

**GOVERNMENT OF WEST BENGAL
LEGISLATIVE DEPARTMENT**

West Bengal Act XXXVII of 1981

**THE CALCUTTA *THIKA* TENANCY (ACQUISITION
AND REGULATION) ACT, 1981.**

[Passed by the West Bengal Legislature.]

[Assent of the President was first published in the *Calcutta Gazette, Extraordinary*, of the 2nd November, 1981.]

[2nd November, 1981.]

An Act to provide for the acquisition of lands comprised in thika tenancies, and other lands held under any person in perpetuity or under registered lease for a period of not less than twelve years or held in monthly or periodical tenancies for being used or occupied as Khatahs, in Calcutta and Howrah and the rights of landlords in such lands, for regulation of the incidents of thika tenancies and of monthly and periodical tenancies and relations between thika tenants and their Bharatias and for planned development and distribution of such lands with a view to subserving the common good.

WHEREAS it is expedient to provide for the acquisition of lands comprised in *thika* tenancies, and other lands held under any person in perpetuity or under registered lease for a period of not less than twelve years or held in monthly or periodical tenancies for being used or occupied as *Khatahs*, in Calcutta and Howrah and the rights of landlords in such lands, for regulation of the incidents of *thika* tenancies, and of monthly or periodical tenancies and relations between *thika* tenants and their *Bharatias* and for planned development and distribution of such lands with a view to subserving the common good;

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

CHAPTER I

Preliminary

1. (1) This Act may be called the Calcutta *Thika* Tenancy (Acquisition and Regulation) Act, 1981.

(2) It extends to Calcutta as defined in clause (11) of section 5 of the Calcutta Municipal Act, 1951 and the municipality of Howrah.

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

Short title,
extent and
commence-
ment.

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[West Ben. Act

(Chapter I.—Preliminary.—Sections 2-4.)

Declaration
as to the
policy of the
State.

2. It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of articles 39 of the Constitution of India.

Definitions.

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

- (1) “*Bharatia*” means any person by whom, or on whose account, rent is payable for any structure or part of a structure erected by a *thika* tenant in his holding;
- (2) “Controller” means an officer or officers appointed under section 10;
- (3) “holding” means a parcel or parcels of land occupied by any person as a *thika* tenant under one lease or one set of conditions where such tenant has been occupying the land from or before the commencement of this Act;
- (4) “landlord” means any Corporation, institution or person, who, for the time being, is entitled to receive or but for a special contract, would be entitled to receive, the rent of any land comprised in a *thika* tenancy and includes any corporation, institution or person having any superior interest in such *thika* tenancy;
- (5) “notification” means a notification published in the *Official Gazette*;
- (6) “prescribed” means prescribed by rules made under this Act;
- (7) “*pucca* structure” means any structure constructed mainly of brick, stone or concrete or any combination of these materials, or any other material of a durable nature;
- (8) “*thika* tenant” means any person who occupies, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at a monthly or at any other periodical rate, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for residential, manufacturing or business purpose and includes the successors-in-interest of such person.

Act to
override
other laws.

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

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(Chapter II.—Acquisition of lands comprised in thika tenancies
and other lands and the rights of landlords in such
lands.—Sections 5, 6.)

CHAPTER II

**Acquisition of lands comprised in *thika* tenancies and other
lands and the rights of landlords in such lands.**

5. With effect from the date of commencement of this Act, lands comprised in *thika* tenancies and other lands held under any person in perpetuity or under registered lease for a period of not less than twelve years or held in monthly and periodical tenancies for being used or occupied as *Khatahs* along with easements, customary rights, common facilities and such other things in such *thika* tenancies and *Khatahs* attached to or used in connection with such *thika* tenancies, and *Khatahs* and the right, title and interest of landlords in such lands shall vest in the State free from all incumbrances:

Lands comprised in *thika* tenancies and other lands, etc. and right, title and interest of landlords in such lands to vest in the State.

