

**EJECTION SUIT NO. : 106 OF 1999**  
**(CNR No. WBPS01-000078-1999)**  
**(JO CODE No. WB01229)**

Order No. - 298

Dt. 16.03.2024

Today is fixed for passing necessary order.

Both sides file hazira.

The case record is taken up for passing necessary order in respect of the application under Section 17(2) and 17(2A)(b) of West Bengal Premises Tenancy Act filed by the defendants in this case.

Perused the petition along with the evidence as well as the documentary exhibits on record filed at the time of hearing of the case by the parties.

On perusal, it appears that the defendants have filed the application under Section 17(2) of West Bengal Premises Tenancy Act praying for adjudication of the bona fide dispute raised in the application about the relationship of landlord and tenant between the plaintiff and the defendants in this case. It is stated by the defendants that they are Thika tenant in respect of the suit property previously under the then landlord and at present under the Govt. of West Bengal after the promulgation of Calcutta Thika Tenancy (Acquisition and Regulation) Act 1981. It is further stated by the defendant that they have been paying periodical rent to the Govt. of West Bengal punctually since the introduction of the said Act, there cannot subsist any relationship of landlord and tenant between the plaintiff and the defendants. It is contended by the defendants that in view of such dispute regarding the ownership and/or title of the plaintiffs as well as regarding relationship of landlord and tenant, they are not the defaulters within the meaning of West Bengal Premises Tenancy Act 1956. Accordingly, the defendants have prayed for determination by this court that the instant suit is not maintainable as there is no relationship of landlord and tenant between the parties in this suit.

Contd....P/2

On the other hand, defendants have also filed an application under Section 17(2A)(b) of West Bengal Premises Tenancy Act 1956 and the said application, they have disputed as to the relationship of landlord and tenant between the plaintiff and the defendants but at the same time, they have also prayed for permitting them to deposit the arrear rent, if any, by installments of Rs.275/- per month.

Plaintiff, on the other hand, in her written objection, denied all the said allegations made by the defendants disputing the relationship as to the landlord and tenant in between the plaintiff and the defendants in this case and stated specifically that the defendants and their predecessor-in-interest were and are all along permanent tenants within the meaning of the West Bengal Premises Tenancy Act. She has further stated that the Govt. of West Bengal cannot have any interest in the suit property of the plaintiff as the suit property under litigation did not and does not vest in the Govt. of West Bengal by the Calcutta Thika Tenancy Act 1981. According to the plaintiff, her predecessor and thereafter herself all along is the owner of the structure standing in the suit premises and they have all along collected rents as landlord within the meaning of West Bengal Premises Tenancy Act and for that reasons, the alleged claim of Thika tenants by the defendants is not maintainable as per law. It is further stated by the plaintiff that mere payment in the name of Govt. of West Bengal does not create any right, title and interest as Thika tenancy within the meaning of Calcutta Thika Tenant (Acquisition and Regulation) Act 1981. According to the plaintiff, the landlord-tenant relationship between herself and the defendants within the meaning of West Bengal Premises tenancy Act has been subsisted before the determination of the contractual tenancy and this apprehension of existence of landlord-tenant relationship within the meaning of the said Act makes the defendants more cautions by filing another application under Section 17(2A)(b) of West Bengal Premises Tenancy Act that if this application

under Section 17(2) of West Bengal Premises Tenancy Act does not hold good, they may take the benefit under Section 17(2A)(b) of West Bengal Premises Tenancy Act by paying the arrear rent by installments. The filing of the application under Section 17(2A)(b) of West Bengal Premises Tenancy Act indicates that the defendants are not sure of their stand as Thika tenants. The plaintiff has contended that this dispute is a sham one and the same has no locus standi in the eye of law. The plaintiff has denied also that the defendants are not the defaulters within the meaning of West Bengal Premises Tenancy Act 1956 and according to her, the defendants are defaulter since the month of Srawan 1390 B.S. It is alleged by the plaintiff that the defendants, by not paying rents since 1986, are trying to hide themselves under the cloth of imaginary Thika Tenancy right just to harass the plaintiff who is very old. Accordingly, the plaintiff has prayed for dismissal of the instant application with costs. Now, as regards to the application under Section 17(2A)(b) of West Bengal Premises Tenancy Act, 1956 filed by the defendants, plaintiff has denied all the allegations made in the said application and contended the same thing as made in the written objection to the application under Section 17(2) of West Bengal Premises Tenancy Act filed by the defendants. But it is also added that it is the cunningness of the defendants that they filed one petition under Section 17(2) of West Bengal Premises Tenancy Act just to raise a sham dispute of relationship which they know very well that the said application will not be entertained and that is why, they have taken the second line of defence by filing the present application under Section 17(2A)(b) of West Bengal Premises Tenancy Act just to avoid of the installments benefit of the West Bengal Premises Tenancy Act. According, to the plaintiff, defendants are running a furniture business in the suit premises and earning a lot both from the business and also from the sub-tenants that they have illegally inducted and for that, the question of installments payment of the arrear rent does not arise and the said

defendants are economically sound that they can be ordered to pay all the arrear amount at a time. Plaintiff has further stated that due to defendants' defaulter in respect of payment of rent which has already amounting to Rs. 20,000/-, the plaintiff is not in a position to pay the Municipal Tax including the water tax. Therefore, the plaintiff has also prayed for dismissal of the instant application with cost.

Defendants have filed affidavit in reply against the said written objections filed by the plaintiff against the applications under Section 17(2) and 17(2A)(b) of West Bengal Premises Tenancy Act, 1956 stating that the plaintiff nor her predecessor-in-interest were ever the owners of the structure standing in the land in question. According to the defendants, they and their predecessor-in-interest have all along paid and paying ground rent only and question of receiving any rent for the structure does not arise at all in as much as they are the owners of the said structure. It is stated further by the defendants that in as much as they were the Thika Tenants in respect of the suit property under the then owners and after the promulgation of the Calcutta Thika Tenancy (Acquisition and regulation) Act, 1981, they become the tenants under the Govt. West Bengal and they are liable and duty bound to pay the ground rent to the Govt. of West Bengal which they have complied with and have been discharging their duties.

After hearing the rival contentions made by the parties, it is to be considered how far the defendants have able to prove their case.

On perusal of the materials on record, it appears that previously, Ld. Judge, 4<sup>th</sup> Bench of Presidency Small Causes Court Vide. Order No. 127 dated 18.03.2008 has disposed off the application under Section 17(2) of W.B.P.T. Act filed by the defendants holding that there was landlord/ tenant relationship between the parties and the defendants were tenants under the plaintiff.

Against the said order, one revisional application was preferred before the Hon'ble High Court at Calcutta and Hon'ble Court has been pleased to set aside the said order in C.O. No. 1284 of 2008 dated 15.07.2008 directing to this Court to frame issue between the landlord/ tenant relationship between the parties and on the basis of the oral and documentary evidence as may be adduced by the parties.

After receiving the order from the Hon'ble High Court, Calcutta, this Court observed that issue regarding relationship of landlord/ tenant between the parties has already been framed and the matter was fixed for hearing of the said petition.

Subsequently, the defendants have filed affidavit-in-chief and supplementary affidavit-in-chief and Manik Lal Sett has been examined as P.W-1 and the following documents have been marked as exhibited.

Exhibit – 1 : Two sheets carbon copy of receipt and return in form A submitted by him regarding submission of record of claim of Thika Tenancy including form of return of land submitted before Controller under Calcutta Thika Tenancy Act.

Exhibit – 2 : The original certified copy of lease deed being no. 2410/1910.

Exhibit – 3 (Collectively) : Ground rent receipt with effect from Pous 1336 B.S. to Falgun 1387 B.S.

Exhibit – 4 (Collectively) : 34 sheets Thika tenancy rent deposited challans permitted by Thika Controller and deposited in the office of Collector of Calcutta.

Exhibit – 5: Two sheets occupier's tax receipts issued by Corporation of Calcutta.

Exhibit – 6: The bainanama executed between Monmotha Nath Kundu & other and Kutiram Kabi & others.

Exhibit – 7 (Collectively) : Six sheets the Property Tax issued by K.M.C.

Exhibit – 8 : Photocopy of the letter dated 27.06.1952.

Exhibit – 9 (Series) (With objection) : Two Trade licences.

Exhibit – 10 (With objection) : The tax receipt of K.M.C. on demand.

Exhibit – 11 (Series) (With objection) : The notice of Thika Controller.

One Jhawharlal Sett was examined as A.P.W-2, one Gaurangamay Sett was examined as A.P.W-3, Ratanlal Sett was examined as A.P.W. - 4 and Sri Sanjay Kundu was examined as A.P.W-5.

In order to disprove the case of the defendant, Smt. Parichita Basu, the substituted plaintiff examined herself as O.P.W-1 and she has relied upon the documents which were filed by her predecessor at the time of her evidence in respect of the application under Section 17(2) of West Bengal Premises Tenancy Act, 1956.

In evidence-in-chief of P.W-1, he has deposed that the land measuring about 6 cottahs (vacant land) situated at 80, Wellesly Street now known as Rafi Ahmed Kidwai Road, P. S. - Taltola, Kolkata – 700013, originally belonged to the Estate of Sri Bhupendra Nath Basu, son of Late Ramtanu Basu of 14, Balaram Ghosh Street, Calcutta was leased out for 7 years as Thika Lease by a registered deed dated 01.07.1910 registered in Book no. 1 Volume no. 81, Pages 82 to 85 being no. 2410 for the year 1910 in the office of the Sub-registrar, Calcutta on 02.09.1910 in favour of the lease penaram alias Pelaram Kabi son of Late Balaram Kabi with the right to make structure thereon the land at monthly rent of Rs. 12/- per cottah i.e. Rs. 72/- total and a premium of selami of Rs. 50/-. The said Penaram Kabi alias Pelaram Kabi had established a business of Timber and Logs under the name and style of "PENARAM KABI & CO." with his two own brothers viz. (i) PUTIRAM KABI & (ii) HARICHARAN KABI. The said lease of seven years for the said land was with the right of

ownership of structure made or to be made by the said lease and so the ownership of structure built on the said land for the said business was with the said Penaram and his two brothers as aforesaid which also supported by the said lease Deed and was going on even on expiry and the said lease was not ended nor he surrendered the lease.

