

[JHARKHAND ACT 06 OF 2012]



**JHARKHAND BUILDING (LEASE, RENT & EVICTION)
CONTROL ACT, 2011**

Preamble to the Act

Whereas, the Government of Jharkhand consider that supply of rental housing stock in the State is not commensurate with the demand,

And Whereas the return from investment in rental housing is low,

And Whereas the relationship between the landlord and the tenant is contentious

And Whereas the ligation under Rent Control Act is unduly delayed

Now, Therefore

An Act to provide for the regulation of letting of the buildings and the rent of such buildings, and to establish better balance between the interests of landlord and tenant, and to lessen the hardships in the litigations and for matters ancillary thereto

BE it enacted by the Legislature of the State of Jharkhand in the Sixty-second year of the Constitution of India as follows:-

CHAPTER - I

PRELIMINARY

1. Short title, Extent and Commencement

(1) This Act may be called the Jharkhand Building (Lease, Rent & Eviction) Control Act, 2011.

(2) This Act shall apply to the whole of the State of Jharkhand.

(3) It shall come into force on such date as the Government of Jharkhand may, by notification in the Official Gazette, appoint.

2. Definitions

In this Act, unless the context otherwise requires

- (a) "Appellate Authority" means the Deputy Commissioner of the District in which the building is situated or any other officer specially empowered by the Government to perform the functions of an Appellate Authority.
- (b) "Building" means any building or hut or a part of the building or hut, let or to be let, separately for residential or non-residential purposes and includes -

- i. the garden, grounds/ *open spaces* and outhouses, if any, appurtenant to such building or hut or part of such building or hut, and
- ii. any furniture supplied by the landlord for use in such building or hut or part of such building or hut.
- (c) "Commissioner" means Commissioner of the Division in which the building is situated.
- (d) "Controller" means the person appointed by the State Government under section 31 of the Act.
- (e) "Deputy Commissioner" means and the Deputy Commissioner of the District in which the building is situated.
- (f) "Government" means the Government of Jharkhand.
- (g) "Landlord" means the owner of the building and includes a person who for the time being is receiving or is entitled to receive the rent of the building, whether on his own account or on behalf of another, or as an agent, trustee, executor, administrator, receiver, guardian or whoever so receives the rent, or entitled to receive the rent, if the building were let to a tenant.
- (h) "Premium" means the mutually agreed amount paid by a tenant to the landlord at the time of agreement which does not exceed 2 months rent in the case of residential building and 12 months rent in the case of non-residential building; which should be refunded without interest while vacating the building
- (i) "Prescribed" means prescribed by rules made under this Act;
- (j) "Standard Rent" in relation to the building means the rent calculated under section 9.
- (k) "State Government" means the Government of Jharkhand.
- (l) "Tenant" means any person by whom or on whose account rent is payable for a building and includes
 - i. a person who occupies a building, as an employee of the landlord of such building either on payment of rent or otherwise.
 - ii. the surviving spouse, or any son or unmarried daughter, or parent, or daughter-in-law, being the widow of predeceased son of a deceased tenant who had been living with the tenant in the building as a member of the family upto her/his death.

3. Act not to apply to certain buildings

The provisions of this Act shall not apply :-

- (a) to any building belonging to the State Government or the Central Government, or Cantonment Board or any local authority; and
- (b) to any building belonging to Jharkhand State Shwetamber Jain Trust Board or Jharkhand State Digamber Jain Trust Board or Wakf Board or *Hindu Dharmik Nayas Board* or any other Religious

and Charitable Trusts or institution run by the Central or State Government.



4. Tenancy Agreement to be in writing

(1) Notwithstanding anything contained in section 107 of the Transfer of Property Act, 1882 (Central Act 4 of 1882), no person shall, after the commencement of this Act let or take on rent any building except by an agreement in writing.

(2) Where in relation to a tenancy created before the commencement of this Act, and where no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing with regard to the tenancy including the amount of rent and the period of tenancy; and deposit a copy thereof before the Controller concerned *within two years as described in Sec 13C of this act*.

Provided that where the landlord and the tenant fail to present jointly a copy of the tenancy agreement under this sub-section, such landlord and tenant shall separately file the particulars about such tenancy with the Controller concerned in such form and in such manner and within *two years* as may be prescribed.

5. Inheritance to tenancy

(1) In the event of death of a tenant, the right of tenancy shall devolve to his successor in the following order, namely :-

- (a) spouse,
- (b) son or un married daughter or where there are both son and unmarried daughter, both of them,
- (c) parents,
- (d) daughter-in-law, being the widow of his pre-deceased son.

Provided that the successor has ordinarily been living or carrying on business in the premises with the deceased tenant as a member of his family upto the date of her/his death and was dependent on the deceased tenant:

Provided also that the period of devolution is limited to the unexpired portion of the tenancy and it is open to the landlord and the successor tenant to enter into fresh agreement.

Provided further that a right to tenancy shall not devolve upon a successor in case such successor or his spouse or any of his dependent son or daughter is owning or occupying a building. However, he shall acquire a right to continue in possession as a tenant for unexpired period of tenancy, or a period of one year from the date of death of the tenant, or on his death, whichever is earlier.

(2) The right of every successor, referred to in sub section (1) to continue in possession of the building shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs.