Provided that the easements, rights, common facilities or benefits enjoyed by a *thika* tenant or an occupier of any land under any person in perpetuity or any land under any person under registered lease for a period of not less than twelve years or a *Khatal* in *khas* lands of the landlords shall not be affected in any way by such vesting.

33 of 1976.

6. (1) Subject to the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and the provisions of the Act, every *thika* tenant and any tenant, in respect of other lands which vest under section 5, occupying any land under a land-lord on the date of commencement of this Act, shall occupy such land, on such terms and conditions as may be prescribed, directly under the State as if the State had been the landlord in respect of that land.

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

(2) Subject to the provisions of section 26 of this Act, every *thika* tenant and other tenants occupying land directly under the State under sub-section (1) shall be liable to pay to the State an amount of revenue determined in accordance with the provisions of the West Bengal Land Holding Revenue Act, 1979 and for this purpose such tenant shall be deemed to be a *raiyat* under that Act:

West Ben.
Act XLIV of
1979.

Provided that the revenue payable by the tenant shall not be less than what he was paying to the landlord before the coming into force of this Act.

(3) The rights of a *thika* tenant and other tenants occupying lands directly under the State under sub-section (1) shall, subject to the provisions of this Act, be heritable and shall not be transferable. No such tenant shall,

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*(Chapter II.—Acquisition of lands comprised in thika tenancies
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lands.—Section 7.)*

without obtaining prior approval in writing from such authority as may be prescribed and without submitting a comprehensive development plan or improvement scheme for the holding, construct *pucca* structure. Any such scheme shall provide for alternative accommodation for *Bharatias* in accordance with sub-section (2) of section 11:

Provided that a *thika* tenant or a tenant in respect of other lands which vest under section 5 may construct a *pucca* structure for essential common facilities like common pathway, common bath, toilet, water supply, drainage, sewerage, lighting and similar other purposes.

Thika tenant
not to let out
land.

7. (1) Any person occupying land directly under the State within the meaning of sub-section (1) of section 6 shall not have any right, title or interest in the land comprised in the holding and shall not let out the whole or any part of the land for any period:

Provided that nothing in this sub-section shall prevent any such person from letting out the whole or any part of the structure standing on the land as long as his *thika* tenancy subsists.

(2) Any person occupying land directly under the State within the meaning of sub-section (1) of section 6 shall not contravene any provision of this Act. Any transaction, contract or agreement (oral or written) in contravention of the provisions of this Act, shall be void and upon such contravention the *thika* tenancy shall stand determined and the structure standing thereon shall vest in the State free from all incumbrances from such date as may be specified by the Controller in his order made on his own motion or on an application:

Provided that no such order shall be made by the Controller, unless upon hearing the parties affected he comes to a finding that any provision of the Act has been violated.

(3) Whenever it appears to the State Government that the land comprised in any *thika* tenancy is needed or is likely to be needed for any public purpose, it may, after giving the *thika* tenant and the *bharatias*, if any, an opportunity of being heard, resume the land comprised in such *thika* tenancy with or without structures, if any, and take possession of the land:

Provided that before taking possession of the land the *thika* tenants in actual occupation of the structure or part thereof and *bharatias* shall be provided with alternative accommodation in the neighbourhood of such land as far as practicable.

Explanation.—For the purpose of this sub-section “public purpose” shall include planned development of any area or holding and implementation of any scheme for improvement thereof.

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*(Chapter II.—Acquisition of lands comprised in thika tenancies
and other lands and the rights of landlords in such
lands.—Section 8.)*

33 of 1976. 8. (1) The State shall for the vesting of any land under section 5, pay to the landlord or landlords having any right in such land an amount as may be determined in accordance with the provisions of the Urban Land (Ceiling and Regulation) Act, 1976.

Payment of
compensa-
tion.