He further deposed that Sri Penaram Kabi, Sri Putiram Kabi and Sri Hari Charan Kabi were running the business under the name and style of "PENARAM KABI & CO." making a shed of some brick pillars wooden logs, bars, bamboos, wooden floors and corrugated tin shed as per Lease Deed i.e. a two storied structure (MATHKOTTHA) on the said land and some wooden structure in back portion, privy etc. i.e. upper structure for residential purpose and also started the said business on the ground still lying kutchha, therein in timber and logs etc. in a portion of said structure also started residing in certain upper portion of said structure with wooden floor and all the roofs were made of corrugated tap water line there and these are the facts to state in short of the Thika Tenancy of the said lease and thereafter ourselves as lessee on ground rent although on record and the both the lessees held to be Thika Tenants on ownership of structure till date without any eviction and subsequently, to the said Lease Deed No. 2410 of 1910 by a registered Deed of Sale being Deed No. 65 for the year 1929 (after about 19 years of Lease of the vacant land) her predecessors had purchased the said structure and from the date of purchase of the said structure as in January, 1929 and/or her said predecessors/purchasers of the petitioners became the Thika Tenants on payment both the said predecessor and on receiving due consideration by Putiram Kabi, son of late Balaram Kabi, Sri Guruprosad Kabi & Jugal Charan Kabi, both sons of late Hari Charan Kabi, minor Sri Prem Prosad Kabi, son of late Satya Charan Kabi and Grand son of late Penaram Kabi represented by guardian Sri Guru Prosad Kabi and Dulal Chand Kabi appointed under the Will of the father (late Satya

Charan son of late Penaram) of the said minor Sri Prem Prosad Kabi as Thika tenants of said land and owners of said structures sold and delivered possession of the said property/ structure with the land and goods lying there at to Shri Manmatha Nath Kundu. Son of late Ramnath Kundu and Shri Jatindra Mohan Sett, son of late Mohendra Nath Sett were her said predecessor. The said Deed of Sale was executed on 4<sup>th</sup> January – 1929 and was registered on 7<sup>th</sup> January – 1929 before the Sub-registrar of Assurance of Calcutta and the certified copy of the said Deed of Sale and from certified copy a fair typed copy is submitted and marked with Exhibited and the said Deed of Sale that the sale and transfer were made to meet the dues of the landlords as claimed in a suit for rent of said lands and after purchase of the said structure, the said Monmotha Nath Kundu and Jatindra Mohon Sett got the Thika rent receipts (for ground-land rent) in their names from Bhupen Basu Estate through J. N. Basu available from Pous 1336 corresponding to 06.03.1930 till Jaistha – 1341 corresponding to 11.11.1934 as Thika Tenants (jointly) by recovery of ground-land rent by all landlords only as per the said receipts collectively and the said Monmotha Nath Kundu and Jatindra Mohan Sett being the Thika tenants of the said land and owners of said structure at 80, Wellesly Street, Calcutta began to enjoy the same and reside therein and also stated a business on a portion of ground floor by a business of wooden furniture like Almirah, table, chairs etc. and still residing thereat and running business by their successors/ legal heirs, the petitioners.

He also deposed that the said thika tenants Shri Monmotha Nath Kundu and Jatindra Mohan Sett got their names duly mutated by the then landlords as Thika tenants and started paying ground rent to the landlords in respect of said land against valid ground rent receipts granted by the then landlords and others and the said ground rent receipts being rent receipts from Pous 1336 till Falgun 1387 dated 07.04.1981 as last rent receipt issued by Smt. Hira Basu on ground

rent only are marked as exhibited **Exhibit – 3 (Collectively)**.

He further deposed that after the commencement of the Calcutta Thika Tenancy Act 1949 and amendments said Monmotha Nath Kundu and Jatindra Mohan Sett became the statutory and/or contractual Thika tenants as per the said Act in respect of the said property under the landlords being the Thika tenants are protected under the said Act and started paying ground rent to the landlords lastly to Smt. Hira Basu till 07.04.1981 or till Falgun 1387 B.S. lastly paid in the name of Manik Lal Sett and Sailendra Nath Kundu and one of the Thika Tenants, Monmotha Nath Kundu died intestate and in his place his son Sailendra Nath Kundu became one of the Thika Tenants with Jatindra Mohan Sett and Shri Jatindra Mohan Sett, one of the Thika tenants died intestate and in his place his son Tirtheswar Sett became one of the Thika Tenants.

He also deposed that ground rent receipts of rent paid by Tirtheswar Sett and Sailendra Nath Kundu, then paid to Smt. Hira Basu and her husband Ranjit Kumar Bose as ground rent and all such, ground rent receipts are made **Exhibit – 3 (Collectively)**.

He further deposed that the said tenancy was absolutely a Thika tenancy before and after under the Calcutta Thika Tenancy Act, 1949 and 2001 and the said landlords/ owners of the land filed suit no. 2295 of 1951 in Calcutta High Court against the said Tirtheswar Sett and Sailendra Nath Kundu and it was amicably settled out of Court. It clearly proves the Thika tenancy as on the said date and on 07.04.1981 for the month of Falgun 1378 by ground rent receipt.

He also deposed that one of the Thika Tenants Tirtheswar Sett died on 26.12.1963 intestate leaving his heirs (a) Smt. Rani Bala Sett, widow (now deceased) (b) Sri Manick Lal Sett, son (c) Sri Ratan Lal Sett, son (d) Jawhar Lal Sett, son (e) Gourangmoy Sett, son and Sri Sailendra Nath Kundu expired on 28.09.2009 as intestate and inherited by Sri Sanjoy Kundu and the four sons or four successors of late Tirtheswar Sett and Sri Sanjoy Kundu son of Late

Sailendra Nath Kundu, successor of late Monmotha Nath Kundu became the present and existing Joint Thika Tenants of the said land of six cottahs and also became the owner of the structure by virtue of the Sale Deed No. 65 for the year 1929 and the ground rents were duly paid by the Thika tenants i.e. by the successors of the said Sailendra Nath Kundu of the said late Monmotha Nath Kundu and Sri Manik Lal Sett and others i.e. the successors of late Tirtheswar Sett in respect of said land and all the rent receipts for ground rent as issued by the said land owners lastly by Smt. Hira Basu are submitted herewith and the said ground rent receipts only name of Manik Lal Sett as successor of late Tirtheswar Sett and the name of Sailendra Nath Kundu are given but this error on the part of the owners does not prevent the legal rights or the actual Thika Tenancy of other legal heirs of late Tirtheswar Sett and late Sailendra Nath Kundu, as it was an error of the landlords as non-joinder and/or mis-joinder of necessary parties in ground rent receipts but they were fully aware of the facts and deliberately and intentionally had been committing mischief.

He also deposed that after the commencement of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 and W.B.T.T. Act, 2001 the said land of premises no. 80, Wellesly Street (now known as 80, Rafi Ahmed Kidwai Road, Calcutta – 13) wherein said Thika Tenancy is situated has vested with the Government of West Bengal and the defendants have become the Thika Tenants under the State of West Bengal in respect of the said property and as the thika tenants are/ were paying rents to the State of West Bengal by depositing the same in the Calcutta Collectorate and they are now absolutely lawful and full fledged Thika tenants under the State of West Bengal in respect of the said property/land and owner of structure situated at 80, Rafi Ahmed Kidwai Road, Calcutta – 700 013 under the provisions of the Calcutta Thika Tenancy (Acquisition & Regulations) Act, 1949 as amended in 1981 and the Act, 2001 and upto date. The land measured about six cuttahs and the structures

held to be "MATHKOTTHA" and the defendants reside in a portion thereof and have their business in the ground floor and the said business is also giving wooden furniture on hire and they also having Bharatias under Thika Act Viz. Md. Halim Mullick, Manisha Saha, Dr. H. P. De, Gouri Sankar Commercial Studio and Kishori Mohan Paul all lawful Bharatias under Thika Tenancy Act under the defendants.

The successors of said Sri Bhupendra Nath Basu and Jatindra Nath Basu & Ors. till Smt. Hira Basu as lastly issued ground rent bills and receipts as the purported original landlord and owners of the said land have no right, title interest in respect of the said grand or any portion thereof but Smt. Hira Basu, one of the successor in the line of erstwhile owner of the said land filed the instant Ejectment Suit before this court claiming rent by stating falsely and by producing a fraudulent purported building plan dated 16.08.1912 that they had let out a building where as the said purported owners had no building plan on record of Calcutta Corporation in view of sale Deed no. 65 of 1929 and lease Deed for vacant land no. 2410 of 1910.

He also deposed that the purported owner Smt. Hira Basu's Case is that in the year 1912 they got sanctioned building plan for the premises no. 80, Wellesley Street now Rafi Ahmed Kidwai Road, Kolkata – 700013 so the said premises with building was let out to the then Thika tenants and not for vacant land and so the grant was not Thika tenancy and the statements and the claims and the said purported plan made by the purported fraudulent documents are absolutely false, frivolous and cannot be taken into consideration.

