

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

WPLRT 200 of 2025

Smt. Rita Ghosh and others
Vs.
The State of West Bengal and others

For the petitioners : Mr. Parimal Bhattacharya,
Mr. Suprotik Shyamal
Ms. Sima Majumder

For the State : Mr. Sk. Md. Galib, Sr. Govt. Adv.

For the
respondent nos. 3-11 : Mr. Bikram Banerjee,
Ms. Sagarika Goswami

Heard on : 02.02.2026

Judgment on : 02.02.2026

Sabyasachi Bhattacharyya, J.:-

1. The present challenge has been preferred by the writ petitioners, who are the private respondents in OA No. 3477 of 2018 (LRTT).
2. To put the case in context, initially an order was passed by the Thika Controller declaring the present writ petitioners to be thika tenants in respect of the subject property. Challenging the same, the present private respondents preferred OA No. 3477 of 2018 (LRTT) and obtained an order of stay of the order of the Thika Controller.

3. The present writ petitioners, in the year 2023, took out an application bearing MA No. 312 of 2023 seeking imposition of occupation charges on the present private respondents as condition for enjoying the stay in connection with OA No. 3477 of 2018 (LRTT). Such application having been rejected by the impugned order, the present writ petition has been preferred.
4. Learned counsel appearing for the writ petitioners submits that by applying the principle embodied in Order XLI Rule 5 of the Code of Civil Procedure and the judgments rendered by the Hon'ble Supreme Court and different High Courts in the context thereof, the person enjoying a decree, which has been stayed by an order passed in connection with a challenge thereto, is entitled to be compensated by payment of occupation charges commensurate with current market rent which can be fetched by letting out the subject property.
5. As such, it is argued that the ground on which the Tribunal refused the application, being that the ownership of the writ petitioners is challenged before the Tribunal, was flimsy.
6. Learned counsel appearing for the private respondents before us, the original applicants before the Tribunal, contends that in any event, the main original application is itself due for hearing next on March 24, 2026. As such, it is prayed that the said application be directed to be taken up for hearing on the next date.
7. It is pointed out that the stay application having been dismissed for default in the meantime, an application for restoration of the same,

filed by the private respondents herein, is pending before the Tribunal.

8. It is further argued that in view of the ownership of the writ petitioners itself having been challenged before the Tribunal, there is no scope for imposition of any occupation charges.
9. Upon hearing learned counsel for the parties, we are unable to agree with the submissions of the private respondents herein and/or the observations of the Tribunal. The premise of Order XLI Rule 5 of the Code of Civil Procedure, which is squarely applicable in the present context, is that despite the grounds taken in an appeal against an eviction decree, the decree holder, until and if the decree is set aside in appeal, is entitled to be compensated for the unnecessary fetter suffered by such decree holder due to the restraint order or stay order passed in appeal.
10. It cannot be gainsaid that in the present case as well, the writ petitioners are already armed with a valid order by a competent authority, that is, the concerned Thika Controller, declaring their thika tenancy in respect of the subject property. Hence, irrespective of the challenge to such finding, even as of today, unless and until the order of the Thika Controller is set aside by the Tribunal, if at all, the writ petitioners continue to be validly declared thika tenants in respect of the subject property.
11. Since their rights to exact rent in respect of the property at the current market rate is being fettered by the stay order passed in favour of the private respondents by the Tribunal, the writ petitioners

are well within their limits to seek imposition of occupation charges for such sufferance.

12. The mere fact that the ownership of the writ petitioners has been challenged before the Tribunal is not a relevant factor at all in that regard.
13. Accordingly, WPLRT 200 of 2025 is allowed on contest, thereby setting aside the impugned order dated August 25, 2025 passed by the Third Bench, West Bengal Land Reforms and Tenancy Tribunal in MA No. 312 of 2023 [in connection with OA No. 3477 of 2018 (LRTT)] and directing the Tribunal to hear MA No. 312 of 2023 afresh on merits in the light of the above observations, upon giving adequate opportunity of hearing to both parties.
14. Since we are apprised that the next date for hearing of the original application is fixed on March 24, 2026, the Tribunal shall, on such returnable date, first decide the private respondents' restoration application and then take up the hearing of MA No. 312 of 2023, subject to the restoration application filed by the present private respondents being allowed, along with the main original application.
15. It is expected that the hearing of MA No. 312 of 2023 shall be concluded on the returnable date itself and order shall be passed thereon within a week thereafter.
16. Thereafter, the Tribunal shall make all endeavour to dispose of the original application as expeditiously as possible. We make it abundantly clear that the merits of the MA No. 312 of 2023 and/or OA No. 3477 of 2018 (LRTT) have not been entered into by this Court

at all and it will be open to the learned Tribunal to decide both the said applications on their own merits in accordance with law.

17. There will be no order as to costs.
18. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)