

## **Is the Rent Act Reaching the Culmination of its Purpose?**

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### **Abstract**

Rent Law in the country has a history of over 78 years since introduction of Rent Restriction Ordinance No: 60 of 1942 by the then Ceylon State Assembly. The Rent Act No: 20 of 1948 introduced by the Government of Ceylon after independence in 1948, incorporated law relating to rent up to date and considered as a comprehensive Rent Law till 1972. Rent Act No: 7 of 1972, more concerned on tenants than landlords, introduced by the Democratic Social Republic of Sri Lanka, repealed the former Ordinance and considering as the current Rent Law of the country with two amendments in 1980 and 2002, both were introduced by the then governments with “Free Economic Policy”. First amendment in 1980 was somewhat capitalist that more leaning towards landlords and the last amendment in 2020 has ultimately lead to close the chapter of “protected tenant”. This article, attempt to see whether the purpose of the Rent Act for safeguarding the interest of tenants is still valid.

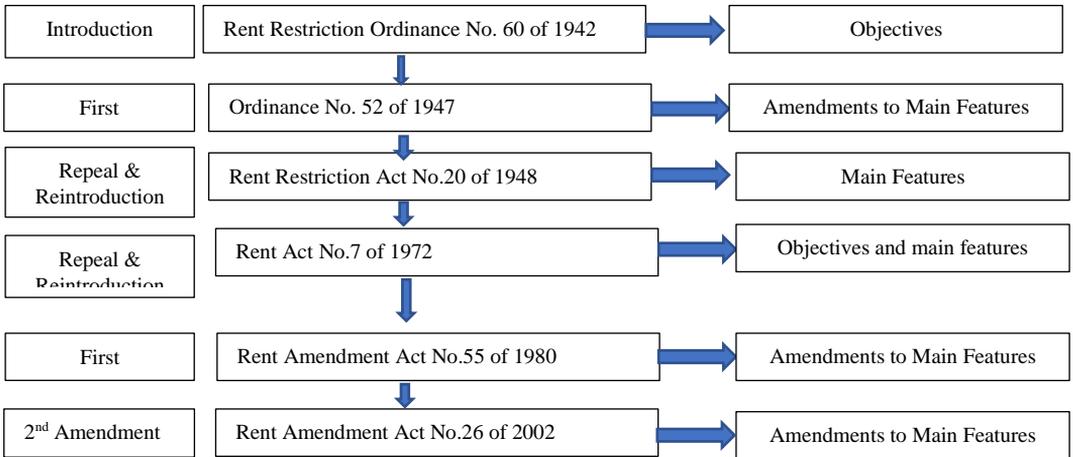
**Keywords:** Rent Act, Protected Tenant, Authorised/Standard Rent, Ejection of tenants, demolition orders and assessment of compensation.

### **Introduction**

Current rent law in operation is the Rent Act No: 07 of 1972 as amended by Rent (Amendment) Act No: 55 of 1980 and Rent (Amendment) Act No: 26 of 2002. The objective of this paper is to see whether the purpose or prime motive of introducing the Act,

especially of protecting or safeguarding the interests of the tenants as well as curtailment of undue difficulties or worries to landlords, are taking place or happening at the moment. In this context, history of rent laws in this country will draw a better picture.

### **Evolution of the Rent Law**



Imposing ceilings, especially on use or on yields from real estate can be describes as a socialist move in political context. Such an ordinance, a rule or law that limits what someone can do or what can happen, was brought forward during the period of Second World War, to control tenanted houses, namely the Rent Restriction Ordinance No: 60 of 1942. As the name implies, the prime motive of the ordinance was to protect the rights of tenants who are living in rented houses, mainly by limiting the rent that could be recovered. While imposing a ceiling on rent that could be recovered, as owners of such houses were collecting exorbitant rents from occupiers, and maintenance of living conditions of the tenanted houses too were safeguarded by the statute. Merriam Webster defines “ordinance” as a limitation on the use or enjoyment of property or a facility.

