Privy Council Appeal No. 13 *of* 1927.
Bengal Appeal No. 64 *of* 1925.

The Karnani Industrial Bank, Limited - - - - *Appellants*

v.

Satya Niranjan Shaw and another - - - - - *Respondents*

Privy Council Appeal No. 87 *of* 1927.
Bengal Appeal No. 88 *of* 1925.

The Karnani Industrial Bank, Limited - - - - - *Appellants*

v.

Satya Niranjan Shaw and another - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH JUNE, 1928.

Present at the Hearing :

VISCOUNT SUMNER.
LORD ATKIN.
SIR JOHN WALLIS.

[*Delivered by* LORD ATKIN.]

These two appeals from the High Court at Fort William in Bengal raise a question as to the construction of the Calcutta Rent Act, 1920. On October 7th, 1920, the appellants, hereinafter called the Bank. took a lease from the respondents, hereinafter called the landlords, of premises, 3 and 4, Royal Exchange Place, Calcutta, for a term of three years from November 1st, 1920, at a rent of Rs. 5400 a quarter. payable in advance. The premises at the time appear to have been let in tenements at monthly rents. In the lease there were stringent repairing covenants, under which the bank were to put the premises in substantial repair, expending at least Rs. 10,000 and to keep them in good repair. They were to eject such of the occupiers as they desired at their own risk and expense. There was the usual forfeiture clause, and the bank had an option to renew for a further term of three years. The bank were not able to evict the occupiers, and apparently took no steps to perform the repairing covenants. They paid the rent up to August 1st, 1922,

and no further. On August 15th, 1923, the landlords served the bank with notice to determine the lease for breach of the repairing covenant, and on September 10th, 1923, they instituted proceedings in ejectment, claiming possession, arrears of rent up to August 15th, 1923, mesne profits and damages for breaches of covenant. On December 1st, 1923, the Bank made application under section 15 of the Rent Act of 1920 to the Controller appointed under the Act to fix the standard rent of the premises and to grant a certificate of the standard rent. On December 13th, 1923, the landlords filed a counter statement. On March 11th, 1924, the Controller fixed the standard rent at Rs. 1420 per mensem and granted his certificate accordingly.

On March 22nd, 1924, the landlords appealed from the order of the Controller to the President of the Improvement Tribunal pursuant to section 18 of the Rent Act, and on March 24th the bank also appealed to the President, seeking to have the standard rent fixed at a lower sum.

The Rent Act of 1920 was only to be in force for three years from May 5th, 1920, but by the Calcutta Rent Amendment Act of 1923 it was extended to the end of March, 1924. By the Calcutta Rent Amendment Act of 1924 it was further extended to the end of March, 1927, with a proviso that after March 31st, 1924, it should cease to apply to any premises the rent of which exceeded Rs. 250 a month or Rs. 3000 a year on November 1st, 1918.

The appeals before the President were adjourned for divers reasons from time to time until January 31st, 1925, when he dismissed both appeals on the ground that the Act of 1920 had ceased to apply to the premises, and therefore he had no jurisdiction. It is admitted that this decision was wrong in law, the contrary having been decided by this Board in *Keshoram Poddar* v. *Nundo Lal Mallick* (1927), 54 I.A. 152.

On February 23rd, 1925, the landlords applied to the High Court under section 115 of the Civil Procedure Code to revise the order of the President on two grounds: (1) that he had wrongly refused jurisdiction; (2) that the whole of the proceedings before the Controller were *ultra vires* and void by reason of the tenancy having determined before the application to him. A rule *nisi* was granted and the hearing stood over until the hearing of the ejectment suit. That suit was heard by Ghose, J., on April 24th, 1925. He held that the lease was determined on August 15th, 1923, and that the bank had given up possession on January 24th, 1924. He gave judgment for mesne profits from August 15th, 1923, to January 24th, 1924, measured by the standard rent fixed by the Controller of Rs. 1420 per mensem. He gave judgment for the damages for breach of covenant to repair, with a reference to the Registrar to assess the amount. As to the claim for arrears of rent, the bank had since the action was brought, paid to the landlords the sum of Rs. 9770, being the amount which added to the rent in fact paid up to August 1st.