(3) Nothing in sub section (1) or sub section (2) shall apply to a non residential building and the vacant possession of such building shall be delivered to the landlord within one year or unexpired portion of tenancy, whichever is earlier:-

- (i) of the death of tenant, in case the tenant is an individual;
- (ii) of the dissolution of the firm, in case the tenant is a firm;
- (iii) of the winding up of the company, in case the tenant is a company;
- (iv) of the dissolution of the corporate body other than a company, in case the tenant is such a corporate body.

Provided that it is open to the landlord and the successor tenant to enter into a fresh agreement.

CHAPTER – II

REGULATION OF RENT

6. *Salami*, fine or advance of more than one month's rent not to be claimed or received

It shall not be lawful for any person to claim or receive, in consideration of grant, renewal or continuation of a tenancy of any building, the payment of any *salami*, fine or any like sum in addition to the rent or payment of any sum exceeding one month's rent of such building as rent in advance. Provided that the payment of premium during tenancy of a building is permissible.

7. Rent Payable

(1) The rent payable in relation to a building shall be:

- (a) the rent agreed to between the landlord and the tenant in writing, or
- (b) the Standard Rent as specified under section 9.

(2) In the case of a tenancy entered into before the commencement of this Act, the landlord may, make an application to the Controller within six months from the date of such commencement to fix the standard rent under sub-section (1) of section 12 and the rent so fixed shall be payable from the date of such commencement.

8. Enhancement of rent of building

Notwithstanding anything contained in any agreement or law to the contrary, it shall not be lawful for any landlord to increase or claim any increase in the rent which is payable for the time being, in respect of any building except in accordance with the provisions of this Act.

9. Standard Rent

(1) Standard Rent, in relation to any building, means the rent calculated on the basis of five per cent per annum of the aggregate amount of the cost of construction and the market price of the land comprised in the building in the year of construction.

Provided that due allowance shall be made on the cost of construction and price of land based on the cost index as per provisions of Section 45 of Income Tax Act, 1981.

Provide however, that the rent shall always be fixed on monthly basis.

(2) For the purpose of this section

- (a) the cost of construction shall be the actual amount spent on construction, and in case such amount cannot be ascertained, such cost shall be determined as per the standard scheduled rates of the *Road Construction Department* and *Buildings Construction Department* of the *State Government* with reference to cost of similar construction for the year in which the building was constructed.
- (b) the market price of the land shall be the price for which the land was bought as gathered from the registered sale deed or the market value of the land notified by the Registration Department of the Government for the year in which construction was made, whichever is high.
- (c) the land shall be the total land comprising the building and such of the vacant land upto fifty percent of the plinth area as is appurtenant thereto.
- (d) Notwithstanding anything contained in clause (a), (b) and (c), the cost of construction and the market price of the land comprised in the building purchased from or allotted by the Housing Board or any Public Sector Undertaking of the Government or a municipality or municipal corporation shall be the aggregate amount paid or payable to such Housing Board or any Public Sector Undertaking of the Government or a municipality or municipal corporation, as the case may be:

10. Other charges payable

(1) A tenant shall be liable to pay to the landlord, besides the rent, the following charges, namely:-

- (a) charges, not exceeding fifteen per cent of the rent for the amenities; or as agreed to by the landlord and the tenant;

- (b) maintenance charges not exceeding ten percent of the rent; or as agreed to by the landlord and the tenant; and
- (c) without prejudice to the liability of landlord, one-twelfth of yearly property tax in relation to the building payable to the municipality or the municipal corporation.

(2) The tenant is responsible for payment of electricity and water charges payable for the building.

11. Enhancement of rent

The standard rent fixed for any building shall be enhanced every year at seventy-five per cent of annual inflation rate based on wholesale price index in the case of residential buildings and one hundred per cent of such rate in the case of non-residential buildings.

12. Controller to fix standard rent

(1) The Controller shall, on an application made to him in this behalf, in the prescribed manner, fix in respect of any building

- (i) the standard rent as per the provisions of section 9
- (ii) the other charges payable as per the provisions of section 10, and
- (iii) the enhancement in rent as per provisions of section 11.

(2) In fixing the standard rent of any building or determining the other charges payable or enhancement of the rent, the Controller shall fix or determine or enhance the amount which appears to him to be reasonable having regard to the provisions of section 9 or section 10 or section 11, as the case may be, and the other circumstances of the case.

(3) Where for any reason if it is not possible to fix the standard rent of any building on the principles set forth in section 9, the Controller may fix such rent as would be reasonable having regard to the location and condition of the building and the amenities provided therein, and where there are similar or nearly similar buildings in the locality, having regard also to the rent payable in respect of such buildings. *The controller would obtain consent of both the parties before final fixation of the standard rent and the date of its applicability.*

(4) The standard rent shall in all cases be fixed for a tenancy of twelve months. After every twelve months, it shall be fixed again on the principles set forth in section 11.

(5) In fixing the standard rent of any building under this section, the Controller shall fix the standard rent thereof in an unfurnished state of the building and may also determine any additional charge to be payable on account of any fittings or furniture supplied by the landlord and it shall be lawful for the landlord to recover such additional charge from the tenant.