He was further deposed that the vacant land of six cuttachs was leased out in the year 1910 for seven years by Deed No. 2410 with effect from Chitra, 1310 to Falgun 1329 by Deed No. 2410 and said grant of lease was made by the Estate of Babu Bhupendra Nath Bose son of Late Ramtanu Bose of 14, Balaram Ghosh Street, Kolkata in favour of one Sri Penaram @ Pelaram Kabi

son of Late Baloram Kabi with his two brothers had established the business under the name and style of "Penaram Kabi & Co." who was given rights to erect structure at his own costs and as owner of the structure and the said structure on the land as leasehold was enjoyed by the lessees and his brothers his business and residence till 1929 without any eviction and after death of Penaram @ Pelaram Kabi his legal heirs / son Satyacharan Kabi, Kutiram Kabi and Haricharan Kabi were running the business in possession of the said land and structure and Putiram Kabi, son of late Balaram Kabi, Sri Guruprosad Kabi & Jugal Charan Kabi, both sons of late Hari Charan Kabi, minor Sri Prem Prosad Kabi, son of late Satya Charan Kabi and Grand son of late Penaram Kabi represented by guardian Sri Guru Prosad Kabi and Dulal Chand Kabi appointed under the Will of the father (late Satya Charan son of late Penaram) of the said minor Sri Prem Prosad Kabi as Thika tenants of said land and owners of said structures sold and delivered possession of the said property/ structure with the land and goods lying there at to Shri Monmatha Nath Kundu and Shri Jatindra Mohan Sett by Deed of Sale was executed on 4<sup>th</sup> January – 1929 and was registered on 7<sup>th</sup> January – 1929 before the Sub-registrar of Assurance of Calcutta and till 1929 the said land and structure were owned by the said lessee M/s. Kabi without any eviction and after such sell and purchase of the said structure made of certain pilers without any foundation plan for business and residence, the predecessor of the present defendant got their ground rent receipts from the former purported landlords and owners of the said leasehold land, J. N. Basu signed by the then rent collector for Bhupen Bose Estate issued ground rent receipts to Monmotha Nath Kundu and Jatindra Mohan Sett from Pous 1336 (06.03.1930) to Jaistha – Ashar, 1341 (11.11.1934), Smt. Basanta Kumari Basu for Bhupen Bose Estate issued ground rent receipts to Monmotha Nath Kundu and Jatindra Mohan Sett from Shraban, 1341 (22.12.1934) to Chatra, 1341 (10.07.1935), Satyendra Nath

Basu and K. K. Basu for Bhupen Bose Estate issued ground rent receipts in the joint names of M/s. Kundu and Sett from Baishakh, 1346 (05.06.1909) to Baishakh, 1351 (05.06.1944), Smt. Bijon Bala Basu for self and natural guardian of Rabin Kumar Basu (minor) and by Ranajit Kumar Basu for Bhupen Bose Estate issued ground rent receipts to M/s. Kundu and Sett from Ashar, 1351(04.08.1944) to Jastha, 1352 (27.06.1945), Ranjit Kumar Basu and Rabin Kumar Basu representing Satyen Bose Estate issued ground rent receipts from Kartick, 1352 (30.11.1945) to Shravan, 1355 to M/s. Kundu and Sett, Ranjit Kumar Basu for the Satyen Bose Estate received money orders ground rent from Tirtheswar Sett sent for M/s. Kundu and Sett from Ashwin, 1355 (09.11.1948) to Chaitra, 1356 (16.05.1950), Ranjit Kumar Basu for the Bijan Bala Estate issued ground rent receipts for Falgun 1963 in the joint names Tirtheswar Sett and Sailendra Nath Kundu and then ground rent receipt issued by Smt. Hira Basu in the joint names of Manik Lal Sett and Sailendra Nath Kundu till the month of Falgun, 1387 (07.04.1981).

He further deposed that the purported building plan is not a building which itself defines but is a forgery and fraudulent document as manufactured by the said purported landlords owners herein since the land was leased for 7 years from Chaitra 1316 to Falgun 1323 (Lease dated 02.09.1910) so there was no scope for any sanction of building plan by the Calcutta Municipal Corporation for or by the owners since the land was under possession of the said lessee till 1929 and still the same structure lying threat sold to the predecessors of the present petitioners with the same structure as evident from the sale deed no. 65 for the year 1929 and so there can not be any such building (pucca) constructed nor there could be any such sanction of any building plan in the year 1912 (16.08.1912) while the land and the structure both were in existence and in possession of the lessees/Thika tenants from Chaitra 1316 to till date and moreover, there is/ was no such building ever made/ constructed in or after

1912 as per the said forged and fraudulent and planted and projected plan presented and/or produced by the purported owners and apart, the Thika Tenancy Controller's office deputed the officer for inspection of the land and structure before accepting the land ground rent who certified on 20.04.1992 that the structure remains on the land is a 'Mathkotha' made of wooden platform, G.I. Roof and 1<sup>st</sup> floor roof is of tin and asbestos in all 17 rooms and the Thika tenants use 9 rooms including shops and there remain Bharatias under Thika tenants and are 6 cuttaha of land (in the file of the Ld. Thika Controller and such report is /was submitted. The said forged and fraudulent building plan and the report dated 20.04.1992 of Thika Inspector also supported that there was no such pucca building as per the said fraudulent and forged plan made by the owners for planting a false case of building tenancy or 'premises tenancy' by the said manufactured plan in or about 16.08.2012. By the nature of the said plan it will be proved that the said building as per the said plan was never in existence nor any building plan sanctioned by the Calcutta Corporation and there is no such record in the office of the Calcutta Corporation from 1912 till date that there was any such sanction of any 'building plan' such a building plan. On further inspection order of the Ld. Court the said forged and fraudulent building plan was further proved false, forged and fraud and there is/was no existence of any such building plan or building ever constructed by the owners nor let out to the Thika tenants nay such building or premises within the meaning of W. B. Premises Tenancy Act, 1956 or the Act, 1997 as falsely made out in Ejectment Suit No. 106 of 1999 by a forged and fraudulent building plan purportedly made on 16.08.2012 which itself will prove that was not a "building plan".

The records of the Calcutta Corporation (now KMC) never recorded any such construction of pucca building as per the said forged and fraudulent plan rather it is recorded that there is a 'Mathkotha' as still now remains. So, we are not the tenants under W.B.P.T. Act, 1956 having no relationship with the plaintiff

as 'Landlord and Tenant' under W.B.P.T. Act, 1956 and the Thika tenants we will submit further statement/reply and documents to the claim and statements of the purported owners/opposite party before the hearing of the case when takes place and the matter of Thika tenancy is now pending before the Controller of Thika tenancy and this court having no jurisdiction to try the matter and the application is made bonafide and in the interest of justice and without prejudice to the rights and contentions of the petitioners in this matter and claim and the claim of the petitioners, also they reserve their lawful rights against the O.P. and her agents for producing and submitting a forged and fraudulent building plan dated 16.08.2012 and the petition already submitted by the petitioners earlier in the matter of the applications under Section 17(2)(2A)(b) of the Act, 1956 are all to be read together with this petitions for fair trial and order which we undertake to refer at the hearing and the petitioners are Thika tenants and the matter is related to Thika tenancy and the same cannot be tried by this court since having no relationship of 'Landlord and Tenancy' in W.B.P.T. Act, 1956.

The P.W-1 in his cross-examination deposed that Lt. Bhupen Basu was the original owner of the premises being no. 13, Balaram Ghosh Street and the suit premises is on more than six Katha land and the original lease deed dated 01.07.1910 is not in his custody and he has filed the certified copy of lease deed of 1999 and after Bhupendra Nath Bose, Sarat Kumar estate issue the deed and Hira Basu was the owner of the 83, Rafi Ahmed Kidwai Road which is just in the Northern side in the suit premises and the plaintiff was the owner of the premises no. 82B, Rafi Ahmed Kidwai Road which is just in the Eastern side of the suit premises as mentioned in the schedule of the plaint and he does not file the original lease deed and J. N. Basu was the owner of the land when the lease deed was executed and there was no such person namely J. N. Basu who was the owner of said property and he has filed rent receipt of Pous, 1336 B.S. corresponding to March, 1930 and the name of the occupier is mentioned

as Estate Monmotha Nath Kundu and Jotindranath Sett, Wellesley Timber Trading Company and presently he did not pay any rent as occupier and Penaram Kabi had taken lease in 1910 at the rate of Rs. 12/- per Katha and when they purchased the structure the rent was Rs. 110/- in 1910 and then the rent bill was issued in the name of his predecessor and he has not filed any document to show that they were the Thika tenant as per the Act of 1949 and they do not received any document from the office of Thika Controller that the suit premises was vested with the Government of West Bengal and he voluntarily tendered rent before Thika controller and he did not receive any letter from the Ld. Thika Controller and he tendered such rent on Ad-hoc basis and the lease of the year 1910 was valid till 1929 and he is still running his business of furniture in the ground floor of the suit building and there are other five shop rooms in the ground floor and those business are running by sub-tenant and they are also Thika tenant and he has not filed any document issued by K.M.C. or Thika Controller to suppress the fact that the property was registered as Thika property and he has not filed any authority letter issued by the other defendants.

