r.e.f. 10.7.2001).

the interests of both the landlords and the tenants and also that stimulates future construction to meet the growing demands for housing.

On the basis of the various recommendations of the experts and also after a series of consultations with the State Governments, the Ministry of Urban Development, Government of India prepared a Model Rent Control Legislation, and sent to the States for consideration.

The Land and Land Reforms Department set up a Committee under the Chairmanship of the Land Reforms Commissioner. The Committee considered the salient features of the 'Model' and obtained the views of Tenants' Associations and House owner's Associations on these features, heard them and suggested a new enactment by replacing the old one.

The Department accepted the suggestion and has prepared the "**The West Bengal Premises Tenancy Bill, 1996**" to replace the existing Act i.e. "The West Bengal Premises Tenancy Act, 1956".