(6) In fixing the standard rent or determining the other charges payable or enhancing rent in respect of any building under this section, the Controller shall specify the date from which the amount, so fixed or determined or enhanced shall be deemed to have effect.

Provided that, in no case the date so specified shall be earlier than the date of filing of the application for the enhancement of the standard rent:

Provided further that if the increase is because of improvement, addition or structural alteration, it shall come into effect from the date of completion of such improvement, addition or alteration.

(7) The Controller may, while fixing standard rent or determining other charges payable or enhancing the rent, order for payment of the arrears of amount due by the tenant to the landlord in such number of installments as he deems proper

13. Limitation for application for fixation of standard rent, etc.

Any landlord or tenant may file an application to the Controller for fixing the standard rent and determining other charges or enhancing such rent and other charges :-

- (a) in the case of any building which was let or in which the cause of action for lawful enhancement of rent and other charges arose, before the commencement of this Act, within two years from such commencement;
- (b) in the case of any building in which the cause of action for lawful enhancement of rent and other charges arises after the commencement of this Act, within two years from the date on which the cause of action arises;
- (c) in the case of any building constructed on or after the commencement of this Act and for which the provisions of this Act are applicable within two years from the date of such application by the landlord or the tenant.

Provided that the Controller may entertain the application after the expiry of the said period of two years, *by recording the reasons in writing* if he is satisfied that the applicant was prevented by sufficient cause from filing the application in time.

14. Refund of rent, premium, etc.

Where any sum or other consideration has been paid, whether before or after the commencement of this Act, by or on behalf of a tenant to a landlord, in contravention of any of the provisions of this Act, the Controller may, on an application made to him within a period of one year from the date of such payment, order the landlord to refund such sum or the value of such consideration to the tenant or order adjustment of such sum or the value of such consideration against the rent payable by the tenant.

15. Tenant making payment of rent entitled to receipt

(1) Every tenant who makes payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a receipt in the prescribed form for the amount of rent paid by him duly signed by the landlord or his appointed agent.

(2) If a landlord, without reasonable cause fails to deliver the tenant a receipt as required by sub-section (1), such landlord shall be liable to fine not exceeding double the amount of rent so paid to be imposed after

summary enquiry by the Controller upon a complaint of the party aggrieved within three months from the date of such failure.

CHAPTER - III LANDLORD AND TENANT

16. Landlord's responsibility

(1) Every landlord shall carry out the repairs which he is bound, under any law, contract or custom, to make to a building in possession of a tenant.

Explanation: In this sub-section, "repairs" include annual white-washing, re-colouring and periodical repairs.

(2) If the landlord fails to carry out white-washing once in every year, re-colouring once in three years and periodical repairs, which he is bound to make, the tenant may by notice, require him to carry out the same within one month from that date of service of the notice, and, on the landlord's failure to do so within the said period, the tenant may himself carry out the same at a cost not exceeding one month's rent for the building and deduct such cost from the rent.

(3) If the landlord neglects to carry out repairs, other than those referred in sub-section (1), which he is bound to make, the Controller shall, on an application by the tenant, which shall specify the approximate cost of such repairs, cause a notice to be served on the landlord to appear and show cause, within such time as may be fixed in the notice.

(4) If the landlord does not appear in obedience to the notice or if he appears but fails to satisfy the Controller as to why he should not be directed to carry out the repairs or such of them as he finds the landlord is bound to make, the Controller shall after making such further inquiry as may be necessary, direct him to carry out the same within a time to be fixed, and on the landlord's failure to comply with such direction, the Controller may permit the tenant to carry out such repairs at a cost not exceeding such amount as may be specified in the order and to recover such cost from the landlord. It shall, thereafter, be lawful for the tenant to carry out such repairs and to deduct the cost thereof from the rent or recover it otherwise from the landlord as if it were a debt due to him by the landlord.

Provided that if, the Controller is satisfied that the repairs involved were due to the negligence of the tenant, he will order the tenant to make such repairs and the cost of repair shall be borne by the tenant and the same shall not be recoverable from the landlord by deduction from the rent.

17. Landlord not to interfere with amenities enjoyed by the tenant

(1) No landlord shall, without just or sufficient cause cut off or withhold any of the amenities enjoyed by the tenant.

(2) A tenant in possession of a building may, if the landlord has contravened the provisions of sub-section (1) make an application to the Controller complaining of such contravention and may restore any of the amenities on his own responsibility, pending consideration of his application by the Controller.

(3) If the Controller on enquiry is satisfied that the landlord has without just or sufficient cause cut off or withhold any of the amenities enjoyed by the

tenant at the time of the commencement of the tenancy or at any time thereafter, he shall

(i) in case such amenity has already been restored by the tenant make an order directing the landlord to pay to the tenant the cost of such restoration as determined by him within such time as may be specified in the order; and

(ii) in any other case, direct the landlord to restore such amenity at such cost and within such time as may be determined by him and also that in case the landlord fails to do so, the amenity may be restored by the tenant at his own cost and such amount as may be specified in the order may be recovered by the tenant as the cost of restoration either by adjustment towards the rent payable by him or as if the amount were a debt due to him by the landlord.

Explanation: In this section, "amenities" include supply of water, electricity, electricity lights in passages and on staircases, lifts and conservancy or sanitary services.