The A.P.W-2 in his evidence-in-chief has deposed that he with his brothers have inherited the suit property as one of the Thika tenants through his predecessors father Tirtheswar Sett and grandfather Lt. Jotindra Mohan Sett and Putiram Kabi and Others were granted lease known as Thika tenancy in respect of the suit land by Zamindari Estate of Babu Bhupendra Basu stated to be the predecessor of the present plaintiff in this suit by a lease Deed no. 2410 of 1910 registered Deed to Putiram Kabi who made cutchha structure thereon by wooden frame and corrugated tin shed/ asbestos shed roof and said Putiram Kabi and Others were the owner of the structure as Thika tenants and said Putiram Kabi and Others had sold/ transferred the said Kutchha structure thereon by wooden frame and corrugated tin shed/ asbestos shed roof to

Monmoth Nath Kundu father of Sailendra Nath Kundu and Jyotindra Mohan Sett, father of Tirtheswar Sett, the predecessor of the defendant no. 1 Manik Lal Sett and said Tirtheswar Sett died then myself with the present defendants had inherited the said Thika tenancy of the suit land also became the joint owners of the said structure and he has filed the certified copy of lease Deed of 2410 of 1910 and certified copy of Deed of Conveyance dated 04.01.1929.

He proved the ground rent receipts for the month of Jaistha and Ashar, 1336 B.S. granted by J. N. Basu on behalf of Bhupen Bose Estate in favour of Monmotha Nath Kundu and Jatindra Mohan Sett for the suit property and these are the ground rent receipts for the suit land granted by Ranjit Kumar Basu in favour of Sailendra Nath Kundu and Tirtheswar Sett.

He further deposed that Putiram Kabi was a Thika tenant and he transferred the said structure upon the said leasehold Thika land and said Putiram Kabi had sold the said structure to Monmoth Nath Kundu and Jyotindra Mohan Sett and the said land was under lease for Thika tenancy and the said land was acquired by the Government of West Bengal and the Thika Controller had accepted ground rent from the defendants Manik Lal Sett (defendant no. 1) towards ground rents dated 18.01.1982, 31.03.1984, 01.01.1988 till 31.12.1988 and then 01.01.1999 to 31.12.1999 and then 31.12.2002 in favour of the Government of West Bengal and they never paid any rent for premises tenancy to the plaintiff and the owner of the land of the Government of West Bengal and the structure owned by them as Thika tenants so they do not accept the plaintiff as their landlord or owner of the land any more and there was no such tenancy as define under West Bengal Premises Tenancy Act, 1956 and they all have become the joint Thika tenants in respect of the said Thika land and ground rent paid and deposited to the Government through Calcutta Collectorate and there as no such premises tenancy and the Thika tenancy was established by virtue of the order of the Thika Controller for depositing the ground rent in the office of

Calcutta Collectorate and relationship of landlord/ tenant never exists between the parties as define under West Bengal Premises Tenancy Act, 1956 or 1997.

During cross-examination, the said witness has admitted that he has no personal knowledge regarding the lease Deed 2410 of 1910 and he has no personal knowledge regarding the construction of the structure as stated by him and further deposed that Putiram Kabi was the owner of the structure or recorded as Thika tenants under Estate of Bhupendra Nath Basu and he has no knowledge whether Putiram Kabi made the structure after obtaining permission of the authority concerned and in the receipt of ground the name of J. M. Sett and Manmatha Nath Kundu and thereafter, receipt was issued in the name of Manik Lal Sett and Sailendra Nath Kundu and he admitted that they voluntarily deposited rent before the Thika Controller by filing up on and they deposited rent as per their wish and he has not filed the challan and original letter as mentioned in his chief and he has not filed document in support of the fact that he himself and his other brothers and sisters became the joint Thika Tenants in respect of the suit land and also admitted that before despiting rent of Thika Controller by filing application they used to tender rent to the plaintiff Hira Basu.

The A.P.W-3 in his evidence-in-chief deposed that he has deposed that the land measuring about 6 cuttahs (vacant land) situated at 80, Wellesly Street now known as Rafi Ahmed Kidwai Road, P. S. - Taltola, Kolkata – 700013, originally belonged to the Estate of Sri Bhupendra Nath Basu, son of Late Ramtanu Basu of 14, Balaram Ghosh Street, Calcutta was leased out for 7 years as Thika Lease by a registered deed dated 01.07.1910 registered in Book no. 1 Volume no. 81, Pages 82 to 85 being no. 2410 for the year 1910 in the office of the Sub-registrar, Calcutta on 02.09.1910 in favour of the lease penaram alias Pelaram Kabi son of Late Balaram Kabi with the right to make structure thereon the land at monthly rent of Rs. 12/- per cottah i.e. Rs. 72/- total and a premium of selami of Rs. 50/-. The said Penaram Kabi alias Pelaram

Kabi had established a business of Timber and Logs under the name and style of "PENARAM KABI & CO." with his two own brothers viz. (I) PUTIRAM KABI & (ii) HARICHARAN KABI. The said lease of seven years for the said land was with the right of ownership of structure made or to be made by the said lease and so the ownership of structure built on the said land for the said business was with the said Penaram and his two brothers as aforesaid which also supported by the said lease Deed and was going on even on expiry and the said lease was not ended nor he surrendered the lease.

He further deposed that Sri Penaram Kabi, Sri Putiram Kabi and Sri Hari Charan Kabi were running the business under the name and style of "PENARAM KABI & CO." making a shed of some brick pillars wooden logs, bars, bamboos, wooden floors and corrugated tin shed as per Lease Deed i.e. a two storied structure (MATHKOTTHA) and said structure was purchased by his grandfather Monmotha Nath Kundu and Jatindra Mohan Sett, by a registered Deed of Sale being Deed No. 65 for the year 1929 and his grandfather and thereafter, his father with the near relations became the Thika Tenants in place of Pelaram Kabi and Others by purchased of the said structure and accepted by the then Zamindar Bhupen Nath Basu Estate by granting rent receipts for the same.

He further deposed that he has inherited the said Thika tenancy from his father with his three elder brothers and sisters and they are not tenants under West Bengal Premises Act, 1956 or 1997 and the plaintiffs had falsely filed the suit against us.

During cross-examination, the said witness has deposed that he has no knowledge about the contents of paragraph 1 in his chief and admitted that after the year 1963, the landlord issued rent receipts in the name of defendant no. 1 and even prior to filing of this suit, they issued rent receipts in his name and he did not filed any objection to the landlord in this respect and he has not taken

any steps to prove thika tenancy except filing the affidavit-in-chief and in the rent bill it is evident that it contents the name of defendant no.1.

The A.P.W-4 in his evidence-in-chief deposed that he has deposed that the land measuring about 6 cottahs (vacant land) situated at 80, Wellesly Street now known as Rafi Ahmed Kidwai Road, P. S. - Taltola, Kolkata – 700013, originally belonged to the Estate of Sri Bhupendra Nath Basu, son of Late Ramtanu Basu of 14, Balaram Ghosh Street, Calcutta was leased out for 7 years as Thika Lease by a registered deed dated 01.07.1910 registered in Book no. 1 Volume no. 81, Pages 82 to 85 being no. 2410 for the year 1910 in the office of the Sub-registrar, Calcutta on 02.09.1910 in favour of the lease penaram alias Pelaram Kabi son of Late Balaram Kabi with the right to make structure thereon the land at monthly rent of Rs. 12/- per cuttah i.e. Rs. 72/- total and a premium of selami of Rs. 50/-. The said Penaram Kabi alias Pelaram Kabi had established a business of Timber and Logs under the name and style of "PENARAM KABI & CO." with his two own brothers viz. (I) PUTIRAM KABI & (ii) HARICHARAN KABI. The said lease of seven years for the said land was with the right of ownership of structure made or to be made by the said lease and so the ownership of structure built on the said land for the said business was with the said Penaram and his two brothers as aforesaid which also supported by the said lease Deed and was going on even on expiry and the said lease was not ended nor he surrendered the lease.

He further deposed that Sri Penaram Kabi, Sri Putiram Kabi and Sri Hari Charan Kabi were running the business under the name and style of "PENARAM KABI & CO." making a shed of some brick pillars wooden logs, bars, bamboos, wooden floors and corrugated tin shed as per Lease Deed i.e. a two storied structure (MATHKOTTHA) and said structure was purchased by his grandfather Monmotha Nath Kundu and Jatindra Mohan Sett, by a registered Deed of Sale being Deed No. 65 for the year 1929 and his grandfather and

thereafter, his father with the near relations became the Thika Tenants in place of Pelaram Kabi and Others by purchased of the said structure and accepted by the then Zamindar Bhupen Nath Basu Estate by granting rent receipts for the same.

He further deposed that the plaintiff is not the owner of the said land Northern structure but was collector of land rent prior to taking over the said by thika tenancy.

He also deposed that he has inherited the said thika tenancy from his father with his three elder brothers and sisters and they are not tenants under West Bengal Premises Act, 1956 or 1997 and the plaintiffs had falsely filed the suit against us.

During cross-examination, the said witness has deposed that he has no knowledge about the contents of paragraph 1 in his chief and admitted that landlord issued bill in the name of Sailendra Nath Kundu and Manik Lal Sett and successor and he has not filed the order passed by the Thika Rent Controller and Thika Controller did not issue any letter to him.

The A.P.W-5 in his evidence-in-chief deposed that he has deposed that the land measuring about 6 cuttachs (vacant land) situated at 80, Wellesly Street now known as Rafi Ahmed Kidwai Road, P. S. - Taltola, Kolkata – 700013, originally belonged to the Estate of Sri Bhupendra Nath Basu, son of Late Ramtanu Basu of 14, Balaram Ghosh Street, Calcutta was leased out for 7 years as Thika Lease by a registered deed dated 01.07.1910 registered in Book no. 1 Volume no. 81, Pages 82 to 85 being no. 2410 for the year 1910 in the office of the Sub-registrar, Calcutta on 02.09.1910 in favour of the lease penaram alias Pelaram Kabi son of Late Balaram Kabi with the right to make structure thereon the land at monthly rent of Rs. 12/- per cuttah i.e. Rs. 72/- total and a premium of selami of Rs. 50/-. The said Penaram Kabi alias Pelaram Kabi had established a business of Timber and Logs under the name and style

of "PENARAM KABI & CO." with his two own brothers viz. (I) PUTIRAM KABI & (ii) HARICHARAN KABI. The said lease of seven years for the said land was with the right of ownership of structure made or to be made by the said lease and so the ownership of structure built on the said land for the said business was with the said Penaram and his two brothers as aforesaid which also supported by the said lease Deed and was going on even on expiry and the said lease was not ended nor he surrendered the lease.

