

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

W.P.L.R.T. 41 of 2025

M/s. Trincas & Ors.

vs.

Apeejay Surrendra Park Hotels Limited & Anr.

For the Petitioners

: Mr. Rajarshi Dutta
Mr. Meghajit Mukherjee
Ms. Mobina Aligh
Ms. Srijeeta Gupta
Mr. Aurin Chakraborty

For the State

: Mr. T.M. Siddiqui, A.G.P.
& Sr. Adv.,
Ms. Debdooti Dutta

For the Respondent No. 1

: Mr. Arindam Banerjee, Sr. Adv.,
Mr. Pranit Bag
Mr. B. Kumar
Mr. R. Baliyal
Mr. R. Ganguly

Heard & Judgment on

: April 21, 2025

DEBANGSU BASAK, J.:-

1. Petitioners assail an order dated January 21, 2025 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. 3085 of 2023 (LRTT).

2. Learned advocate appearing for the petitioners submits that the petitioners are the tenants under the private respondents by virtue of a Deed of Lease dated October 19, 1965. He refers to Clauses (IV)(b)(c) of such Deed of Lease. He contends that, subsequent to the expiry of the period of lease specified by the Deed of Lease his clients became tenants under the respondents, by virtue of such clauses, at the rate of rent specified therein. He submits that the petitioners and the respondents agreed to the rate of rent that the petitioners are obliged to pay in respect of the tenancy in question.
3. Learned advocate appearing for the petitioners submits that since the parties agreed to a rate of rent, it was not open either for the Rent Controller or the Appellate Authority being the West Bengal Land Reforms and Tenancy Tribunal to fix fair rent in terms of Section 17 of the West Bengal Premises Tenancy Act, 1997. He submits that the learned Rent Controller rightly dismissed the application under Section 17 of the Act of 1997 filed by the respondents before it. He contends that by the impugned order, the learned Tribunal erred in remanding the application under Section 17 of the Act of 1997 to the Rent Controller for the purpose of fixation of fair rent.
4. Learned advocate appearing for the petitioner draws the attention of the Court to Section 13 of the Act of 1997. He submits that under Section 13 of

the Act of 1997, no tenant is liable to pay to the landlord for the occupation of any premises any amount in excess of fair rent in respect of the premises. He also refers to Section 17 of the Act of 1997. According to him, a tenant can approach the Rent Controller for the purpose of fixation of fair rent and that a landlord cannot invoke the jurisdiction of the Rent Controller under Section 17 when there is a written agreement between the landlord and the tenant as to the rent payable.

5. Learned advocate appearing for the petitioner submits that the respondents filed a suit for eviction of the petitioner from the tenancy. Such suit was, however, subsequently withdrawn. He draws the attention of the Court to paragraphs 3 and 4 of the plaint filed in the suit. He submits that the respondents acknowledged the existence of the Deed of Lease dated October 19, 1965. He also draws the attention of the Court to the fact that subsequent to the withdrawal of the suit for eviction initially a notice under Section 20 of the Act of 1997 was issued to which the petitioner replied. Thereafter, a further notice under Section 20 of the Act of 1997 was issued on the basis of which the respondent approached the Rent Controller for the purpose of fixation of fair rent.
6. Respondents are represented.
7. Relationship of the petitioners and the respondents as tenants and landlords is admitted at the bar. This finding of us, we hasten to add

should not be construed to mean that we pronounced on the nature of tenancy existing between the private parties. Such issue is not falling for decision before us save and except the issue as to whether the petitioners before us are tenants of the respondents or not.

8. Petitioners are in occupation of about 8000 sq. ft. at premises No. 17 Park Street, Kolkata. It cannot be gainsaid that the location is a prime area of the city of Kolkata.
9. Petitioners claim that rate of rent payable in terms of the deed of lease dated October 19, 1965 is Rs.1989.11 per month. Although the petitioner acknowledges that the period of the lease expired by efflux of time, they claim that by virtue of Clauses (IV)(b)(c) of the deed of lease, the petitioners continue to be monthly tenants governed under the West Bengal Premises Tenancy Act, 1997 and paying a monthly rent of Rs.1989.11 per month.
10. Respondents herein initially filed a suit for eviction which was withdrawn. In the plaint of such suit for eviction, the respondents as plaintiffs acknowledged the petitioners before us as their tenants paying a rent of Rs.1989.11 per month in respect of the tenancy in question.
11. Subsequent to the withdrawal of such suit, respondents issued notices under Sections 20 of the Act of 1997. The first notice was withdrawn and a second notice was issued. Thereafter, respondents approached the Rent

Controller under Section 17 of the Act of 1997 for the purpose of fixation of fair rent.