(2) Where the landlord is a corporation or an institution established exclusively for a religious or a charitable purpose, of a public nature, or is a person holding under a public trust or an endowment or other legal obligation exclusively for a public purpose which is religious or charitable, the State shall, for vesting under section 5, pay to such landlord an annuity for such number of years as may be prescribed, having regard to the extent of the rights of the landlord. Such annuity shall not exceed the annual net income derived from the holding as may be determined by the Controller in the prescribed manner. In determining net annual income the Controller shall deduct from the gross income apart from other sums as may be prescribed, charges on account of management and collection at the rate of twenty *per centum* of the gross income.

(3) For the purpose of sub-section (2), the Controller, on his own motion or upon any information, may, after giving the person interested an opportunity of being heard, enquire and decide any question as to whether any trust, endowment, corporation or institution is for exclusively religious or charitable purpose or as to whether it is of public or private nature, and any question of title incidental thereto as may be necessary to determine such question, by examining the document, if any, and by taking into account the following, among others:—

- (i) actual user of income of the land,
- (ii) mode of user,
- (iii) share of income of the land appropriated or enjoyed, by or on behalf of such trust, endowment, corporation or institution.

(4) An appeal from any order passed by the Controller under this section shall lie under section 13.

(5) The State shall, for vesting under sub-section (2), or resumption under sub-section (3), of section 7 of any structure comprised in any tenancy, pay to the tenant having any right in such structure an amount calculated by the Controller in the prescribed manner. Such amount shall be calculated at a rate not exceeding ten times the annual rent paid by *Bharatias* to the tenant reduced by, apart from other sums as may be prescribed, rent, taxes and other charges on account of management and collection at a rate of twenty *per centum* of the gross annual rent. Where the structures are occupied by the tenant himself, fair rent determined by the Controller under this sub-section in the prescribed manner shall be deemed to be the annual rent paid by *Bharatias*.

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[West Ben. Act

(Chapter III.—Incidents of tenancies of *Bharatias* in premises
on lands comprised in *thika* tenancies.—Sections 9-11.)

(6) Where there are more than one landlord in respect of a *thika* tenancy or other tenancy vested under section 5, the amount payable to them under sub-section (1) or the annuity payable to them under sub-section (2) shall be apportioned among them in the prescribed manner.

CHAPTER III

**Incidents of tenancies of *Bharatias* in premises on lands
comprised in *thika* tenancies.**

Thika
tenants and
Bharatias to
be governed
by West
Ben. Act XII
of 1956.

9. (1) *Thika* tenants and *Bharatias* hitherto governed by the provisions of the Calcutta *Thika* Tenancy Act, 1949, shall with effect from the coming into force of this Act, be governed by the provisions of the West Bengal Premises Tenancy Act, 1956, in all matters regulated by the West Bengal Premises Tenancy Act, 1956, and for such purpose a "*thika* tenant" and a "*Bharatia*" shall be deemed to be a "landlord" and a "tenant" respectively within the meaning of that Act.

West Ben.
Act II of
1949.
West Ben.
Act XII of
1956.

(2) Notwithstanding anything contained in this Act or in the West Bengal Premises Tenancy Act, 1956, a *Bharatia* under a *thika* tenant shall be entitled to take separate electrical connection from the electricity supplying agency or separate water supply connection from the appropriate agency for his own use.

Controller.

10. The State Government may, by notification, appoint one or more officers as Controller to perform all the functions of a Controller under this Act in respect of any area or areas to be specified in the notification.

Bharatia to
continue as
monthly
tenant.

11. (1) Notwithstanding anything contained in the West Bengal Premises Tenancy Act, 1956, or in any other law for the time being in force, a *Bharatia* under a *thika* tenant shall continue to be a monthly tenant unless lawfully evicted and the tenancy of a *Bharatia* shall not be extinguished because of subsequent non-existence of the structure or building or part thereof, which the *Bharatia* previously occupied under the *thika* tenant.

(2) If any building or structure is built or rebuilt on the same site within the period of twelve years next after the date on which the old building or structure ceased to exist, the *Bharatia* shall be put into possession of the whole or a part of the new building or structure in proportion to the area held by him in the old building or structure and on such terms and conditions in force immediately before the date of cessation of the old building or structure.