Objectives of the Rent Restriction Ordinance No: 60 of 1942 were, to govern the relationships of landlord and tenant, to restrict

the increase of rent, and to provide for matters incidental to such restrictions. But the Ordinance was not intended to be a permanent Statute in our Statute Book and the scope of the Ordinance and its amendments were most restricted.

Main features of Rent Restriction Ordinance No: 60 of 1942 were, the Executive Committee of Local Administration was responsible for giving effect to the provisions and the Governor had very wide powers. Provisions of the Ordinance were applicable to all premises in the areas in which the Ordinance was in operation and certain types of premises of which the landlord was a Local Authority were treated as excepted. Provisions with regard to the rights of the landlord and the tenant were contained in section 3-7,8,9 and 10, which relate to the rent under the contract of tenancy and the restriction of the right of the landlord to institute an action for the ejection of the tenant.

The first amendment to this Ordinance was brought forward by Ordinance No.52 of 1947 and provision was made for the establishment of a Rent Board of Review. Next, Rent Restriction Act No.20 of 1948 and its amendments were far more comprehensive and introduced a number of provisions for the better protection of the rights of the landlord and the tenant. The main features of this Ordinance were,

- Authority responsible- Minister of Local Government and Administration,
- Certain premises were declared to be excepted- identical to the provisions of Section 4 of Rent Act No.7 of 1972,
- Special provision was made for the letting out of premises in separate parts,
- Right of the tenant to sublet the premises or part thereof was restricted,

- Provision was made with regard to amenities and repairs of premises,
- Provisions with regard to ejectment – identical to Rent Restriction Ordinance No:60 of 1942,
- Provision was made for continuance of the tenancy upon the death of the tenant,
- Provisions was made for the grant of certificate of tenancy by the landlord to the tenant,
- Appointment of “Authorised Officers” for the purpose of enforcing the provisions of the Act and
- the Rent Control Board was given the power to determine the authorised rent.

In 1972 Rent Act No: 7 of 1972, was introduced and by the Sec. 46(1) of the Rent Act No: 7 of 1972, the Rent Restriction Act (Chapter 274), as amended from time to time, was repealed and the same became the only rent law of the country since March 1972. The main features of the Act were, more effective and comprehensive law which would define the rights and duties of landlords and tenants more precisely and provides more effective provisions and machinery for the enforcement and protection of the rights of landlords and tenants.

Accordingly, the rent which can be recovered from a property “not excepted and situated within an area where the Rent Act is in operation” is the Authorised Rent or Receivable Rent, as the case may be. The Authorised Rent comprises of, the Standard Rent determined under Sec. 4 and the permitted increases under Sec. 5 of the Act). Authorised Rent for residential premises will be calculated for the premises where Relevant Amount does not exceed the Annual Value as specified in Sec. 48(1).

**Table 01: Relevant Amounts for Residential Premises - Sec. 48(1)**

<b>Area</b>	<b>Annual Value</b>
i. Colombo Municipal Council	Rs. 2000.00
ii. Other Municipal Councils	Rs. 1,500.00
iii. Urban Council	Rs. 1,000.00
iv. Town Councils and all other area except above i, ii & iii	Rs. 500.00

Thus under Sec. 4(1), the Authorised Rent for **Residential Premises** and **Business Premises within the Relevant Amounts** is calculated as below. It is to be noted that, all tenanted residential premises comes under the purview of the Rent Act, but only the business premises where Annual Value does not exceed **Relevant Amount** comes within the purview of the Act.

Under Sec. 48(2) Relevant Amounts for business premises where annual value as at 01.01.1968 or if is it first assessed after that date, the first annual value does not exceed relevant amount as below.

**Table 02: Relevant Amounts for Business Premises - Sec. 48(2)**

<b>Area</b>	<b>Annual Value</b>
i. Colombo Municipal Council	Rs. 6000.00
ii. Other Municipal Councils	Rs. 4,000.00
iii. Urban Council	Rs. 2,000.00
iv. Town Councils and all other area except above i, ii & iii	Rs. 1,000.00

**Basic calculation of Authorised Rent under Rent Act No: 7 of 1972 is as below.**

If the annual value as at 01.01.1968 or if first assessed after that date, Annual Value on such assessment does not exceed the **relevant amount**, the formula adopted is as below.

