

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CO 4056 of 2024

Mr. Nitin Patel

Vs

Mr. Susanta Sen

For the Petitioner : Mr. Suvadeep Sen,
Ms. Sucheta Das.

**For the Plaintiff /
Opposite Party** : Mr. Shuvasish Sengupta,
Mr. Ankit Dey.

Hearing concluded on : 19.02.2025

Judgment on : 07.03.2025

SHAMPA DUTT (PAUL), J. :

1. The present revision has been preferred against order no. 22 dated **September 19, 2024**, passed by the learned Civil Judge (Senior Division), 2nd Court, Alipore in Title Suit No. 1223 of 2021.
2. It is the case of the defendant/petitioner that he is a tenant in respect of the suit premises. The suit before the Trial Court is a suit for eviction and recovery of Khas possession of the suit premises. Petitioner states that the prayer of the plaintiff seeking deletion of the words "under section 6(4) of the West Bengal

Premises Tenancy Act, 1997" in paragraph 5 of the original plaint, by way of an application under Order 6 Rule 17 CPC was allowed by the Learned trial Court by an order dated December 13, 2022.

3. It is the case of the defendant/petitioner herein that the original tenant was the father of the Defendant/Petitioner who died on December 6, 2018. At the time of his death, the petitioner and his mother used to reside in the suit property and had therefore become tenants under section 2 (g) of the 1997 Act. The mother of the Defendant/Petitioner had thereafter died on September 17, 2021.
4. It is further stated that in terms of section 2 (g) of the 1997 Act, after the death of the original tenant, the spouse thereof would remain a tenant during his or her lifetime and the son, daughter, parent or the widow of the predeceased son who ordinarily resided with such tenant would be a tenant there under **for a period of five years from the date of death of such tenant**. Therefore, it is stated that the petitioner being a dependent would remain a tenant for a period of five years from the date of death of the original tenant on 6th December, 2018 till December 5, 2023.
5. It is further submitted that said suit was filed on December 7, 2021, which was prior to the expiry of the said period of five years from the date of death of the original tenant. The

Plaintiff/Opposite Party has categorically admitted in the amended plaint, inter alia, that the Defendant/Petitioner's mother was the monthly tenant under the Act of 1997 (after the death of the original tenant) thereby admitting to the fact that the tenancy was governed by such Act.

6. It is further stated by the petitioner, who had been residing with his parents, that he had therefore become a tenant in terms of Section 2 (g) of the 1997 Act, at least for a period of five years from the date of death of his father who was the original tenant and his tenancy rights are protected under such Act within the said period five years, which did not expire on the date of filing of the said suit.
7. The defendant/petitioner made an application under Section 7 (2) of the Act 1997 claiming “preferential tenancy” on the condition of payment of fair rent. It is submitted that the Trial Court was authorized to fix the fair rent in terms of parameters laid down in the Act of 1997.
8. The period of 5 years from the date of death of the defendant/petitioner’s father expired and **the application under Section 7 (2) of the Act of 1997 was taken up for hearing thereafter, after the expiry of 5 years (on 19.09.2024).**

9. By the order under revision the Trial Court has been pleased to reject the application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997. Hence the revision.
10. In the order under revision the Trial Court held as follows:-

“Title Suit No. 1223 /2021

Order dated 19.09.2024

The father of the defendant died on 06.12.2018. Thus, the status of the defendant upto December, 2023 in respect of the suit premises was that of a statutory tenant. During this period, the defendant could have enjoyed all the benefits which an ordinary tenant enjoys under the West Bengal Premises Tenancy Act had the plaintiff taken any adverse steps against him to evict him from the suit premises. But, after expiry of the said period of limitation, the status of the defendant in respect of the suit premises is nothing but that of an unauthorised occupier. Hence, the defendant cannot claim the benefit of the West Bengal Premises Tenancy Act being a tenant under the said Act. Accordingly, his petitions U/S 7(1) and 7(2) of the West Bengal Premises Tenancy Act are not maintainable in law, rather are liable to be rejected.

In the light of the discussion above made, petition dtd.19.04.2024 filed by the plaintiff is allowed on contest however without any order as to costs.