He further deposed that Sri Penaram Kabi, Sri Putiram Kabi and Sri Hari Charan Kabi were running the business under the name and style of "PENARAM KABI & CO." making a shed of some brick pillars wooden logs, bars, bamboos, wooden floors and corrugated tin shed as per Lease Deed i.e. a two storied structure (MATHKOTTHA) and said structure was purchased by his grandfather Monmotha Nath Kundu and Jatindra Mohan Sett, by a registered Deed of Sale being Deed No. 65 for the year 1929 and his grandfather and thereafter, his father with the near relations became the Thika Tenants in place of Pelaram Kabi and Others by purchased of the said structure and accepted by the then Zamindar Bhupen Nath Basu Estate by granting rent receipts for the same.

He was further deposed that the vacant land of six cuttahs was leased out in the year 1910 for seven years by Deed No. 2410 with effect from Chitra, 1310 to Falgun 1329 by Deed No. 2410 and said grant of lease was made by the Estate of Babu Bhupendra Nath Bose son of Late Ramtanu Bose of 14, Balaram Ghosh Street, Kolkata in favour of one Sri Penaram @ Pelaram Kabi son of Late Baloram Kabi with his two brothers had established the business under the name and style of "Penaram Kabi & Co." who was given rights to erect structure at his own costs and as owner of the structure and the said structure on the land as leasehold was enjoyed by the lessees and his brothers his business and residence till 1929 without any eviction and after death of

Penaram @ Pelaram Kabi his legal heirs/ son Satyacharan Kabi, Kutiram Kabi and Haricharan Kabi were running the business in possession of the said land and structure and Putiram Kabi, son of late Balaram Kabi, Sri Guruprosad Kabi & Jugal Charan Kabi, both sons of late Hari Charan Kabi, minor Sri Prem Prosad Kabi, son of late Satya Charan Kabi and Grand son of late Penaram Kabi represented by guardian Sri Guru Prosad Kabi and Dulal Chand Kabi appointed under the Will of the father (late Satya Charan son of late Penaram) of the said minor Sri Prem Prosad Kabi as Thika tenants of said land and owners of said structures and subsequent to the lease deed his predecessor had purchased the said structure by Deed no. 65 for the year 1929 and became the Thika tenants and Monmotha Nath Kundu and Jatindra Mohan Sett became the Thika tenants of the said land and owner of the said structure and started a business of wooden furniture and they being the legal heirs now he is running the business and the said Thika tenants, Monmotha Nath Kundu and Jatindra Mohan Sett got their names duly mutated by the then landlord and issued valid ground rent receipts and last rent receipt was issued by Smt. Hira Basu.

He further deposed that prior and after the commencement of the Calcutta Thika Tenancy Act, 1949 and amendments and New Act (W.B.T.T. Act) and Monmotha Nath Kundu and Jatindra Mohan Sett became the Thika Tenants of the said land and owners of the structure on the land and thereafter, Late Tirthaswar Sett and his father became the joint Thika Tenants and also from 1981 on Calcutta Thika Tenancy Act became statutory Thika tenants as per the said Act in respect of the said property first under the landlords as the Thika Tenants and are now protected under the said Act and started paying ground rent to the purported landlords lastly to the representative of Hira Basu as Rent Controller for the land till 07.04.1981 or till Falgun 1387 B. S. lastly paid in the name of Manik Lal Sett and his father Sailendra Nath Kundu and the ground rent receipts monthly written by Ranjit Kr. Bose on Sadhan Bose husband and

son in – law of Smt. Hira Basu as rent collector signed and one of the Thika Tenants Monmotha Nath Kundu, his grandfather died intestate and in his place his son Sailendra Nath Kundu, his father became one of the Thika Tenants with Jatindra Mohan Sett and the said Jatindra Mohan Sett, one of the Thika tenants did intestate and in his place his son Tirtheswar Sett father of the defendant no. 1 became one of the Thika Tenants, ground rent receipts of rent paid by Tirtheswar Sett and Sailendra Nath Kundu, then paid to Smt. Hira Basu and through her husband Ranjit Kumar Bose or son-in-law Sadhan Bose as ground rent collectors.

He also deposed that the said Thika Tenancy was absolutely a lawful Thika tenancy before and after under the Calcutta Thika Tenancy Act, 1949 and 1981 and then under W.B.T.T. Act 2001 and the said purported landlord/ owners of the land filed a false suit no. 2295 of 1951 in Calcutta High Court against said Tirtheswar Sett and Sailendra Nath Kundu but could not produce proof of ownership by any Title Deed of their ownership of the said land but they were Rent Collectors and after the death of Tirtheswar Sett and Sailendra Nath Kundu, the defendants became the joint Thika tenants of the said land and also became the owner of the structure by way of Sale Deed and the ground rents were duly paid by the Thika Tenants as issued by the said purported land owner/ rent collector lastly Smt. Hira Basu.

He also deposed that after the commencement of Calcutta Thika Tenancy (Acquisition and Regulation), Act 1981 and W.B.T.T. Act 2001, the same land wherein the said Thika tenancy is situated has vested with the Government of West Bengal and they became the Thika Tenants under the state of West Bengal and paid rent to the state of West Bengal by depositing the same in the Calcutta Collectorate and ground rent receipts showing payment of suit ground rents and the defendants duly filed returned dated 12.01.1983 in Form A before the Ld. Thika Tenancy Controller under the

Calcutta Thika Tenancy (Acquisition and Regulation), Act 1981 on 12.01.1983 and they are now absolutely and lawful Thika Tenants under the State of West Bengal in respect of the said land and owner of structure situated at premises no 80, Rafi Ahmed Kidwai Road, Kolkata – 700013 under the Calcutta Thika Tenancy (Acquisition and Regulation), Act 1949 as amended in 1981 and the Act of 2001 and they are the Bharatias under Thika Act.

He also deposed that the purported successors of the said Bhupendra Nath Basu and Jatindra Basu and Others as Rent Collector till Smt. Hira Basu as Rent Collector as lastly issued ground rent bills and receipts and the purported original landlords and owners of the said land have no right, title and interest in respect of the said land but still Smt. Hira Basu claimed as one of the successors in the line of erstwhile owners of the said land illegally threatening to dispossess them after filing this false suit claiming monthly rent by producing a forged and fraudulent purported building plan dated 16.08.1912 that they had let out a building but the said purported owners has no proper building plan as per any record of Calcutta Corporation and Smt. Hira Basu having no relationship with the Estate of Bhupendra Nath Basu having never possess Title Deed in original for the said property.

He also deposed that after the grant of lease was made by the Estate of Bhupendra Nath Basu in favour of Pelaram Kabi and Others who has given rights to yet structure and they enjoyed the same by way of business and residence till 1929 and after the death of Pelaram Kabi and Others, his successors had sold the structure with the business of the said lessee to the present predecessor of the present defendant and after such sale and purchased of the said structure the predecessor of the said predecessor of the defendants got their ground rent receipts from the formal purported landlord and owners of the said leasehold land and got their ground rent receipts from the former purported landlords and owners of the said leasehold land, J. N.

Basu signed by the then rent collector for Bhupen Bose Estate issued ground rent receipts to Monmotha Nath Kundu and Jatindra Mohan Sett from Pous 1336 (06.03.1930) to Jaistha – Ashar, 1341 (11.11.1934), Smt. Basanta Kumari Basu for Bhupen Bose Estate issued ground rent receipts to Monmotha Nath Kundu and Jatindra Mohan Sett from Shraban, 1341 (22.12.1934) to Chiatra, 1341 (10.07.1935), Satyendra Nath Basu and K. K. Basu for Bhupen Bose Estate issued ground rent receipts in the joint names of M/s. Kundu and Sett from Baishakh, 1346 (05.06.1909) to Baishakh, 1351 (05.06.1944) , Smt. Bijon Bala Basu for self and natural guardian of Rabin Kumar Basu (minor) and by Ranajit Kumar Basu for Bhupen Bose Estate issued ground rent receipts to M/s. Kundu and Sett from Ashar, 1351(04.08.1944) to Jastha, 1352 (27.06.1945), Ranjit Kumar Basu and Rabin Kumar Basu representing Satyen Bose Estate issued ground rent receipts from Kartick, 1352 (30.11.1945) to Shravan, 1355 to M/s. Kundu and Sett, Ranjit Kumar Basu for the Satyen Bose Estate received money orders ground rent from Tirtheswar Sett sent for M/s. Kundu and Sett from Ashwin, 1355 (09.11.1948) to Chaitra, 1356 (16.05.1950), Ranjit Kumar Basu for the Bijan Bala Estate issued ground rent receipts for Falgun 1963 in the joint names Tirtheswar Sett and Sailendra Nath Kundu and then ground rent receipt issued by Smt. Hira Basu in the joint names of Manik Lal Sett and Sailendra Nath Kundu till the month of Falgun, 1387 (07.04.1981).