1922, at the contractual rate, satisfied the rent due up to August 15th, 1923, on the footing that the standard rent, Rs. 1420 per mensem, had been payable by the bank from the commencement of the term. The learned Judge thought this sufficient and made no order for payment of arrears of rent. On June 19th, 1925, the High Court (Sir Wm. Greaves and Ghose, J.) heard the argument on the rule *nisi* and gave judgment setting aside the order of the Controller on the ground that he had no jurisdiction, as at the time of the application the applicants (the bank) had ceased to be tenants. On July 4th, 1925, the bank appealed to the Court of Appeal from the judgment in the ejectment suit, and on August 3rd, 1925, the landlords cross-appealed. On April 27th, 1926, the Chief Justice and Rankin, J., heard the appeal. They dismissed the bank's appeal and allowed the cross-appeal by giving judgment for arrears of rent on the footing of the contractual rent, and directing that mesne profits should be calculated at the same rate. This decision necessarily followed from the order of the High Court setting aside the certificate of the Controller. There is now no complaint in respect of it except that if the bank succeed in restoring the Controller's certificate the figures as to rent and mesne profits must necessarily be adjusted.

In the result, therefore, the appeals depend upon the question whether the High Court were right in deciding that the Controller had no jurisdiction to make the order in question certifying the standard rent at Rs. 1420 per mensem.

The Act of 1920, reciting by way of preamble that it is expedient to restrict temporarily the increase of rents in Calcutta, makes provision for achieving that object. By section 4, where the rent of any premises is during the continuance of the Act increased so as to exceed the standard rent, the amount of such excess is, notwithstanding any agreement to the contrary, to be irrecoverable. The standard rent is the rent at which the premises were let on November 1st, 1918, or if first let after November 1st, the rent at which first let, or, in the cases specified in section 15, the rent fixed by the Controller. By section 14, if any sum has been paid on account of rent which is by the Act irrecoverable, such sum shall within six months after the date of payment be recoverable by the tenant by whom it was paid from the landlord who received the payments. It appears to their Lordships to be obvious that this section is intended to give relief to any person who, having been a tenant, comes within the period of limitation to assert his claim to recover excessive rent paid, whether at the time he claims he is actually a tenant or not. If it were otherwise the exorbitant landlord who had succeeded in obtaining the excessive rent could relieve himself of his liability by determining the tenancy, which in the case of poor tenants holding on a month's tenancy could easily be done. There seems no reason why the tenant whose tenancy has expired by notice or by effluxion of time should lose the benefit of the section, and the words of the section, " tenant by whom it was paid," and " land-

lord who received the payment," appear to their Lordships to indicate that a change in the relations of a tenancy was contemplated by the Legislature.

Moreover, by section 4, rent in excess of the standard rent is irrecoverable by the landlord. This must mean irrecoverable at any time by any process. It seems inconceivable that while the landlord is debarred from recovering excessive rent from an actual tenant, whether by distress or action, yet if a tenancy expires by notice or effluxion of time the landlord may recover the full excessive rent from his ex-tenant.

These considerations show that, if full effect is to be given to the provisions of section 4 and section 14, it will be necessary for ex-tenants as for actual tenants to have facilities for determining what is the standard rent by which the excess is to be measured.

Section 15 provides machinery by which the standard rent is to be ascertained, and in the cases mentioned in subsection 3 the only machinery by which it is to be ascertained. By subsection 1 the Controller shall, on application made to him by any landlord or tenant, grant a certificate certifying the standard rent of any premises leased or rented by such landlord or tenant. This is a duty imposed on the Controller. Subsection 3 provides, " In any of the following cases the Controller may fix the standard rent at such amount as, having regard to the provisions of this Act and the circumstances of the case, he deems just. (*a*) Where by reason of any premises having been let at one time as a whole and at another time in parts, or where a tenant has sublet a part of any premises let to him or where for any reason any difficulty arises in giving effect to this Act " ; (*b*) provides for difficulties which may arise where premises are let furnished ; (*c*) for cases where the premises at any time have been let for a nominal consideration or a consideration in addition to rent ; (*d*) for cases where the rent on November 1st, 1918, was, in the opinion of the Controller, unduly low ; (*e*) for cases where there has been a change in the condition of any premises or an increase in municipal rates and subsequent to the standard rent having been fixed.

In order to perform his duties the Controller is given powers of entry and inspection of premises and power to compel information to relevant facts. It is to be observed that it would not be practicable to carry out the provisions of the Act prohibiting an increase over the standard rent unless there were power to adjust rents actually payable on November 1st, 1918, in some such way as is provided in subsection 3. The case of furnished premises is a simple case for which some provision must be made. It is further to be noticed that the powers of subsection 3 are granted to the Controller alone, and are not given to any other judicial authority. In their Lordships' view it seems to follow that the Controller must have been intended to be permitted to exercise these powers in order to give effect to the rights which ex-tenants have under sections 4 and 14. The argument which

prevailed with the High Court was that section 15 (1) only provides for the Controller granting a certificate " on the application made to him by any landlord or tenant," and that the bank when they made their application were not tenants, as their term had expired by forfeiture or by effluxion of time.