Consequently, petitions dtd.11.01.2022 filed U/S 7(1) and 7(2) of the West Bengal Premises Tenancy Act by the defendant are rejected being not maintainable.

To 25.11.2024 for framing additional issues.

D/C by me.

**Sd/-
Civil Judge (Sr. Divn.)
2nd Court, Alipore.”**

11. Written notes along with judgments relied upon has been placed by both the parties.

12. Defendant/petitioner herein has relied upon the following judgments:-

- i. Central Bank of India & Ors. vs Dragendra Singh Jadon, (2022) 8 SCC 378.**
- ii. Nasima Nagi vs Todi Tea Company Ltd. & Ors., 2019 SCC OnLine SC 1601.**
- iii. Kartick Chandra Bhandari vs Ashim Kumar Samanta, 2007 SCC OnLine Cal 565.**
- iv. Somnath Mukherjee vs Mamata Rani Saha, 2006 SCC OnLine Cal 180.**
- v. Glacier Commerce Pvt. Ltd. & Anr. vs Uday Nath Behera & Ors., 2014 SCC OnLine Cal 20163.**
- vi. R. S. Madireddy and another Vs. Union of India and others, 2024 SCC OnLine SC 965.**
- vii. Om Prakash Gupta Vs. Ranbir B. Goyal, (2002) 2 Supreme Court Cases 256.**

13. On the other hand the plaintiff/opposite party has relied upon paragraph 14 of the judgment in **Smt. Dipali Halder & Ors. Vs Sri Chandan Das & Anr.** passed by the Calcutta High Court in **CO 1534 of 2017, 2017 SCC OnLine Cal 19976**, wherein it was held:-

“14. An application under Section 7(2) of the Act of 1997 may be filed by a tenant. The legislature has advisedly used the word “tenant” in preference to the word “defendant”. In any event, Section 7 of the Act applies when grounds under Section 6 of the Act are invoked for eviction. In the present case no ground under Section 6 of the Act was invoked for seeking the eviction of the petitioners herein from the suit premises.”

14. **Section 2(g) of the WBPT Act, 1997 lays down:-**

“Section 2(g) in The West Bengal Premises Tenancy Act, 1997:-

*(g)“tenant” means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his pre-deceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and **were dependent on him** and who do not own or occupy any residential premises, and in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family and were dependant on him [or a person authorised by the tenant who is in possession of such premises.] but shall not include any person against*

whom any decree or order for eviction has been made by a court of competent jurisdiction:

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

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

15. In the present case:-

- i. The petitioner/defendant's father was the original tenant.
He died on 06.12.2018.
- ii. Original Tenant's spouse/mother of the petitioner/defendant died on 17.09.2021.
- iii. The suit was filed on 07.12.2021.
- iv. Application under Section 7(1) & 7(2) WBPT Act, 1997 decided was on 19.09.2024 (after more than five years of the death of the original tenant).
- v. At the time of death of the original tenant on 06.12.2018 admittedly the petitioner was residing with him but there is

no materials on record to show that the petitioner was dependant on the original tenant.

- vi. Though the suit was filed prior to five years, the application under Section 7(1) and 7(2) WBPT Act was heard and disposed of after the period of five years had expired after the original tenant's death.

16. The petitioner/defendant/tenant has now stated that instead of fixing the fair rent, the trial Court erroneously rejected the applications under Section 7(1) and 7(2) of the WBPT Act, 1997.

17. Admittedly there is no tenancy agreement as per Section 2(g) of the Act between the parties, as such the question of fixing fair rent does not arise so also the option of "preferential" agreement.

18. The petitioner/defendant as tenant has already got the benefit of five years after the death of the original tenant and without there being any agreement, the right of the petitioner as tenant stands extinguished.

19. Thus the order under revision dated September 19, 2024 passed by the learned Civil Judge (Senior Division), 2nd Court, Alipore, in

Title Suit No. 1223 of 2021, being in accordance with law requires no interference.

20. CO 4056 of 2024 stands dismissed.

21. Trial Court to proceed with the suit expeditiously.

22. All connected applications, if any, stand disposed of.

23. Interim order, if any, stands vacated.

24. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]