He further deposed that the Thika Tenancy Controller's disputed the officer for inspection of the land and structure before accepting the land/ ground rent receipts who certified on 20.04.1992 that the structure remain on the land is a Mathkotha made of wooden platform, G. I. Roof and first floor roof is made as tin and asbestos in all 17 rooms and thika tenants used 9 rooms including shop and they are remain Bharatis under Thika tenants and Calcutta Corporation never recorded any such construction of pucca building as per the said forged and fraudulent documents and they are not tenants under the West

Bengal Premises Tenancy Act, 1956 having no relationship with the plaintiff and landlord of the tenant under W.B.P.T. Act, 1956/1957 and the matter of Thika tenancy is now pending before the controller of Thika tenancy and this court have no jurisdiction to try the matter and the application under Section 17(2) and 17(2A) and (b) of the W.B.P.T. Act, 1956 filed and Smt. Hira Basu did not file this suit and one Sadhan Basu by fraud and misrepresentation filed this suit and she was not the owner and having no title and title deed with her for the suit property and the present plaintiff is not the owner of the suit land and she has filed the suit with some false claimed.

During cross-examination, he has deposed that he has personal knowledge about the construction of the suit property and he has not filed any permission or plan in this respect and he has not filed the original deed for the year 1929 and Hira Basu was collecting rent for the Estate of Bhupen Basu and they never issue any letter challenging the ownership of the plaintiff and they always pay rent to them without any objection.

Ld. Advocate Commissioner was examined as A.P.W-6 and he has submitted his report and he proved his report that the Exhibit 12 (Collectively) and there are 44 pilers around the building was made on 01.04.2011 and the plaintiffs are never given any sketch map and the defendants are in possession of the entire suit premises.

With regard to the allegations made by the defendant, the present plaintiff namely Parichita Basu has adduced herself as O.P.W-1 and the following documents have been marked as Exhibited.

Exhibit A – death certificate of Hira Basu,

Exhibit B (Series) – three K.M.C. Tax receipts.

Exhibit C (Collectively) – 24 counter-part of rent receipts.

Exhibit D – death certificate of Sanchayita Basu,

Exhibit E (Series) – K.M.C. Tax receipts and bill.

The said P.W-1, in her evidence deposed that her grandmother namely Hira Basu @ Surali Basu had filed the above suit against the defendant as owner/ landlord and her grandmother was the owner of an Estate by virtue of a Probated Will and Testament left by her grandfather Ranjit Kumar Basu, since deceased and the suit premises no. 80, Rafi Ahmed Kidwai Road, Kolkata – 700013 (formerly known as 80, Wellesley Street) is the part of the said Estate and the Probate along with the Will had been filed by her mother Sanchayita Basu as a constituted attorney of Hira Basu @ Surali Basu at the time of adducing evidence on 07.08.2006 and those were exhibited and defendant no. 1 and 2 were the tenants under her grandmother, since deceased in respect of the suit premises at the monthly rental of Rs. 275/- according to Bengal Calendar within the meaning of West Bengal Premises Tenancy Act, 1956 and she also deposed that the defendants were defaulter in payment of rent since Shraban, 1390 B. S. and they have sublet the suit premises to the defendant no. 3 to 9 without any written consent of her grandmother namely Hira Basu @ Surali Basu.

She also deposed that the suit premises was constructed by one Bhupendranath Basu the paternal grandfather of her grandfather Ranjit Kumar Basu, the husband of the original plaintiff Hira Basu @ Surali Basu being premises no. 80, Rafi Ahmed Kidwai Road, Kolkata – 700013 (formerly known as 80, Wellesley Street) as per sanction plain duly sanctioned by the then Calcutta Municipal Corporation and said Akash Structure has been constructed and till now it is existing and the land on which the suit premises stands is not a Thika land and the suit building is not the Thika premises as per record of the Calcutta Municipal Corporation and property tax bill were issued by Calcutta Municipal Corporation in the name of Satyendra Nath Basu and Kamal Kumar Basu and thereafter in the name of her grandfather Ranajit Kumar Basu and thereafter in the name of her grandmother Hira Basu @ Surali Basu.

She also deposed that after passing of Thika Tenancy Act, 1949 and/or 1956 and or 1981 and or 2001 the said property was never deemed to be a Thika land because the Calcutta Municipal Corporation had already assessed the said property as a premises and this can be understood from the notice and bills issued by the Calcutta Municipal Corporation in the name of her grandmother and she denied that the defendant no. 1 and 2 are the Thika tenants of the suit premises as alleged and /or the said Kabirs were ever the owner of the said suit premises as alleged and/or the said suit premises can be vested in the Government of West Bengal under the Thika Tenancy Acquisition Act as alleged and/or defendant no. 1 and 2 have become the direct tenant of the Govt. as alleged and/or her grandmother has no right, title, interest in the said property as alleged and/or the defendant no. 1 and 2 are not her grandmother's tenant under the West Bengal Premises Tenancy Act and she further stated that mere payment of rent for the Thika Controller does not create any right, title and interest in the defendant no. 1 and 2 as a direct tenant under the Thika Controller, Govt. of West Bengal and the defendants and their predecessors are/were regularly paying rents to her grandfather and grandmother till Ashar, 1390 and the defendants with ulterior motive to grab the suit property are claiming themselves to be the Thika Tenants, after getting the summons of the above suit and filed the instant applications and thereby challenging the relationship of the parties in the above suit and the defendants are depositing rents to the Thika Controller at their own sweet will and neither the Thika Controller nor any Authority has/had issued any notice either to us or to her grandfathers or grandmother the said Hira Basu @ Surali Basu – the original plaintiff, or the defendants and it is to note that the office of the Thika Controller received the money as ad-hoc basis from the defendants without any investigation and/or enquiry and the suit property has been recorded in the Kolkata Municipal Corporation till date as a personal property lying in the name

of her grandmother, Hira Basu @ Surali Basu as the Executrix to the Estate of Ranjit Kumar Basu as owner.

She further deposed that the application under Section 17(2) and 17(2) (a)(b) of West Bengal Premises Tenancy Act, 1956 were heard on contest by the Ld. Judge, 4<sup>th</sup> Bench, Small Causes Court, Calcutta and the Ld. Judge was pleased to dispose of the said application and ordered that the defendants are not Thika tenants under the State Government or the suit property is not the Thika property and provisions of tenancy act is very much applicable and the it was also held that the defendants are the tenants under the plaintiff and the defendants are default for payment of rent since Shravon, 1390 B.S.

She further deposed that the defendants preferred revisional application before the Hon'ble High Court, Calcutta and Hon'ble court was pleased to set aside the said order and direction was given to this court after framing of issue as to the existence of landlord/ tenant relationship and decide the issue on the basis of evidence as may be further adduced by the parties.

She also deposed that there is no bona-fide dispute either in respect of landlord/ tenant relationship within the meaning of W.B.P.T. Act between the plaintiff and the defendants and as such the application has no merit and the defendant no. 1 and 2 are the tenants in respect of the suit premises and the rent receipts which have been produced by the defendants in the name of J. N. Basu are not the receipts issued by her forefathers and her grandfather and grandmother used to sign the receipts and she denied the handwriting in respect of the word "ground" before the word "rent" and at present the defendant illegally inducted to a subtenants in the suit premises and defendants may be directed to pay the arrears of rent at a time.

The O.P.W-1 in her cross-examination deposed that she is in possession of original Title Deed of the suit property and she can produce the same and she is the owner of the suit property and her mother gifted with the said

property and previously the said property was in the name of her maternal grandmother Hira Basu and she got the said property by Will and she has submitted the said Will and Probate and her grandmother Hira Basu @ Surali Basu became owner of the suit premises by virtue of probate and her mother has submitted the said probate and she has gone through the said Probate and her grandmother has filed the said probate case before Hon'ble High Court at Calcutta in the year 1970 and the said Deed of Gift was executed by her mother in the year 2007 and she was personally present and accepted the same and the said Deed of Gift was executed in respect to the premises no. 80, 82B, 83, Rafi Ahmed Kidwai Road, Kolkata – 700013 and 13/2B, Balaram Ghosh Street, Kolkata – 700004 and her mother died on 15<sup>th</sup> June, 2012 and her grandmother died on 14<sup>th</sup> July, 2016 and the properties in the Probate were the same as of the said Deed of Gift along with properties of Bengal and Bihar and she does not have the original Title Deed of the said properties, but she has the partition deed and her mother has filed the said partition deed and her grandmother has filed this case and her grandmother has executed power of attorney in favour of her only daughter Sanchayita Basu and the said suit was filed in respect of premises no. 80, Rafi Ahmed Kidwai Road and her maternal grandmother namely Hira Basu, original plaintiff of this suit appeared and contested the case and also deposed that her grandfather Ranjit Kumar Basu inducted the predecessor of the defendant Tirtheswar Sett and Sailendranath Kundu in respect of the suit premises and Thika Controller never directed to the defendants to deposit the rent to the Calcutta Collector Office.

She also deposed that she does not know whether the Kolkata Corporation recorded the Thika Land in their records after getting order from the Thika Controller or not and her tax bill of Calcutta Municipal Corporation shows that the suit premises is not the Thika land and she knows that Hira Basu did not collect rent personally and her Daroyan went for collection of rent.

After closure of evidence, the matter has been fixed for hearing of argument and both the Ld. Advocates argued on the points as per the averments made by the parties.

Perused the application under Section 17(2) and 17(2)(a) of W.B.P.T Act filed by the defendants, the written objection, the evidence of the parties both oral and documentary and also submissions of the Ld. Advocates of the parties.