18. Duties of tenant

(1) Every tenant shall be bound to keep the building in good and tenantable repairs in relation to water taps, water closets, bath tubs, geysers, kitchen fixtures, minor electric equipment, glass panel for doors and windows and other minor repairable items etc.

(2) Where any repairs, in relation to a matter falling under sub-section (1), without which the building is not habitable or useable and the tenant neglects or fails to make them within a period of two months after notice in writing, the landlord may apply to the Controller for permission to make such repairs himself and may submit to the Controller an estimate of the cost of such repairs, and, thereupon the Controller may, after giving the tenant an opportunity of being heard and after considering such estimate of the cost and making such enquiries as he may consider necessary, by an order in writing, permit the landlord to make such repairs at such cost as may be specified in the order, and it shall thereafter be lawful for the landlord to make such repairs himself and to recover the cost of such repairs, which shall in no case exceed the amount so specified, from the tenant.

(3) The tenant shall make good all damages caused to the premises by his negligence within three months of being informed in writing to do so by the landlord failing which the landlord may apply to the Controller for permission to make good the said damages and the Controller shall decide the matter in the manner provided in sub-section (2).

(4) The tenant shall hand over possession of the building on termination of tenancy in the same condition, except for the normal wear and tear, as it was when handed over to him at the beginning of such tenancy and in a case where certain damages have been caused, not being damages caused by *force majeure*, the tenant shall make good the damages caused to the building failing which landlord may apply to the Controller for permission to make good the said damages and the Controller shall decide the matter in the manner provided in sub-section (2).

(5) The tenant shall not, whether during the subsistence of tenancy or thereafter, demolish any improvement or alteration carried out by him in

the building or remove any material used in such improvement or alteration, other than any fixture of a removable nature, without the permission of the landlord failing which such demolition or alteration shall be deemed to be a damage caused by such tenant under sub-section (3) and shall be dealt with accordingly.

CHAPTER - IV REGULATION OF EVICTION

19. Eviction of tenant

(1) Notwithstanding anything contained in any contract or law to the contrary, but subject to the provisions of the Industrial Disputes Act, 1947 (Act XIV of 1947), and to those of section 18, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of an order passed by the Controller on one or more of the following grounds:

- (a) for breach of the conditions of the tenancy, or for sub letting the building or any portion thereof without the consent of the landlord, or if he is an employee of the landlord occupying the building as an employee, on his ceasing to be in such employment;
- (b) where the condition of the building has materially deteriorated owing to acts of waste by, or negligence or default of the tenant or of any person residing with the tenant or for whose behaviour the tenant is responsible;
- (c) where the building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord.

Provided that where the Controller thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing that tenant to continue occupation of the rest and the tenant agrees to such occupation, the Controller shall pass an order accordingly; and fix proportionately the standard rent for the portion in occupation of the tenant, which portion shall henceforth constitute the building within the meaning of clause (b) of section 2 and the rent so fixed shall be deemed to be the standard rent fixed under section 12.

Explanation I: In this clause, the word "landlord" shall not include an agent referred to in clause (h) of section 2.

Explanation II: Where there are two or more buildings let out by the landlord, it will be for the landlord to choose which one would be preferable to him and the tenant or tenants shall not be allowed to question such preference.

- (d) where the amount of two months rent, lawfully payable by the tenant and due from him is in arrears by not having been paid within the time fixed by contract or in the absence of such contract, by the last day of the month next following that for which the rent is payable or by not having been validly remitted or deposited in accordance with section 27;
- (e) in case of a tenant holding on a lease for a specified period, on expiry of the period of tenancy; and

- (f) the landlord requires the premises in order to carry out any building work at the instance of the Government or the Municipality or the Municipal Corporation or the Regional Development Authority or any other Authority within whose jurisdiction the building lies and such building work cannot be properly and fully carried out without the premises being vacated.

2. (a) Where a servant of the Government in possession of any building *private/government* as a tenant intends to vacate such building, he shall give fifteen days previous notice in writing of his intention to do so to the landlord and to the Collector who shall under intimation to the landlord within a week of receipt of the notice, either allot the building to any other servant of the Government whom the Collector thinks suitable subject to payment of rent, and the observance of the conditions of the tenancy by such servant of the Government or direct that the landlord shall be put in possession of the building.

Provided that when no such order is passed by the Collector, the landlord shall be deemed to have been put in possession of the building.

(b) Where a building is vacated by a servant of the Government, any person occupying such building other than the person referred to in clause (a) shall be liable to be evicted by the Collector in such manner as may be prescribed.

Provided that after a landlord has been or is deemed to have been put in possession of such building, he may let it to any person.

20. Binding nature of the order of the Controller on all persons in occupation of the building

(1) Notwithstanding anything contained in any other law, where the interest of the tenant, in any building is determined for any reason whatsoever, and any order is made by the Controller under this Act for recovery of possession of such building, the order shall be binding on all persons who may be in occupation of the building and vacant possession thereof shall be given to the landlord by evicting all such persons therefrom.

Provided that nothing in this section shall apply to any person who has an independent title to such building or to a tenant who has been inducted with the express written permission of the landlord himself personally.

(2) On taking possession of the building, the landlord shall refund the premium collected if any to the tenant.