**Table 03:**

Annual Value as at 01.01.1941 or first Assessment	Rs. ....	
<b>Add - Annual Rates on such Annual Value</b>	<u>Rs. ....</u>	
<b>Standard Rent</b>	<u>Rs. ....</u>	
<b>Add – Permitted Increases</b>		
10% of the Standard Rent	Rs. ....	
6% of approved cost of improvements	Rs. ....	
Excess Rates (Rates at First Assessment – current rates)	<u>Rs. ....</u>	<u>Rs. ....</u>
<b>Authorised Rent</b>		<u><u>Rs. ....</u></u>

The notable phenomenon feature of the Rent Laws prevailed up to 1980 was that, the provisions in the Act were mainly concerned about the rights of the tenants and less importance was given to the rights of the landlords. This was featured by controlling the rent that can be recovered under the provisions of the Rent Act to **Authorised Rent**, which is a very minimum basic rent with compared to the open market rental value of a similar type building, either commercial or residential, because the calculation was initially based on the Annual Value prevailed as at 1941.

Concept of “Free Economy” was declared by the Government came into power in July 1977 and as a consequence of it, Rent (Amendment) Act No: 55 of 1980 was passed in the Parliament. The very special feature of this amendment was that, so called Authorised Rent was limited only to the residential premises which have been given on rent before January 1980. Thus, Under Sec. 2 (4) of the Rent Act, the provisions of the Rent Act apply to premises other than,

**Table 04:**

- A. 1. Property where landlord is a local authority
2. Property where landlord is the National Housing Commissioner
3. Excepted premises **as below**
  - i. Commercial properties where annual value as at 01.01.1968 or if is it first assessed after that date the first annual value exceeds relevant amount as below.

<b>Area</b>	<b>Annual Value</b>
i. Colombo Municipal Council	Rs. 6000.00
ii. Other Municipal Councils	Rs. 4,000.00
iii. Urban Council	Rs. 2,000.00
iv. Town Councils and all other area except above i, ii & iii	Rs. 1,000.00

4. Where it is a **commercial property** situated outside of the above municipal council, Urban Council and Town council as at the date of commencement of the Act,
- i) If the property is given as at the date of commencement of the Act (March 1972) for a rent higher than Rs. 1,500 per annum,
  - ii) If a property is not given on rent as at the date of commencement of the Act and subsequently given on rent higher than Rs. 1,500 per annum. However on an application made by the tenant if the Board is satisfied that the reasonable rent of the premises does not exceed Rs. 1,500 per annum such premises can be declared as an unexcepted premises.
- B.** Residential premises constructed after January 1, 1980 and let on or after that date
- C.** Residential premises occupied by the owner on January 1, 1980 and let on or after that date
- D.** Residential premise where possession has been taken over by the landlord on January 1, 1980 and let on or after that date
- E.** Residential properties in the occupation of a person who has been issued with a valid visa under the Immigrants and Emigrants Act and whose total income exceeds Rs. 1,000 per month or a non-resident company in respect of which the landlord obtains the prior approval of CNH who shall grant approval if he is satisfied that the previous tenant has vacated voluntarily or upon an order of courts.
- F.** Any premises of which the landlord is a Co-operative Society registered under the Co-operative Societies Law No: 5 of 1972 or any other law, the state, a public Corporation, a public authority or company registered under the Companies Act No: 17 of 1982
- G.** Any premises of which the tenant is a Co-operative Society registered under the Co-operative Societies Law No: 5 of 1972 or any other law, the state, a public Corporation, a public authority or company registered under the Companies Act No: 17 of 1982.

Above (F) and (G) were introduced under the regulations published in Extraordinary gazette No: 1305/17 dated 09.10.2003 by the Minister of Housing. Above A and E were introduced under Rent Act No: 7 of 1972 and B, C & D were introduced by the Amendment Act No: 55 of 1980.