(3) Any dispute in this regard shall be decided by the Controller on an application made to him in the prescribed manner, after giving the parties opportunity of being heard and the order of the Controller shall be executed in the manner prescribed.

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*(Chapter IV.—Miscellaneous and supplemental provisions.—
Sections 12, 13.)*

CHAPTER IV

Miscellaneous and supplemental provisions.

5 of 1908. **12.** The Controller and any person deciding any appeal from his order shall have all the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

Powers of
Controller.

- (a) summoning and enforcing the attendance of any person and examining him on oath as a witness,
- (b) requiring the discovery and production of any document or record,
- (c) receiving evidence on affidavits,
- (d) requisitioning any public record or copy thereof from any court or office,
- (e) issuing commission for the examination of witnesses or documents,
- (f) enforcing or executing orders (including an order for restoration of possession) as if such orders were decrees of a civil court,
- (g) remanding any case or proceedings to the officer from whose order the appeal is preferred.

13. (1) Any person aggrieved by an order of the Controller may, within thirty days from the date of the order, prefer an appeal in writing—

Appeal.

- (a) in respect of any holding within the jurisdiction of the Court of Small Causes of Calcutta, to the Chief Judge of the Court of Small Causes of Calcutta; and
- (b) in respect of any holding elsewhere, to the District Judge within whose jurisdiction the holding is situate.

(2) The Chief Judge of the Court of Small Causes of Calcutta or the District Judge, as the case may be, before whom an appeal is preferred under sub-section (1) may either himself hear any such appeal or transfer such appeal to a Judge, Court of Small Causes of Calcutta or to an Additional District Judge, as the case may be, and the Judge to whom such appeal is so transferred shall hear and dispose of such appeal.

(3) The Chief Judge of the Court of Small Causes of Calcutta or the District Judge, as the case may be, either on his own motion or on the

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*(Chapter IV.—Miscellaneous and supplemental provisions.—
Sections 14, 15.)*

application of any party may withdraw any appeal pending before any Judge to his own file for hearing and disposal or transfer it to any other Judge of the Court of Small Causes of Calcutta or any Additional District Judge, as the case may be, for hearing and disposal.

(4) Subject to such rules as may be made under this Act, any final order passed by any court under sub-section (2) or sub-section (3), may in the manner prescribed be reviewed by the court which passed the order on the discovery of any new and important matter or evidence or on account of some mistake or error apparent on the face of the record or for any other sufficient cause of like nature:

Provided that before making any order under this sub-section the person likely to be adversely affected by such order shall be given reasonable opportunity of being heard.

(5) An order passed by the Controller against which no appeal has been preferred, may also be reviewed by him in the manner prescribed on the ground of discovery of new matter or evidence or on the ground of error apparent on the face of the record after giving the person an opportunity of being heard.

(6) Subject to the provisions of this Act, any decision of the Appellate Authority and, in cases where no appeal has been preferred, the decision of the Controller shall be final and may be executed by the Controller in the manner provided in the Code of Civil Procedure, 1908, for the execution of decrees.

5 of 1908.

Revision by
State
Government.

14. The State Government may, on its own motion, call for and examine the records of any order passed or proceedings taken by the Controller under the provisions of this Act and against which no appeal has been preferred for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of the procedure and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected reasonable opportunity of being heard in the matter.

Power of
District
Judge and
Chief Judge,
Court of
Small Causes
of Calcutta to
withdraw and
transfer any
proceedings.

15. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or on his own motion without such notice, the District Judge in the case of a proceeding pending before a Controller appointed for any area within the district, or the Chief Judge of the Court of Small Causes of Calcutta, in the case of a proceeding pending before a Controller appointed for any area within the jurisdiction of the Court of Small Causes of Calcutta,

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*(Chapter IV.—Miscellaneous and supplemental provisions.—
Sections 16-18.)*

may, at any stage, withdraw such proceeding and transfer it for hearing or disposal to a Controller appointed for any other area within the district or within the jurisdiction of the Court of Small Causes of Calcutta, as the case may be, or retransfer it for hearing or disposal to the Controller from whom it was withdrawn.