Upon perusal of the same, it appears that the defendants have contended that the suit property was leased out as vacant land in the year 1910 by a leased Deed executed by Babu Bhupendra Nath Basu to Putiram Kabi @ Penaram @ Pelaram Kabi consisted of six cuttaha land with the right to erect structure after paying ground rent and thereafter said Putiram Kabi @ Penaram @ Pelaram Kabi had erected structure over the said land and thereafter on 4<sup>th</sup> January, 1929 had transferred the said structure by way of registered Deed in favour of the predecessors of the present defendants namely Jotindra Mohan Sett and Monmotha Nath Sett and they became the joint owners of the said structure after paying ground rent to the landowners and they became the Thika tenants for the land and they had inducted Bharatis under the Thika Tenancy Act, 1981 and after the enactment of Calcutta Thika Tenancy (Acquisition & Regulation Act), 1981, the State Government had acquired the ownership land and as per the said Act, the Thika Tenants herein the defendants and they deposited rent before the Thika Controller and the Thika Controller accepted them to the Thika Tenants.

It is also contended by the defendants that there is no existence of landlord/ tenant relationship as per the provision of West Bengal Tenancy Act, 1956 or 1997 and the suit property is Thika property and as such this court has no jurisdiction under the the Thika Tenancy Act, 1949 and also under the Calcutta Thika Tenancy (Acquisition & Regulation) Act, 1981.

On the other hand, it is contended by the present plaintiff that previously

her mother has filed the suit against the defendant no. 1 and the defendant no. 2 (deceased) and others being the owner and executrices to the estate of Lt. Ranjit Kumar Basu of the premises no. 80, Rafi Ahmed Kidwai Road, P. S – Taltala, Kolkata – 700013 and the present defendant no. 1 and 2 were the tenants under her and the instant suit was filed after serving notice as per the provision of West Bengal Premises Tenancy Act, 1956.

It is further contended the plaintiff that the suit property had not been vested under the Government of West Bengal by the enactment of Calcutta Thika Tenancy (Acquisition & Regulation) Act, 1981 and her mother all alone is the owner of the structure standing in the suit premises and collected rent as landlord under the provisions of West Bengal Premises Tenancy Act, 1956 and the documents submitted by the defendants do not create any favourable right on behalf of the defendant to claim Thika Tenant and the defendants are not paying rent since the month of Shraban, 1390 B. S.

On perusal of the certified copy of Lease Deed of the year 1910, it appears that Penaram Kabi became tenant under Babu Bhupendra Nath Dutta in respect of suit land measuring about six cuttahs having right to construct structure thereon and the period of leased was for seven years and it also appears the certified copy of Deed of Conveyance dated 08.01.2029 and said Penaram Kabi and other brothers of him had sold the entire six cuttahs of land along with structure to Monmotha Nath Kundu and Jotindra Mohon Sett and it was alleged by the defendants that their predecessors became the owner of the said land and structure situated at the premises no. 80, Wellesley Street, (Rafi Ahmed Kidwai Road), P. S – Taltala, Kolkata – 700013.

On further perusal of the documents submitted by the defendants, it appears that Monmotha Nath Kundu and Jotindra Mohon Sett used to pay ground rent of entire six cuttahs of land along with structure to the original owner.

It appears from the materials on record that originally the suit was instituted by Hira Basu @ Surali Basu and previously Sanchayita Basu was examined as O.P.W-1 on behalf of the plaintiff and at the time of her evidence, she deposed that originally the suit property belongs to Bhupendra Nath Basu who was the paternal grandfather of Ranjit Kumar Basu, the husband of plaintiff Hira Basu @ Surali Basu.

On further perusal of the materials on record that the plaintiff has produced Xerox copy of Partition Deed being no. 1446 of 1941 which was held between Satyendra Nath Basu and Kamal Kumar Basu and on perusal of the said Deed, it appears that the schedule B as mentioned in the said Deed belonged to Satyendra Nath Basu and the suit property being premises no. 80, Wellesley Street belonged to Satyendra Nath Basu and it appears from the Xerox copy of Will executed by Ranajit Kumar Basu son of Late Satyendra Nath Basu and the Probate granted by the Hon'ble High Court, Calcutta appointed Smt. Surali Basu as the executrix of the Estate of Ranajit Kumar Basu whereby said executor bequeathed his all movable and immovable property to his wife Smt. Surali Basu during her lifetime and after her death to her daughter Sanchaita Basu to be enjoyed by her absolutely and the Xerox copy of Gift Deed no. 3002 of 2007 submitted by the plaintiff shows that Sanchaita Basu had gifted her all movable and immovable property in favour of her daughter namely Parichita Basu.

After considering the evidence of D.Ws, it appears that they contended that they became owner of the suit property by virtue of a Deed executed on 04.01.1929 but the said document is not found from the case record and the question arises how the predecessor of the present defendants had got the suit property though they have claimed that they are the Thika tenants in respect of the suit property after paying rent to the Thika Controller but it appears that the said rent was paid by them on ad-hoc basis and on the basis of such payment,

they cannot be claimed to be Thika Tenants under the Government of West Bengal after the promulgation of Calcutta Thika Tenancy (Acquisition & Regulation) Act, 1981.

Originally Calcutta Thika Tenancy Act, 1949 came to be enacted and the said enactment made various provisions as regards the extent of Thika tenancies, the grounds on which a Thika tenant would have been rejected, the procedure relating to the proceeding for ejectment, the regulation of rent and its payment.

The aforesaid Act of 1949 was repealed as a whole by the new enactment initially carrying the title of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 and this enactment promulgated on 02.11.1981 and came into force with effect from 18.01.1982 and later on several amendments were made to this enactment including the change of his title by way of the Calcutta Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 1993 and the said amendment Act of 1993 was given retrospective effect from 18.01.1982 i.e. the date of commencement of principle enactment and with change of name this enactment being West Bengal Act no. XXXV2II of 1981, came to be known as the Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act.

The Bharatias under the Calcutta Thika Tenancies Act, 1949 are vulnerable to the wishes of the Thika tenants with regard to enhancement of huts or other structures occupied by them and with regard to ejectment therefrom. The provisions of that act do not provide for protection of Bharatias against ejectment or enhancement of rent at the whims of the Thika tenants.

In order to give some protection to the Thika tenants and Bharatias against ejectment, the Calcutta Thika Tenancies Stay of Proceeding (temporary provisions) Act, 1978 was enacted and it came into force on 19<sup>th</sup> day of July, 1978 and the life of that Act has been extended upto 18<sup>th</sup> day of July, 1981 and

the object of that Act was to provide temporary protection against ejectment pending enactment of a comprehensive legislation to remove the public grievances.

The aforesaid Act of 1981 was repealed with effect from the date of commencement of the West Bengal Thika Tenancies (Acquisition and Regulation) Act, 2001, as it has been mentioned in the Section 27 of the said Act of 2001 and the said new enactment came into force on 01.03.2003.

On further perusal of the materials on record, it appears that the instant suit was filed under the provisions of West Bengal Premises Tenancy Act, 1956 before the Ld. City Civil Court, Calcutta being Ejectment Suit No. 37 of 1995 on 30.01.1995 when the Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981 was in force.

In the year 1995, the Calcutta Thika and other Tenancy and Land (Acquisition and Regulation Act), 1981 was in operation and Section 9 of the said Act clearly stated that the monthly and other periodical tenancies of Bharatias in respect of structures occupied by them on payment of rents to Thika tenants shall, with effect from the date of coming into force of this Act, be Governed by the provisions of W.B.P.T. Act, 1956 in all matters coming within the purview of the said Act and, for the said purpose, the owners of the structures shall be deemed to be landlords and the Bharatias shall be deemed to the tenants under the said Act.

On further perusal of the materials on record, it appears that the defendants have mentioned about the non-maintainability of this suit on the grounds applicable under the provisions of West Bengal Thika Tenancy (Acquisition and Regulation) Act, 1981 as the defendants were Thika Tenants.

Under the Provisions of West Bengal Premises Tenancy Act, 1956, the tenants get protection against eviction under Section 13 of the said Act and as per provisions of Section 2(d) landlord includes any person who, for the time

being, is entitled to receive or but for a special contract, would be entitled to receive, the rent of any premises, whether or not on his own account and Section 2(h) defines tenants which means any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and includes any person continuing in possession after the termination of his tenancy or in the event of such persons death, such of his heirs as were ordinarily residing with him at the time of his death, but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction.

Considering the specific provisions of the Calcutta Thika and other Tenancy and Land (Acquisition and Regulation Act), 1981 and West Bengal Premises Tenancy Act, 1956, it clearly appears from the materials on record that the instant suit is regulated under the provisions of West Bengal Premises Tenancy Act, 1956 and under the provisions of Calcutta Thika and other Tenancy and Land (Acquisition and Regulation Act), 1981.

In an application under Section 17(2) of West Bengal Premises Tenancy Act, the court has to determine the dispute as to the relationship of landlord and tenant in between the plaintiffs and defendants first and thereafter as to the dispute regarding the rate of rent and finally arrear rent, if any, payable by the defendants to the plaintiffs/ landlord.

In the instant application, defendants have disputed the relationship as to landlord and tenant in between them and the plaintiff in this case stating that after promulgation of the Calcutta Thika and Tenancy (Acquisition and Regulation Act), 1981, they have become the direct tenant under the Govt. of West Bengal and in pursuant to that, they have been depositing the rent to the Govt. of West Bengal. In such circumstances, the question of payment of rent to the plaintiff landlord does not arise at all.

In the plaint, plaintiff has stated that she is the owner and executrix to the

Estate of late Ranjit Kumar Basu and the premises no. 80, Rafi Ahmed Kidwai Road, Kolkata – 700 013, which is the suit premises, is the part of the said Estate.