21. Special procedure for disposal of cases for eviction on ground of bonafide requirement

(1) Every suit by a landlord for the recovery of possession of any premises on the ground specified in clause (c) or (e) of sub-section (1) of section 19 shall be dealt with in accordance with the procedure specified in this section.

(2) The Controller shall issue summons in every suit referred in sub-section (1) without delay.

(3) (i) The Controller shall, in addition to, and simultaneously with the issue of summons for service on the tenant or tenants, also direct the summons to be served by registered post with acknowledgement due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require also direct the publication of the summons in the official

gazette or in newspapers circulating in the locality, in which the tenant is last known to have resided or carried on business or personally worked for gain.

(ii) When an acknowledgement purporting to be signed by the tenant or his agent is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent has refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

(4) The tenant on whom summons is duly served (whether by ordinary mail or by registered post) shall not contest the prayer for eviction from the building unless he files an affidavit stating the ground on which he seeks to make such contest and obtains leave from the Controller as hereinafter provided; and in default of the appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the suit for eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall give to the tenant leave to contest the suit if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for eviction on the grounds specified in clauses (c) and (e) of sub-section (1) of section 19.

(6) When leave is granted to the tenant to contest the suit, the latter may, within fifteen days from the date of the order, pray after making requisite fee, that the affidavit may be treated as the written statement or if he chooses to file a separate written statement, he may do so within fifteen days of the grant of leave to contest the suit and if he does not file the written statement within the period he shall not be allowed to do so later. The Controller shall thereafter commence the hearing of the suit as early as practicable.

(7) Notwithstanding anything contained in the Code of Civil procedure, 1908 (Act V of 1908) or any other law, the Controller while hearing a suit under this section shall follow the practice and procedure of a Court of Small Causes including the recording of evidence.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any building made in accordance with the procedure specified in this section.

Provided that on an application being made within sixty days of the date of the order of eviction, the High Court may for the purpose of satisfying itself that an order under this section is according to law, call for the records of the case and pass such order in respect thereof as it thinks fit.

(9) Where no application has been made to the High Court in revision as laid down in sub-section (8) above, the order for eviction passed by the comptroller shall be final or the Controller, which passed the order for eviction may exercise the powers of review in accordance with the provision of order XLVII of the First Schedule to the Code of Civil Procedure (Act V of 1908).

Provided that no such review shall be made unless an application is filed for the same within thirty days of the order of eviction.

22. Provisions of section 21 have overriding effect

Notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force, the provisions of section 21 or any rule made thereunder shall have overriding effect.

23. Special provision for active/ex-servicemen of Defence Forces

(1) Where the landlord has been in active military service or is ex-serviceman or has been discharged or retired from service or is to retire or has died while in such active service and any member of his family is in actual necessity of house, then on an application being filed by the landlord or any member of his family, the Controller after issuing notice of fifteen days and on being satisfied after hearing the claim of the landlord is genuine, by order, shall direct the tenant to give possession of the house to the landlord or his family member and if the Controller is not satisfied with the claim of such landlord, he shall pass order rejecting the application.

Provided that if the landlord or his widow has more than one residential house, then such landlord or his widow shall have no right to take back possession of more than one house.

2 (a) The Controller on the receipt of application shall issue summon to the tenant within seven days of filing the application.

(b) In addition to this, the Controller shall direct to send summon to the tenant or his agent by registered post with acknowledgement due and also to stick the second copy of the summon on any conspicuous visible portion of the house.

(c) If the summon with the registered post is returned with the endorsement of the postman that the tenant or his agent refused to take the summon, the Controller after enquiry as he may think fit and being satisfied with the endorsement, may declare that the summon has been legally served on the tenant.

(d) The tenant against whom service of summon has been declared valid, will have no right to oppose the petition of eviction till an affidavit within fifteen days of service of summon is filed mentioning the reason on the basis of which he opposes the petition of eviction and obtains the permission of the Controller on it. In case of failure of his appearance and obtaining Controller's permission, the statement of the landlord or his widow, father, mother, son, grandson, or widow daughter-in-law, as the case may be, shall be deemed to be accepted by the tenant and the petitioner shall be entitled for the order of eviction of the tenant.

(e) The Controller within fifteen days of filing of such affidavit shall give permission to the tenant to oppose the application, if the tenant has disclosed such facts which can debar the landlord, his widow, father, mother, son, grand son, widow daughter-in-law in getting back the possession of that residential house.

(f) Where permission to oppose the application has been granted to the tenant, the Controller shall not fix the date more than one month from the date of permission given to the tenant to oppose the application and hearing of the application shall continue on day-to-day basis till the disposal of the case and as far as possible, the decision shall be given within two months from the commencement of the hearing.

(g) The Controller shall give appropriate time to the tenant to give back the possession of the residential house to the landlord, his widow, father, mother, son, grandson or widow daughter-in-law, as the case may be, but will not extend that time altogether more than two months.

(h) Where such proceeding of enquiry in which this section is applicable, including the recording of statements of witnesses, the Controller will follow the procedure of a Court of Small Causes.

(3) No appeal shall lie against the order of the Controller to give possession of any building except as per the procedure laid down in the section.

Provided that a revision petition may be filed in the High Court within sixty days from the date of the order of eviction.

(4) No Court other than the High Court shall stay the operation of eviction during the pendency of the revision petition filed under sub-section (3) of this section.