Further, changes were introduced to the method of calculating the Authorised Rent, to be a somewhat fair or increased rent for tenanted premises, lifting the base year from 1941 to 1955. Thus, the calculation of Authorised Rent is as below from 1980, even up to now.

### **Calculation of Standard Rent/Authorised Rent after 1980 Amendment**

1. The **Standard Rent** of any **residential premises** where first assessment of Annual Value on or before 01.01.1969 and does not exceed the relevant amount and of any **business premises** the Annual Value of which does not exceed the relevant amount means,

**Table 05:**

A	Annual Value as at January 1955 or if the Annual Value first assessed after that month such Annual Value	Rs. ....
B	Plus (+) if the rates paid by landlord, the rates payable for the time being (current annual rates)	Rs. ....
	<b>Standard Rent</b>	Rs. ....

2. **Standard Rent** of any **residential premises** other than above, ( means, first assessed after 01.01.1969 and does not exceed the relevant amount

**Table 06:**

A	Current Annual Value	Rs. ....
B	Plus (+) Current Annual Rates	Rs. ....
	<b>Standard Rent</b>	Rs. ....

3. In the case of any premises to which the above provisions do not apply, the standard rent of such premises means such rent as may be fixed by the Board on an application made either by the landlord or by the tenant.

## **Permitted Increases**

According to Sec. 5, permitted increases are as below.

Sec. 5 (1) - Since determination of standard rent, where the landlord incurred or incurs expenditure on the improvements, repairs or structural alterations,

- a. if prior consent of the tenant for the work as well as for the amount or
- b. prior approval of the Board, has been obtained,

the standard rent per annum may be increased for a period of five years by twenty-five percent each year of the amount of the expenditure so incurred. Means 1/4<sup>th</sup> share of such expenditure incurred was added to the Standard Rent for a period of five years to arrive at the Authorised Rent.

There is no any interpretation given in the Act for “expenditure on the improvements, repairs or structural alterations” mentioned in Sec. 5(1). Such an instance, case Law provides a base.

In *D.A.Senanayake V The Urban Council Gampaha* 60 NLR 127 – Justice M.C.Sansoni & H.N.G.Fernando, stated that,

“If the work which is done is the provision of something new for the benefit of the occupier, that is properly speaking an improvement: but if it is only the replacement of already there, which has become dilapidated or worn-out, then albeit that it is a replacement by its modern equipment, it comes within the category of repair and not improvement.”

Under Sec. 6, the authorized rent of any premises shall not be less than the authorized rent or the receivable rent of those premises, as the case may be, under the provisions of this Act as were in force on March 1, 1972. Thus, it is a requirement by the statute that, to

determine Standard Rent or Authorities Rent, the rent should be calculated under Rent Act No: 7 of 1972 and under Rent (Amendment) Act No: 55 of 1980 as well and whichever the higher is determined as the Standard/Authorised Rent of the premises.

### **Effect of Rent Law on Payment of Compensation under Land Acquisition Act No: 9 of 1950**

When a property is compulsorily acquired for a development project under the provisions of the Land Acquisition Act, it is a legal requirement to pay compensation to the parties interested. This principle is based on the “**Doctrine of Eminent Domain**”.

The term "**eminent domain**" was taken from the legal treatise *De jure belli ac pacis* (On the Law of War and Peace), written by the Dutch jurist Hugo Grotius in 1625, which used the term *dominium eminens* (Latin for "supreme ownership") and described the power as follows.

Legal **doctrine of** the right and inherent power **of** a government to take private property (such as land) for public use (such as for bridges, canals, roads) on reimbursing the owner with fair market value **of** the property. In other words, “the power in its irreducible terms i.e., power to take, without the owner's consent, and for the public use”.

Under Sec. 46(1) of the Land Acquisition Act, compensation for a land acquired,

- (a) where the compensation is for the acquisition of that land, be based on the **market value of that land**, or
- (b) where the compensation is for the acquisition of a servitude over that land, be based on the **market value of that servitude**, and shall be proportionate to his interest in that land.