Their Lordships are of opinion that this adopts too narrow a construction of the words. In order to give any working effect to the Act it is necessary that the words landlord and tenant must include, as they often do in ordinary parlance, ex-landlord and ex-tenant. An action by ex-landlord against ex-tenant might ordinarily be described as an action of landlord against tenant. In section 11, which provides for what has come to be known as a statutory tenancy, " tenant " must include a person whose term under the contract of tenancy has come to an end. This agrees with the decision of the English Court of Appeal in *Remon* v. *City of London Real Property Co.* [1921], 1 Q.B. 49, where in similar words in section 15 (1) of the Increase of Rent Act, 1920 (10–1 G. 5 c. 17), Lord Justice Scrutton says, " Whom did they mean to include in the term tenant ? If a tenant by agreement whose tenancy had expired was not within those terms, the whole purpose of the Act would have been defeated." The Court in that case also held that where a tenancy had expired by notice some days before the coming into force of the Act, the tenant without consent retaining possession, the premises were nevertheless at the passing of the Act " let as a separate dwelling " within the meaning of section 12 (2), which defined the premises to which the Act applies. If in fact the Act applies in appropriate cases to an ex-tenant, it cannot make any difference whether the tenancy came to an end by effluxion of time, by act of the landlord, or by act or default of the tenant.

Their Lordships would further observe that though, for the reasons they have given, in the Act the word tenant must include in its proper context as ex-tenant, the definition clause 2 (*g*), which defines tenant as any person by whom or on whose account rent is payable for any purpose, would in its strictest sense cover the case of the present appellants, by whom in fact arrears of rent were payable at the date of the application.

A further point was made before this Board as to the jurisdiction of the Controller. It was said that the premises as a whole were first let by the lease to the bank, and that this was so clear that the Controller had no jurisdiction to fix the standard rent under 15 (3) (*a*), though he might have jurisdiction to certify that the rent was the rent agreed at such first letting. It was further said that 15 (3) (*a*) in any case only empowered the Controller to act where a difficulty arose in giving effect to the Act, and here there was no difficulty. Subsection 3 is ungrammatical, but their Lordships assume that the first limb of the sentence should read, " Where by reason of any premises having been let—in parts—any difficulty arises in giving effect to this Act." Their Lordships consider that these points do not affect

the jurisdiction of the Controller. He has jurisdiction to determine when these premises were first let, as he has jurisdiction to determine whether there is any difficulty which makes it in his opinion just to fix the standard rent under clause 3 (*a*). He did in fact consider both questions, and if he came to a wrong conclusion the remedy is not by way of attack on his jurisdiction, but by appeal to the President of the Improvement Tribunal under section 18. It was also suggested that the Controller had no power to fix the standard rent so as to operate retrospectively. Their Lordships cannot accept this contention, as one of the objects of fixing the standard rent must be to enable a tenant to know whether he has in the fact paid or agreed to pay rent in excess of the standard.

In one respect, in their Lordships' opinion, the Trial Judge took too favourable a view to the present appellants. The arrears of rent were calculated as though the bank were entitled to be debited with the standard rent from the beginning of the tenancy. They, however, paid the contractual rent up to August 1st, 1922, and the sums so paid are irrecoverable six months after the last payment. The landlords therefore are entitled to hold the sums so paid for the contractual rent, and rent on the basis of the standard rent, whatever it may be, will only run from August 1st, 1922, and must be calculated accordingly.

Their Lordships, therefore, are of opinion that the decree of the High Court on the rule for revision, dated June 19th, 1925, should be discharged with costs, and the order of the President of the Tribunal be set aside. The parties will be at liberty to proceed with their appeals to the President of the Tribunal if so advised. The decree of the High Court on appeal in the ejectment suit should be discharged, except so far as it affirms so much of the original decree dated April 24th, 1925, as awarded damages for breach of covenant. This case should be remitted to the High Court to take such steps as are necessary to carry out their Lordships' opinion. When there is a final determination of the standard rent the original decree may have to be revised by giving the respondents a decree for arrears of rent on the footing that the rent paid up to August 1st, 1922, must be treated as due and is not to be adjusted. The appellants must have the costs of these appeals and of the rule and the appeal thereon. The costs of the ejectment suit in the Indian Courts will be dealt with by the High Court.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

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DELIVERED BY LORD ATKIN.

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