(5) Where the tenant has been evicted from the residential house and the landlord or his widow, father, mother, son, grand son or widow daughter-in-law, as the case may be, does not occupy within three months continuously from the date of eviction or let out the building or a portion thereof to a person other than the evicted tenant within three years of eviction of the tenant, then the evicted tenant may file an application to the Controller for restoration of possession of that building to him on the same terms and conditions which were applicable at the time of eviction and the Controller shall pass order accordingly and also order to pay cost.

24. Right to recover immediate possession of building to accrue to employee of State or Central Government

(1) Where the landlord is a retired employee of the State or Central Government, and the building let out by him, his spouse or his dependent son or daughter are required for his own use, such employee may, within one year from the date of his retirement or within a period of one year from the date of commencement of this Act, whichever is later, apply to the Controller for recovering immediate possession of such building.

(2) Where the landlord is an employee of the State or Central Government and has a period of less than one year preceding the date of his retirement and the building let out by him, his spouse or his dependent son or daughter is required by him for his own use after his retirement, he may, at any time within a period of one year before the date of his retirement, apply to the Controller for recovering immediate possession of such building.

(3) Where the landlord, his spouse or his dependent son or daughter referred to in sub-section (1) or sub-section (2) has let out more than one building, it shall be open to him, his spouse or his dependent son or daughter, as the case may be to make an application under that sub-section in respect of only one of the premises chosen by him.

25. Right to recover immediate possession of building to accrue to a widow or a handicapped person or a person aged sixty five years and above

(1) Where the landlord is

(a) a widow and the building let out by her, or by her husband;

- (b) a handicapped person and the building let out by him;
- (c) a person who is of the age of sixty five years or more and the building let out by him,

is required for use by her or him or for her or his family or for any one ordinarily living with her or him for use, she or he may apply to the Controller for recovery of immediate possession of such building *and the process of eviction as delineated in Sec 23 of this act shall be applicable.*

(2) Where the landlord referred to in sub-section (1) has let out more than one building, it shall be open to her or him to make an application under that sub-section in respect of any one building chosen by her or him.

CHAPTER - V DEPOSIT OF RENTS

26. **Deposit of rent by tenant on refusal of the landlord to accept it or in case of doubt or dispute as to the person entitled to receive it.**

(1) If the landlord or his authorized agent refuses or neglects to pass to the tenant the receipt referred to in sub section (2) of section 15, the Controller may, on an application made to him in this behalf by the tenant within two months from the date of payment and after hearing the landlord or his authorized agent, by order direct the landlord or his authorized agent to pay to the tenant, by way of damages, such sum not exceeding double the amount of *monthly* rent or other charges paid by the tenant and the costs of the application and shall also grant a certificate to the tenant in respect of the rent or other charges paid.

(2) If the landlord or his authorised agent refuses to accept or evades acceptance of receipt of rent and other charges, the tenant may, by notice in writing, ask the landlord to supply him the particulars of his bank account in a bank located near to the building.

(3) If the landlord furnishes the particulars of his bank account, the tenant shall deposit the rent and other charges payable in such bank account from time to time.

(4) If the landlord does not furnish the particulars of the bank account under sub-section (2), the tenant shall remit the rent and the other charges payable to the landlord, from time to time, *through* postal money order after deducting the *necessary postal* charges.

(5) Where any bonafide doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of any building, the tenant may deposit such rent in the prescribed manner *with the controller*, stating the circumstances under which such deposit is made, and, may until such doubt has been removed or such dispute has been settled by the decision of any competent court or by settlement between the parties, continue to deposit in like manner, the rent that may subsequently become due in respect of such building.

(6) When a deposit has been made under sub-section (5), the amount of such deposit shall be held by the Controller pending the removal of the doubt or the settlement of the dispute which has arisen as to the person, who is entitled to receive the rent, either by the decision of a competent court or by settlement between the parties, and the amount of such deposit may be withdrawn by the person who is declared by such court to be entitled to it or who is held by the Controller to be entitled to it in accordance with the settlement.

27. Deposit of rent by tenants in suits for eviction

(1) If, in a suit for recovery of possession of any building, the tenant contests the suit as regards claim for eviction, the landlord may move an application at any stage of the suit for order on the tenant to deposit rent month by month at a rate at which it was last paid and also subject to the law of limitation, the arrears of rent, if any, and the Controller after giving opportunity to the parties to be heard, may make an order for deposit of rent month by month at such rate as may be determined and the arrears of rent, both before or after the institution of the suit if any and on failure of the tenant to deposit the arrears of rent within fifteen days of the date of order or the rent at such rate for any month by fifteenth day of the next following month; the Controller shall order the defence against eviction to be struck off and the tenant to be placed in the same position as if he had not defended the claim to eviction and further, the Controller shall not allow the tenant to cross-examine the landlord's witnesses.

(2) If in any proceeding referred to in sub-section (1), there is any dispute as to the person or persons to whom the rent is payable, the Controller may direct the tenant to deposit in the office of Controller the amount payable by him under sub-section (1) and in such case, no person shall be entitled to withdraw the amount in deposit until the Controller decides the dispute and makes an order for payment of the same.