**Market Value** is defined in Sec. 45 as under

*“For the purposes of this Act the market value of a land in respect of which a notice under section 7 has been published shall, subject as hereinafter provided, be the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of publication of that notice in the Gazette :”*

Market Value of any property reflects the value of the yield that would be generated by the property. In other words, the return an investor would receive for the money he paid or invested to get the ownership of the property. As all valuers know, the annual net income derived from a property is multiplied by a deviser called “Years Purchase in perpetuity” commonly known as YP to arrive at the Market Value.

There are so many methods to assess Market Value, basically five methods, and whatever the method apply to ascertain the market value, the basic process is similar. When it is a built up property, the annual rent of the building reflects the yield and if it an agricultural property, the annual harvest or crop reflects the yield. Annual Rent means, the rent that could be collected for the property in the open market, called Open Market Rent as at the date of valuation.

If there is any restriction by law over the collection of rent, what will happen to the Market Value?

When a property is acquired under the provisions of the Land Acquisition Act and if such a property is occupied by a protected tenant under the Rent Act, it will affect to the Market Value of the property adversely, as only a legal rent, a restricted yield, can be collected from such a property. If the rent is low, consequently the Market Value too becomes low. If the rent obtainable reflects the

open market rental value consequently it reflects Open Market Value of the property too.

Therefore, it is an accepted principle that, when an acquired property is occupied by a protected tenant under the Rent Act, the Market Value is determined, based on the Standard/Authorised Rent and as a result, the compensation determined became very low with compared to properties valued on open market rental value. The following example, which is a true case happened, illustrates this situation impeccably or without a glitch.

Lot No: 40 in PP Co 8361 in extent 0 Acre 0Rood 20.55Perches with a part of a single storied residential building covering a Floor Area of 3,006 square feet, located in Kollupitiy, Colombo city, was acquired for Marine Drive Road construction. This property was occupied by a protected tenant under the Rent Act and based on the Authorised Rent, the compensation assessed and offered was Rs. 371,800/=, which is the Market Value of the property under Sec. 46(1) of the LA Act.

Whereas for Lot No: 18 in extent 0Acre 0 Rood 20.15Perches and Lot No: 20 in extent 0Acre 0Rood 19.91 Perches, being two allotments of same Preliminary Plan, acquired for same purpose and located in the same vicinity, compensation paid was Rs. 6,220,000/= and Rs. 10,500,000/= respectively. Both allotments had buildings, though they are unauthorized, occupied by tenants, but were not came within the purview of the Rent Act. The date of Valuation was 11.02.2002. Obviously, owner of the Lot 40, where the extent of the land was 20.55 perches would have got more compensation than above two lots if the tenant occupying was not a protected tenant under the Rent Act.

This example shows how adversely affect the existing Rent Law to the meaning of doctrine of Eminent Domain when calculations are made for payment of just and fair compensation. Thus, it is very important to see further the effect of a protected tenant in assessing compensation under the Land Acquisition Act.

The Market Value as defined in the Land Acquisition Act is not the normal Market Value one finds in the open market, as defined by the International Valuation Standard Committee, commonly known as IVSC. It is a Market Value as defined in the Act with certain restrictions as laid out in the provisions of the Act. The Assessment of compensation under Sec. 46(1) of the LA Act based on the definition of the “Market Value” in sec. 45 of the Act has to be made taking other provisions laid out in the Act including Sec. 48 of the Act which lists matters to be ignored in assessment of compensation. In the case CA 786/91(F). D.C. Colombo 7301/RE, October 3, 1996, Senanayake J and Edussuriya J held that

“It is an accepted principle that parties cannot contract outside the Rent Act where the premises is governed by the Rent Act”.