(2) The Controller to whom any proceeding has been transferred under sub-section (1) shall have the same power to hear or dispose of it as the Controller from whom it was withdrawn and may, subject to any special directions in the order of transfer, either rehear it or proceed from the stage at which it was withdrawn and transferred.

Explanation.—In this section “proceeding” includes any proceeding arising out of an application made to the Controller under the provisions of this Act.

16. Nothing in this Act shall apply to—

- (a) Government lands,
- (b) any land vested in or in the possession of—
 - (i) the State Government,
 - (ii) a port authority of a major port, or
 - (iii) a railway administration, or
 - (iv) a local authority, or
- (c) any land which is required for carrying out any of the provisions of the Calcutta Improvement Act, 1911.

Bar to application of Act to certain lands.

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

Restriction or exclusion of Act by agreement.

18. For the purpose of any inquiry under this Act, the Controller and any person deciding an appeal under section 13, may,—

- (a) enter and inspect any premises at any time between sunrise and sunset;
- (b) authorise any person subordinate to him to enter and inspect any premises between sunrise and sunset; or

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

Ben. Act V of 1911.

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Act, 1981.*

[West Ben. Act

*(Chapter IV.—Miscellaneous and supplemental provisions.—
Sections 19-23.)*

- (c) by written order, require any person to produce for his inspection such accounts, rent receipts, books or other documents at such time and at such place as may be specified in the order:

Provided that no premises shall be entered under clause (a) or clause (b) without the consent of the occupier, unless at least twenty-four hours' previous notice in writing has been given.

Proceedings including appeals and proceedings in execution of orders, etc., to abate.

19. All proceedings including appeals and all proceedings in execution of orders passed in proceedings including appeals under the Calcutta Thika Tenancy Act, 1949, pending on the 19th day of July, 1978, for the ejection of *thika* tenants and *Bharatias* shall stand abated with effect from the 19th day of July, 1978, as if such proceedings, appeals or execution proceedings has never been made.

West Ben.
Act II of
1949.

Power to make rules.

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

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters that may be or are required to be prescribed or made by rules.

Repeal.

21. The Calcutta *Thika* Tenancy Act, 1949 is hereby repealed.

Saving of limitation.

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

Bar to jurisdiction.

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

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(Chapter IV.—Miscellaneous and supplemental provisions.—
Sections 24-27.)

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

West Ben.
Act II of
1949,
Ben. Act I of
1887.

25. The State Government shall cause a survey to be made in the areas of Calcutta as described in sub-section (2) of section 1 of the Calcutta *Thika* Tenancy Act, 1949 in accordance with the provisions of the Calcutta Survey Act 1887, in order to record the names of *thika* tenants and of *Bharatias*. Survey.

West Ben.
Act XXXIII
of 1951.

26. (1) The provisions of the West Bengal Land Holding Revenue Act, 1979 shall, *mutatis mutandis*, apply to a *thika* tenant as if the said Act extends to the area described in Schedule I to the Calcutta Municipal Act, 1951 and as if the said area is a region within the meaning of the West Bengal Land Holding Revenue Act, 1979. The provisions of West Bengal Act XLIV of 1979 to be applicable to *thika* tenants.

(2) The Schedule to the West Bengal Land Holding Revenue Act, 1979, shall not apply to a *thika* tenant. The following shall be deemed to be the Schedule to the said Act being applicable to a *thika* tenant:—

In the case of any holding of a *thika* tenant the rate of revenue on land holding:—

- (a) on the first rupees 10,000 of the total rateable value—5 paise in the rupee,
- (b) on the next rupees 10,000 of the total rateable value—8 paise in the rupee,
- (c) on the balance of the rateable value—10 paise in the rupee.

33 of 1976.

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