(3) If the Controller is satisfied that any dispute referred to as in sub-section (2) has been raised by the tenant for reasons which are false or frivolous, the Controller may order the defence against the eviction to be struck off and proceed with the hearing of the suit as laid down in sub-section (1).

28. Deposit of rent determined by the Controller during the pendency of appeal or revision.

The Appellate Authority or the Commissioner may, after giving an opportunity to the parties to be heard make an order for deposit of rent at such rate as may be determined month by month, and arrears of rent, if any, and in case of non-compliance of this order, the Appellate Authority or the Commissioner shall order the defence against the standard rent order to be struck off. The landlord may apply for permission to withdraw the amount of rent so deposited without prejudice to any other legal remedy to which he is otherwise entitled and the Controller may permit to do so.

CHAPTER - VI RESTORATION OF POSSESSION AND EXTENSION OF LEASE



29. Entitlement to restoration of possession and compensation by tenant

Where the landlord recovers possession of any building from the tenant by virtue of an order secured because of clause (c) and (e) of sub-section (1) of section 19 and the building is not occupied by the landlord, or by the person for whose benefit the building is held within *three* month of the date of vacation of the building by such tenant, or the building having been so occupied is re-let within six months of the date of such occupation to any person other than such tenant without the permission of the Controller, the Controller may on the application of such tenant made within *three* month of his vacating the building, and giving the landlord an opportunity of being heard, by order direct the landlord to put such tenant in possession of the building or to pay him such compensation as may be fixed by the Controller or both.

30. Extension of period limited by lease

(1) If a tenant in possession of any building held on lease for a specified period intends to extend the period limited by such lease, he may give the landlord at least one month before expiry of the period limited by the lease, a written notice of his intention to do so, and upon the delivery of such notice, the landlord may renew the lease on the terms mutually agreed upon.

(2) If the tenant fails to vacate the building on the termination of lease or as the case may be, on the expiry of the period renewed under sub-section (1), the Controller shall on an application by the landlord pass an order for eviction, which shall be executed as such and may further order that the tenant shall pay to the landlord such amount as may be determined by it as daily compensation.

CHAPTER - VII

CONTROLLER, APPELLATE AUTHORITY AND COMMISSIONER

31. Appointment of Controllers

(1) The State Government may, by notification, in the Official Gazette, appoint as many Controllers as they think fit, and define the local limits within which, each Controller shall exercise the powers and perform the functions under this Act.

(2) A person not below the rank of Sub Divisional Officer and Executive Magistrate shall be appointed as a Controller,

32. Powers of Controller

(1) For the purpose of any enquiry under this Act, the Controller may

- (a) enter and inspect any building at any time between sunrise and sunset or authorize any officer subordinate to him to so enter and inspect any building.

Provided that no building shall be entered without the consent of the occupier unless at least twenty four hours previous notice in writing has been given, and

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

(2) The Controller shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a Court by the Code of Civil Procedure (Act No.5 of 1908).

33. Procedure to be followed by Controller

(1) No order which prejudicially affects any person shall be made by the Controller under this Act without giving such person a reasonable opportunity of showing cause against the order proposed to be made, and until his objection, if any, and any evidence that may be adduced in support of the same have been considered by the Controller.

(2) The Controller shall, while holding enquiry in any proceeding before him, follow such procedure as may be prescribed.

(3) All proceedings before the Controller shall ordinarily conclude within six months from the date of first appearance of the respondent in response to the summons issued for his appearance in the case, or from the date on which the respondent is set ex-parte:

Provided that the Controller may extend the hearing of the case beyond six months for reasons to be recorded by him on each day of hearing. *However total period of such hearing shall not exceed 12 months.*

(4) In the case of an application under sub-section (2) of section 18, the Controller shall commence the hearing of the application within seven days of the filing thereof and shall dispose off the same as far as may be possible within thirty days of start of such hearing, unless for reasons to be recorded the Controller adjourns the case beyond such time.

34. Controller to issue notice to landlord or tenant before exercising powers

Before exercising any of the powers conferred by this Act, the Controller shall give notice of his intention to do so to the landlord and to the tenant, if any, and shall consider any application that may be received by him within the period specified in the notice from such landlord or tenant or from any other person likely to be affected by the exercise of such powers and shall hear the applicant if so desired by him.

35. Controller to maintain list of Standard Rents

(1) The Controller shall maintain up-to-date list showing the standard rents of buildings as fixed by him from time to time under the Act.

(2) A copy of the list shall remain in the office of the Controller available for inspection free of charge during office hours, and copies of the entries in such list may be granted by the Controller on payment of such charge as may be prescribed.

36. Appeal

- (1) Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of receipt of such order by him, prefer an appeal in writing to the Appellate Authority.
- (2) On such appeal being preferred, the Appellate Authority may
 - (a) after perusing the memorandum of appeal and hearing the appellant, if necessary summarily dismiss the appeal, or
 - (b) call for records of the case from the Controller and after examining such records and, if necessary, making such further enquiry as he thinks fit decide the appeal.
 - (c) *such appeal shall be decided within the six months.*
- (3) Subject to the provision of sub-section (2), the decision of the Appellate Authority and subject only to such decision where an appeal lies, an order of the Controller shall be final and shall not be liable to be questioned in any court of law whether in suit or other proceeding by way of appeal or revision.