Sec. 3 of the Rent Act No: 7 of 1972 states,

1. It shall not be lawful for the landlord of any premises,
  - (a) To demand, receive or recover as the rent of such premises in respect of any period commencing on or after the date of commencement of this Act any amount, in excess of the authorized rent of such premises as defined for the purpose of this Act in Sec. 6 or as the case may be, in excess of the receivable rent of such premises as defined for the purpose of this Act in Sec. 7; or

- (b) To increase the rent of such premises in respect of any such period to an amount in excess of such, authorized rent or such receivable rent.
2. It shall not be lawful for the tenant of any premises to pay or offer to pay as the rent of such premises, any amount, in excess of the authorized rent of such premises as defined for the purpose of this Act in Sec. 6 or, as the case may be, in excess of the receivable rent of such premises as defined for the purpose of this Act in Sec. 7.

Thus, in the case of a tenanted property, protected under the Rent Act, the valuation has to be carried out based on the Legal Rent receivable, i.e. Authorized /Standard Rent for the premises, otherwise it violates the said Sec. 3 of the Rent Act and also the aforementioned Court ruling.

Consequently, the Landlord's interest with the sitting tenant protected under the Rent Act is very much lower in comparison to the Unencumbered Freehold Interest of the land. Encumbrance created by the Rent Act adversely affects the Market Value too. Is there any remedial measure to overcome this undue legal interference on Open Market Value of a tenanted property?

The only legal measure, provided within the Rent Law itself is obtaining tenant free status. According to the Rent Act, there are only two ways by which the vacant possession can be obtained.

- A. Obtaining a demolition order
- B. Ejection of tenant

## **A. Obtaining a Demolition Order**

Section 18A – Rent (Amendment) Act No:26 of 2002 states that, Commissioner of National housing may authorize the owner to demolish buildings over 40 years old, subject to following conditions.

- Order the owner to provide alternate accommodation to the tenant or
- to pay two years rent as an advance to find alternate accommodation by the tenant or
- order the owner to pay to the tenant 10 years annual value of the premises as at the date of application for demolition or
- 20% of the market value of the premises as determined by the Chief Valuer or
- to pay Rs. 150,000, whichever is higher as compensation.

But, compensation to be paid to get the tenant ejected under Sec. 18A is not limited to the above amounts. It must “to be reasonable as determines by the Commissioner”. The Sec. 18A 2b(ii) reads as below.

Sec. 18A 2b(ii) - order the owner of such building to pay to the tenant thereof, such compensation as the **Commissioner determines to be reasonable**, for the loss of possession by such tenant ; so however that the amount ordered to be so paid **shall in no case be less than** ten years’ annual value of the premises calculated as at the date of the application for demolition or twenty per centum of the market value of the premises as determined by the Chief Valuer as at the date of the application for demolition or rupees one hundred and fifty thousand, whichever is higher.

What is this so called “**reasonable**” compensation?

Under the protection provided by the Rent Act, a tenant enjoys a “rental benefit” created by the “Authorised Rent” concept. In other words, a tenant occupies a property by paying a “Legal Rent” over and above the “open market rental value” of the premises, where gap between the two reflects his rental benefit created by the law. Therefore, we have to assess this rental benefit to determine the “Reasonable” compensation by the Commissioner.

I hope, the following example clarifies this position.

A land in extent 0A0R20.00Perch in extent with a residential building, having a Floor area of 1,000 square feet, has been acquired for a public purpose under the provisions of the Land Acquisition Act No: 9 of 1950. It is over 45 years old, located in a commercial area and occupied by a protected tenant under the Rent Act. Rental Value for commercial purpose varies from Rs. 25/= per sq.ft. to Rs. 40/= per sq.ft. per month and for residential purpose varies from Rs. 5/= per sq.ft. to Rs. 7.50 per sq.ft. per month. General site value in the locality is around Rs. 500,000/= per perch for commercial purpose.

Calculate the amount of compensation to be paid to parties interested.

Although a monthly tenant of a property is not entitled for compensation under Sec. 65 of the Land Acquisition Act, since 17.03.2009, a protected tenant under the Rent Act too has been made entitled for compensation under regulations made for Land Acquisition Act under the “Regulation 2008” passed in the Parliament and published in Government Gazette No: 1585/7 dated 20.01.2009.

Whether it is for assessment of compensation under Land Acquisition Act or assessment of compensation in order to determine the “reasonable compensation” to be paid to the tenant to

issue a demolition order under Sec. 18A of Rent Act, same procedure is to be adopted. In this process, four stages are to be followed.