12. Section 17 of the Act of 1997 is as follows:-

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

(2) The fair rent for a year in respect of any premises constructed and let out after the year 1984, shall be fixed [on the basis of annual payment of an amount equal to six and three-fourth per cent per annum of the aggregate amount of the actual cost of construction and the market price of the land on the date of commencement of construction.]

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

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

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

(4) Where a tenancy subsists for ten years or more but less than twenty years in respect of the premises constructed in or before the year 1984, the fair rent shall be determined by adding to the rent as on 1.7.1986 not more than two times, and then

deducting the increase, if any, in the manner provided in Schedule III, or by accepting the existing rent if such rent is more than the increased rent determined according to that Schedule.

(4A) Where a tenancy subsist for twenty years or more in respect of the premises constructed in or before the year 1984 and used for commercial purpose, the fair rent shall be determined by adding the rent as on 1.7.1976 five times or by accepting the existing rent if such rent is more than the increased rent determined under this sub-section.

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

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

(6) Where none of the foregoing provisions of this section applies to any premises, the fair rent shall be such as would be reasonable, having regard to the situation, locality and condition of the premises and the amenities provided therein and, where there are similar or nearly similar premises in the locality, having regard also to the rent payable in respect of such premises."

13. Section 17 of the Act of 1997 deals with fixation of fair rent. Sub-Section

(1) thereof requires the Rent Controller to fix fair rent in accordance with the provisions of the Act of 1997 on an application made to him either by the landlord or the tenant. Sub-Section (1) of the Act of 1997 does not debar a landlord from approaching the learned Rent Controller for the purpose of fixation of fair rent. Sub-Section (2) to Sub-Section (5) of Section 17 of the Act of 1997 lays down the manner and mode of

calculation of fair rent in the scenarios and as described in such Sub-Sections. Each of Sub-Sections deals with specified scenarios taking into consideration the age of the building and other factors. Sub-Section (6) of Section 17 of the Act of 1997, however, prescribes that where none of the provisions of Sub-Section (2) to Sub-Section (5) apply to any premises fair rent should be such as would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein and, where there are similar or nearly similar premises in the locality, having regard also to the rent payable in respect of such premises.

14. Section 13 of the Act of 1997 is as follows:-

“13. Rent in excess of fair rent not chargeable.—(1) (a) No tenant shall, notwithstanding any agreement to the contrary, be liable to pay to the landlord for the occupation of any premises any amount in excess of fair rent of the premises, unless such amount is lawful increase of the fair rent in accordance with the provision of this Act.

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

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

15. Section 13 of the Act of 1997 in our understanding lays down an embargo on the landlord from extracting any rent in excess of the fair rent from a tenant who is governed under the Act of 1997, agreement or otherwise. In

a scenario where there is a contract between the landlord and the tenant prescribing a rate of rent which is excess than the fair rent, the tenant can approach the Rent Controller for the purpose of fixation of fair rent. This statutory provision empowers the tenant to approach the Rent Controller for the purpose of fixation of fair rent notwithstanding the quantum of rent agreed to be paid by the tenant to the landlord.

16. As noted above, Section 17 does not limit the jurisdiction of a Rent Controller to decide the fair rent solely on an application of a tenant. Sub-Section (1) of Section 17 itself is unambiguous. It allows both the landlord and the tenant to approach the Rent Controller for the purpose of fixation of fair rent.

17. In the facts and circumstances of the present case, the respondents as landlords approached the Rent Controller for fixation of fair rent. Learned Rent Controller dismissed such application by an order dated August 16, 2023. Aggrieved, the respondents preferred an appeal before the West Bengal Land Reforms and Tenancy Tribunal being O.A. 3085 of 2023 (LRTT) which was disposed of by the impugned order dated January 31, 2025. By the impugned order, the learned Tribunal allowed the appeal setting aside the order dated August 16, 2023, Rent Controller passed in R.C. No. 119 of 2009 and remanded the application for fixation of fair rent made under Section 17 of the Act of 1997 to the Rent Controller with a

direction upon it to determine the fair rent of the subject property within a period of four months from the date of communication of the order.

18. We find no infirmity in the impugned order of the learned Tribunal warranting our intervention.

19. In such circumstances, **W.P.L.R.T. 41 of 2025** is **dismissed** without any order as to costs.

20. Time for compliance with the order passed by the West Bengal Land Reforms and Tenancy Tribunal is extended for a period of four months from date.

(Debangsu Basak, J.)

21. I agree

(Md. Shabbar Rashidi, J.)

S.D.