

*Privy Council No. 91 of 1925.*

*Bengal Appeal No. 2 of 1925.*

Keshoram Poddar - - - - - *Appellant*

*v.*

Nundo Lal Mallick - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 24TH FEBRUARY, 1927.

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*Present at the Hearing :*

VISCOUNT DUNEDIN.

LORD SALVESEN.

SIR JOHN WALLIS.

[*Delivered by VISCOUNT DUNEDIN.*]

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The appellant in this case is the tenant, and the respondent is the landlord of certain premises in Calcutta.

The appellant was let into possession on the 1st June, 1920, as a tenant, but the rent payable was not then fixed. He remained in possession until March, 1923, and the question raised by the case is, what rent ought to be paid for that period of occupation.

After the entry in June, 1920, the question of rent being mooted, the respondent demanded from the appellant rent at the rate of Rs. 4,500 per mensem, inclusive of taxes. The appellant conceiving that this demand was excessive, decided to avail himself of the provisions of the Calcutta Rent Act (Bengal) No. 3 of 1920, which had come into force on the 5th May, 1920. By that Act, either the landlord or the tenant may apply to the Controller of Rates, an officer appointed under the Act, to fix the standard rent. By Section 18 of the Act an appeal is given from his decision to the President of the Improvement Tribunal, whose decision is declared to be final. The appellant accordingly

applied to the Controller. On the 23rd October, 1922, the Controller fixed the rent at Rs. 4,500 per month; on the 25th November, 1922, the appellant appealed to the President of the Improvement Committee to review that decision. The President, whose time was fully occupied by appeals, did not take up the appellant's appeal at once, but from time to time adjourned the hearing, so that it was only finally disposed of on the 3rd August, 1924. He disposed of it by holding that he had no jurisdiction to determine the matter. This he did because of two Acts which had been passed while the case was waiting for hearing before him.

In the original Act, Section 1, subsection 4, it was provided that the Act should commence when the Local Government should, by notification, direct and should continue for three years from that date. By the Calcutta Rent Amendment Act (Bengal) No. 2 of 1923, that provision was amended by the substitution of the fixed date of the end of March, 1924, for the expiration of three years from the commencement. A further amendment was made by the Calcutta Rates Amendment Act (Bengal) No. 1 of 1924 by which the date 1927 was substituted for 1924, but there was added the following proviso :—

“ Provided that after the 31st day of March, 1924, this Act shall cease to apply to any premises the rent of which exceeded Rs. 250 a month, or Rs. 3,000 a year, on the 1st day of November, 1918.”

The appellant then applied to the High Court under Section 115 (b) of the Code of Civil Procedure to have a judgment enjoining the President to exercise his jurisdiction, but the Judges of the High Court took the same view as the President, holding that he had no jurisdiction.

There is no question but that the premises in question in the case are worth more than the figure mentioned in the proviso to the Act of 1924. The President of the Improvement Tribunal, in his judgment, said :—

“ The plain meaning of the amendments effected by the Act of 1924 is that the principal Act is extended till the end of March, 1927, in the case of all premises except those the rent of which on the 1st November, 1918, was over Rs. 250 a month; and consequently, so far as the last-mentioned premises are concerned, the principal Act expired with the 31st March, 1924.

“ The rents of the premises in question in all these cases were more than Rs. 250 a month on the 1st November, 1918. It follows from what I have said that the proceedings in all these three cases terminated *ipso facto* on the 31st March, 1924.”

The learned Judges of the High Court took the same view. Their Lordships think that the discussions as to the different effects of a repealing Act on the one hand, and an expiring Act on the other, which bulk largely in the judgments given, are really beside the point. The Act is the Act of 1920. It was a temporary Act and would have expired in three years from its inception, but by subsequent amendments its life was prolonged until

31st March, 1924. It was, therefore, a living Act at the moment of the application to the President. Then there is the proviso. The view taken by the learned Judges is that the effect of the proviso is to make the Act a temporary Act ending at March, 1924, as regards the higher valued premises, but an existing Act until 1927 as to other premises. Their Lordships think that this is an erroneous view. As above said, the Act of 1920 still lives until 1927. The effect of the proviso is just as if the words therein had been inserted in the original Act, and the Act must be so read at the present time. Now, if that had been done it would, their Lordships think, never have occurred to anyone to say that there could be aught but one interpretation. The Act is good for premises of all values up to March, 1924, but only good for those of lower value after that.

The application of the Act is when the parties begin to move under it. This was done in the present case before March, 1924.

The rest is merely the working out of the application. Their Lordships are of opinion that the High Court ought to have directed the President of the Improvement Tribunal to exercise his jurisdiction. The case must go back for them to do so. When he exercises it, his judgment, in view of Section 18, will be final and not subject to review.

Their Lordships will humbly advise His Majesty in accordance with the above opinion, and the appellant will have the costs of this appeal and in the Court below.

In the Privy Council.

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KESHORAM PODDAR

v.

NUNDO LAL MALLICK.

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DELIVERED BY VISCOUNT DUNEDIN.

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