**Table 07 :**

Stage 1	Assessment of compensation of unencumbered Freehold interest of the premises – this is because, Market Value is to be ascertained based on the “Highest and Best Use” of the property.
Stage 2	Determination of Reasonable Amount of Compensation under Sec. 18A 2(ii)(b) of the Rent Act to be paid to the Protected Tenant – Valuation is based on Rental Benefit enjoyed by the tenant, which is the difference between the Authorised Rent and the Open market Rent of the premises.
Stage 3	Determination of Market Value of Encumbered Freehold Interest or market value of owner’s share
Stage 4	Apportionment of Market Value of Unencumbered Freehold Interest between the owner and the protected tenant.

**Table 08:**

	Assessment of Market Value of Unencumbered Freehold Interest	
	Land – 0A 0R 20P @ Rs. 500,000.00 per perch	Rs.10,000,000.00
Stage 1	(Commercial Value) Building- No value of residential building as the land is valued on commercial basis	
	Determination of Reasonable Amount of Compensation under Sec. 18A 2(ii)(b)	
	1. Determination of Chief Valuer’s Market Value (I assume that the following method is the best method available to the Chief Valuer - in this scenario subject to correction if any)	
Stage 2	<u>Open Market Rental Value of the premises</u>	
	Floor Area 1,000 sq.ft. @ Rs. 5/= per sq. ft. per month	Rs. 5,000/= per month
	Annual Gross Income (Rs. 5,000/= x 12)	Rs. 60,000.00
	Less: 25% for outgoings	<u>Rs. 15,000.00</u>

Annual Net Income	Rs. 45,000.00
Years Purchase in perpetuity @ 5% (highest return adopted as the future life span of the building is low and assumed condition of the building is below average)	<u>20.00</u>
<b>Market Value</b>	<b>Rs. 900,000.00</b>

Cost of obtaining vacant possession- Section 18 A -  
Payment to tenant - Rs. 150,000/= or 20% of Chief Valuers' valuation i.e. 20% of Rs. 900,000/= as assessed above - Rs. 180,000/= or 10 years of annual value Rs.3,450/= x 10 = Rs. 34,500/=. (Although here it is assumed that the Annual Value of the property is Rs. 3,450/=:, this should be taken from Annual Assessment Notice issued by the Local Authority)

**According to Sec. 18A 2 b ii Reasonable amount should be not less than Rs. 180,000/= – Therefore, Reasonable Amount** should be calculated, based on the **Rental Benefit** enjoying by the tenant.

Annual Open Market Rental Value	Rs. 60,000.00
Less: Authorized Rent (as assumed – this should be calculated under Sec. 6 of the Rent Act)	<u>Rs. 3,000.00</u>
Rental benefit of statutory tenancy	Rs. 57,000.00
Years Purchase @ 5% for 20 years (20 years is assumed, as the life expectancy of the existing building considering the assumed poor maintenance and age of the building)	<u>12.4622</u>
<b>Gross Value</b>	<b>Rs. 710,345.00</b>

Less: 25% for impact on marketability (Tenant's right cannot be sold in the market and therefore 25% is deducted for non-marketability- Although this seems arbitrary, this percentage is purely based on the market analysis of the valuer)	<u>0.75</u>
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<b>Value</b> of Rental Benefit of the Statutory Tenant	Rs. 532,759.00
<b>Say</b>	<b>Rs. 533,000.00</b>

Therefore, **Reasonable Amount** of Compensation to the Statutory Tenant is determined as Rs. 533,000/=.

So, by depositing a sum of Rs. 533,000/= as compensation to the Protected tenant, an owner can request for a Demolition Order through Courts under the provisions of Sec. 18A 2b ii of the Rent Act.

If a tenanted property is acquired for a public purpose under the provisions of the Land Acquisition Act and as the protected Tenant too is entitle for compensation under “Regulation 2008”, following two more stages too are to be followed in assessment of compensation.