37. Revision

- (1) The Commissioner may, either of his own motion or on application made to him in this behalf, revise any order passed by the Controller or by the Appellate Authority on appeal under this Act.
- (2) The exercise of the powers by the Commissioner under this section shall be subject to such rules as may be prescribed and for reasons to be recorded in writing,
- (3) *Such revision application shall be disposed of within six month from the date of filing of such application.*

38. Award of costs

In every order passed by the Controller, the Appellate Authority or the Commissioner under this Act, it may award cost to the person in whose favour the order is passed and the cost so awarded shall include such sum as compensation for the expense, trouble and loss of time incurred in, or incidental to, the hearing of the case, as deemed just and reasonable.

39. Execution of orders of Controller, Appellate Authority and Commissioner

- (1) Every order of the Controller passed under this Act, where no appeal against such order has been preferred under sub-section (1) of section 36, every order of the Appellate Authority on appeal under sub-section (2) of section 36 and every order of the Commissioner passed in revision under section 37 shall be executed by the Controller as if such orders were an order passed by such Controller.
- (2) The Controller, Appellate Authority and the Commissioner, in exercise of the powers conferred upon it under this Act shall be treated as a Court under sections 195 and 340 of Criminal Procedure Code (1973 (Act 2 of 1974) and any proceedings before it shall be regarded as judicial proceedings under sections 193 and 228 of Indian Penal Code.

CHAPTER – VIII

PENALTIES

40. Penalties

(1) If any person contravenes any of the provisions of this Act, he shall except as otherwise provided in section 15, be punishable with imprisonment for a term which may extend to two years or with fine or with both.

(2) Whoever fails to comply with any direction made or deemed to have been made under this Act shall be punishable with imprisonment for a term which may extend to one year or fine or with both.

Provided that the Controller trying any offence under this Act may order the whole or any part of the fine recovered to be applied to the payment to any person as compensation for any loss caused by the offence.

CHAPTER – IX

MISCELLANEOUS

41. Certified copies of orders and decisions of Controller, Appellate Authority and Commissioner

Any person affected by any order of the Controller or any decision of Appellate Authority on appeal or any order of the Commissioner in revision made or passed under this Act shall be entitled to be furnished with a copy thereof duly certified by the Controller, the Appellate Authority or the Commissioner as the case may be, to be a true copy on payment of such fee as may be prescribed; and such copy shall be admissible as evidence in any Court of Law to prove the order of the Controller, the decision of the Appellate Authority on appeal or the order of the Commissioner on revision, as the case may be.

42. Decision which has become final not to be reopened

The Controller shall summarily reject any application which raises substantially the same issue as have been heard and finally decided in a former proceeding under this Act between same parties under whom they or any of them claim.

43. Exemptions

Notwithstanding anything in this Act, the Government may, by notification in the Official Gazette, exempt subject to such conditions and terms, if any, as they may specify in the notification, any building or class of buildings from operation of all or any of the provisions of this Act.

44. Protection of action taken under the Act

(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made or deemed to have been made under this Act.

(2) No suit or other legal proceeding shall lie against the Government for any damage which is in good faith done or intended to be done in pursuance of any order made or deemed to have been made under this Act.

45. Power to make Rules

(1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rule may provide for all or any of the following matters, namely:

- (a) the form, the manner and the time in which particulars of tenancy have to be filed before the Controller under proviso to sub-section 92) of section 4;
- (b) the manner in which an application is made to the Controller to fix standard rent under section 12;
- (c) the form in which receipt for payment of rent is issued by the landlord under sub-section (1) of section 15;
- (d) the manner of eviction of a person unauthorisedly in occupation of a building by the Collector under sub-section (2) of section 19
- (e) the manner of depositing rent under sub-section (5) of section 26;
- (f) the manner of holding enquiry by the Controller under section 33;
- (g) charging or remitting of costs and fees under this Act and fixing of the amount or the scale of such costs and fees;
- (d) the manner of exercising the powers of revision by the Commissioner under section 37; and
- (e) any other matter by this Act required or expressly or impliedly authorized to be prescribed.

46. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, in consequence of the transition to the said provisions from the corresponding provisions of the Act, which was in force immediately before the commencement of this Act, the Government may, by order in the Official Gazette, issue such orders or instructions as appear to them to be necessary or expedient for removing the difficulty.

(2) If any difficulty arises in giving effect to the provisions of this Act (otherwise than in relation to the transition from the provisions of the Act, which was in force immediately before the commencement of this Act), the Government may, by order in the Official Gazette, make such orders or instructions, not inconsistent with the purposes of this Act, as appear to them to be necessary or expedient for removing the difficulty.

(3) The Provision of this Act shall not affect the provisions in Chhotanagpur Tenancy Act, 1908 and Santhal Pargana Tenancy Act, 1949 in any manner.

47. Repeal and Saving

(1) The Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (Act No.4 of 1983) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in exercise of any powers conferred by or under the said Act shall be deemed to have been done or taken in exercise of powers conferred by or under this Act as if this Act were in force on the day on which such thing or action was done or taken.

झारखण्ड राज्यपाल के आदेश से,

पंकज श्रीवास्तव,

सरकार के सचिव-सह-विधि परामर्शी

विधि (विधान) विभाग, झारखण्ड, राँची ।