In support of their ownership, the defendants have contended that their predecessor became owner of the structure over the suit property Deed of Conveyance dated 04.01.1929 and submitted that Putiram Kabi and others have in favour of Manmatha Nath Kundu and Jatindra Mohan Seth. The defendants have filed two original rent receipts for ground rent for the month of Jaistha and Ashar – 1336 B. S. and also five original receipts for ground rent for the month of Agrahayan, Pous and Magh – 1374 B. S. granted by Ranajit Kumar Basu and Falgoon and Chitra – 1375 B. S. granted by Smt. Hira Basu with two original cash receipts as Exhibit 2 series. Some challans have been produced by the defendants and by filing the said documents and adducing witness in this case, defendants have tried to establish the fact that the suit property is a Thika Property and they were Thika Tenants in respect of the said property. Therefore, the provisions of West Bengal Premises Tenancy Act, 1956 is not applicable to them. Defendants have also filed the challans to show that they have deposited the amount of the rent before the Thika Controller as per the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981.

On the other hand, the present plaintiff has also tried to establish by producing the documents mentioned above that she is the owner in respect of the suit property and provisions of West Bengal Premises Tenancy Act is applicable in the instant case and the defendants are liable to be evicted as per West Bengal Premises Tenancy Act 1956.

As per the provisions of The Calcutta Thika Tenancy (Acquisition and Regulation) Act 1981, the acquisition of land comprises under Thika Tenants and the incidents of such tenancies is being dealt with under Section 5 and Section 6 of the said Act. According to Section 5 of the said Act, from the date of

effect of the said Act, the land comprised under Thika Tenants, Khas land etc. shall vest in the State and the State will be the landlord in respect of that land and the tenant in respect of the said premises will be a direct tenant under the State Government.

There is no evidence to show that the suit property has vested in the State Government after the date of commencement of this Act. Moreover, we know very well that if the suit property is vested in the State Government as per the said Act, some incidents must be followed in view of the said provisions of the Act. The defendants have tried to show that they have followed the said incidents of tenancies in respect of land vested in the State by paying the rents in the State Government through challans.

But besides the said incident, there are other incidents of vesting the lands in the States such as after such vesting the State Government shall pay in the landlord or landlords having any right in such lands, a compensation under Section 8 of the said Act. But there is no document to show that the State Government, after vesting the suit property, has paid any such compensation to the landlord/plaintiff in this case.

Now, besides the said incidents, when a tenant becomes a Thika tenant, he has to follow certain terms and conditions as per The Calcutta Thika Tenancy (Acquisition and Regulation) Rules 1982. According to the said rules, every Thika tenant shall furnish to the Controller a return in form – A showing the particulars. In this case, defendants have filed Form A claiming them as Thika Tenant but the document itself does not bear any signature and seal of the Thika Controller and mere filing a document is not sufficient to prove that same has been filed before the concerned authority and the defendants did not cited any witness on behalf of the Thika Controller to prove the same which creates a cloud in respect of the defendant's case and also failed to substantiate that they have followed the said terms and conditions as enumerated in the Calcutta

Thika Tenancy (Acquisition and Regulation) Rules 1982. Furthermore, for the purpose of payment of rent under Sub Section 1 of Section 8, every landlord shall submit to the State Government a return to Form – C within 240 days from the date of commencement of the Act, but in the instant case, there is no such document that the plaintiff / landlord has filed such return in Form – C before the State Government.

In such circumstances, I find that no other incidents have been followed after vesting the suit property in the State Government, if any, except depositing rent by the defendants to the State Government through challans. I find from the challans that the said amount of rent has been deposited by the defendants in favour of the Thika Controller. But in my view, mere acceptance of rent by the Thika Controller does not recognize that the defendants were Thika tenants in respect of the suit property or the suit property is a Thika property.

It is settled principle of law that the Thika Controller has no right to recognize anybody as Thika Tenant by way of accepting the rents and in order to establish the Thika Tenancy right, it must be provided that a tenancy was created for land only and that the tenant has either constructed a structure thereon or has acquired such structure either by purchase or by gift for manufacturing, residential or business purpose.” Therefore, in case of Thika tenancy, land will be owned by the landlord while the structure by the tenant, on the other hand, if both the land and structure are let out in a tenant, such tenancy will be governed by West Bengal Premises Tenancy Act. In the instant case, there is no evidence that the tenant has constructed the structure in the suit property. On the other hand, the plaintiff has produced Xerox copy of sanctioned plan filed before the Calcutta Municipal Corporation and it also appears that suit property was mutated in the name of the original plaintiff under the Kolkata Municipal Corporation and thereafter, in the name of present plaintiff and she used to pay taxes to the Kolkata Municipal Corporation after

mutated her name before the said authority. After producing the mutation certificate in the name of the original plaintiff and also in the name of the present plaintiff, the court shall presumed that the mutating authority has mutated the name of the original plaintiff and also in the name of the present plaintiff after due process of law and the said mutation process followed by issuing notices to both parties and if any objection raised by any party, then the same shall be decided by the authority of Kolkata Municipal Corporation and the said authority has mutated the suit property in the name of original plaintiff and also in the name of the present plaintiff after observing all formalities and according to the procedure of law under the Kolkata Municipal Corporation Act.

It is also averred by the defendants that the structure in the suit property is a "Kachha" structure or temporary structure and it must not be a "pacca" structure or permanent structure. There is no iota of evidence to show that the suit property is a kachha structure rather it appears from the document on record that the original plaintiff had prayed before the appropriate authority for sanctioning of building plan.

It appears from the material on record that engineer Commissioner appointed to inspect regarding the condition of the structure and he has submitted his report and on perusal of the said report, it appears that there is a structure of one storied and partly two storied is existing made of several brick pilers, wooden frames on the ground floor and there are existing bricks lying on the ground and partly cemented and a high brick built wall is lying plaster with old sand and it has been mentioned in the said report that the shed/ structure is not a pucca brick built building structure and the number of floors are true only and the roof is said type and tin styles etc. lying over wooden/ bamboo frame and the structure is made of bamboo, wooden, brick pilers and flooring is of partly cemented and partly bricks and remaining of rubbish and soil mixed materials on the ground floor and on the first floor of wooden planks etc. and it

is also mentioned in the said report that the building is not a rigid structure and there are no pucca footings /foundation, load bearing walls, pucca floors.

Upon considering the said report, it cannot be said the structure made over the suit property is fully kachha structure or fully brick built structure, unless the suit property is made of kachha structure, the said property cannot be called as a Thika property. Moreover, the defendant can claim the Thika tenancy under the State only if the land had vested in the State and not otherwise.

In the instant case, there is no evidence to show that the land comprising the suit property has vested in the State. So, on perusal of the evidence on record, either oral or documentary, as cited by the parties, I find that the defendants have failed to establish that the suit property is a Thika property or they are the Thika tenants under the State Government. It is also found from the application under Section 17(2) and (2A) of the West Bengal Premises Tenancy Act, filed by the defendants that there was a hesitation in the mind of the defendants about the nature of the suit property as Thika property as because when they have challenged the relationship as to landlord and tenant in between the parties in the suit stating that they are the Thika tenants under the State Government but at the same time, they have also prayed for deposition the arrear amount of rent, if any by installments.

Considering the above made observations, perusing and oral and documentary documents and the relevant provisions of Law, I am of considered view that the defendants are not Thika tenants under the State Government or the suit property is not a Thika property in view of provisions of Calcutta Thika Tenancy (Acquisition and Regulation) Act 1981 and the provisions of West Bengal Premises Tenancy Act 1956 is very much applicable to the defendants in this case and the rent which was paid before the Thika Controller on ad-hoc basis are not valid deposit of rent after due process of law.

Accordingly, I hold that the defendants are tenants under the plaintiff and the plaintiff is the landlord in respect of the suit property and there is a relationship of landlord and tenant in between the plaintiff and the defendants in the instant case.

Now, as regard to the rate of rent, I find that there is no dispute regarding the rate of rent and the rate of rent was Rs.275/- per month payable according to Bengali calendar month.

Now, this court is to consider about arrear or rent in respect of the suit property. According to the plaintiff, defendants were defaulter in payment of rent since Sravan 1390 B.S. There is no challan or court deposit receipt to show that the defendants have deposited the said rent before the court towards payment of rent for the suit property. There is no evidence also to show that the plaintiff has refused to receive rent of the suit property or the defendants have tendered the rent by way of money order or that the defendants have taken recourse to the provisions under the West Bengal Premises Tenancy Act against such refusal.

In such circumstances, I can safely hold that the defendants were defaulter in payment of rent since Sravan 1390 B.S. and the defendants are defaulter of rent for 489 months from Sravan 1390 B.S. to Chaitra – 1430 B.S.

Hence, it is

**ORDERED**

that the application under Section 17(2) (2A) of the West Bengal Premises Tenancy Act 1956 is hereby disposed of on contest with an observation that the defendants are defaulter in payment of rent for 489 months from Sravan 1390 B.S. to Chaitra – 1430 B.S. @ Rs.275/- per month in total 1,34,475/- plus statutory interest of Rs.11,201/- in total of Rs.1,45,676/-.

Defendant no. 1 and substituted defendant no. 2 are directed to deposit the said arrear of rent of Rs.1,45,676/- within 30 days from the date of this order

and also directed to deposit current rent by the 15<sup>th</sup> day of each succeeding month.

Let the application under Section 17(2) and 17(2A)(b) of West Bengal Premises Tenancy Act filed by the defendants be disposed off.

To 18.04.2024 for framing of issues and filing receipt showing payment of arrear rent by the defendants.

**[ Dictated and corrected by me ]**

Sd/-

(Manabendra Nath Ghosh)  
Judge, Bench – II,  
Presidency Small Cause Court,  
Calcutta.

Sd/-

(Manabendra Nath Ghosh)  
Judge, Bench – II,  
Presidency Small Cause Court,  
Calcutta.