Stage 2

Determination of Market Value of Encumbered Freehold Interest or Owner’s Interest

<b>Market Value of Unencumbered Freehold Interest</b>	Rs. 10,000,000.00
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<b>Less:</b> 1. Compensation for tenant	Rs. 533,000.0 0
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2. Cost of litigation - (This is the cost that would be incurred by the owner from the time making an application for demolition order to the Housing Commissioner till the decision is given by the Court of Law) as estimated	Rs. <u>100,000.0</u> <u>0</u> Rs. <u>633,000.00</u>
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<b>Market Value before legal clearance</b>	Rs. <u>9,367,000.00</u>
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Differ @ 10% for 2 years (10% is interest for financial cost and 2 years is the time estimated till final decision by the Courts)	<u>0.8264</u>
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<b>Market Value of Encumbered Freehold Interest</b>	<b>Rs. 7,740,888.00</b>
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Sta  
ge 4 Apportionment of Compensation under Sec. 46(1) of the Land  
Acquisition Act.

**Landlord's Share**

(7,740,888 X 10,000,000)

(7,740,888 + 533,000)

Rs. 9,355,805.00

**Tenant's Share**

(533,000 X 10,000,000)

(7,740,888 + 533,000)

Rs. 644,195.00

## **B. Ejection of tenant**

The second option given to Landlords in the Rent Act is to ejection of tenants under Section 22 of the Rent Act as amended by the Rent (Amendment) Act No: 26 of 2002 is as below.

When the standard rent does not exceed Rs. 100/= per month, ejection case can be filed in courts on following grounds.

1. The rent is in arrears for three months or more after it has become due,
2. Such premises are reasonably required for occupation as a residence for the landlord or any member of the family, or for the purpose of the trade, business, profession, vocation or employment of the landlord. For this purpose, prior to filing action in courts, a sum equivalent to ten year's rent or Rs. 150,000/= whichever is higher should be deposited with Commissioner of National Housing and inform the CNH about the institution of such case.
3. In case of service tenants when their service is terminated.
4. Convicted for using the premises for illegal or immoral purposes or became guilty of conduct through courts which is a nuisance to adjoining occupant,
5. Structural alteration done without prior authorization in writing of the landlord and the relevant local authority.
6. Change of use partly or wholly,

7. Premise is required for development and a sum equivalent to ten years annual value or 20% of the market value as determined by the Chief Valuer or Rs. 150,000/= whichever is higher is deposited with CNH for payment to the tenant as compensation. (It is to be noted that under Sec. 18 2b ii, this amount is the “reasonable amount” as determined by the Commissioner of National Housing – two contradictory provisions?)

When the standard rent exceeds Rs. 100/= per month, ejectment cases can be filed on above grounds except that the rent is in arrears for one month.

### **Conclusion**

The major protection given to the tenant in Rent Act is threefold.

1. Protection from arbitrary increase of Rent (payment or accept of a rent more than the Authorized Rent/ Receivable Rent is an offence, punishable under Sec. 3 of the Rent Act.
2. Protection from eviction (security of tenure). The tenant cannot be evicted unless he contravenes specific provisions in Sec. 22.
3. Succession of tenancy. At the death of a tenant the statutory tenancy transfers to a occupier with deceased as defined in Sec. 36.

Can we see whether these protections for tenants are valid any further, after the Rent (Amendment) Act No: 26 of 2020? By the legal background given above, it is clear that if a tenant behaves well it is rather difficult to evict him under the provisions of Sec. 22 of the Rent Act.

How about going for a demolition order under Se. 18A? We are in 2020s and all the tenanted premises coming within the purview of the Rent Act are over 40 years old by now. Therefore, all landlords who are suffering from getting a lower rent or legal rent under the

Rent Act can go for demolition orders and under the circumstances, the protection given by the Rent Act to tenants are in jeopardy. Therefore, it is clear from the above analysis that the Rent Act has reached the culmination of its main purposes of protecting tenants and at the moment, it solely protects the rights of landlords only. Or else, the Rent Act has committed suicide as far as rights of tenants are concerned.

### **References – Relevant Rent Acts**