

## Kundalmul Dalmia Vs W. Dyer

**Court:** Calcutta High Court

**Date of Decision:** Dec. 16, 1924

**Acts Referred:** General Clauses Act, 1897 " Section 6

**Citation:** (1925) ILR (Cal) 551

**Hon'ble Judges:** Greaves, J; Chakravarti, J

**Bench:** Division Bench

### Judgement

Greaves, J.

The main question which arises in these three Rules is the same and it will be convenient to deal with them in one judgment

considering first the main question which is common to all three rules and dealing later with any special matter which arises in one or other of the

rules.

2. By Section 1(1) (4) of the Calcutta Rent Act, 1920 (Bengal Act No. III of 1920), it was provided that the Act should come into force on such

date as the Local Government might by notification direct and that it should be in force for a period of three years from the date of the

commencement of the Act.

3. The Act came into force under a notification in the Calcutta Gazette on the 5th May 1920.

4. By the Calcutta Rent (Amendment) Act, 1923 (Bengal Act No. II of 1923), the period of the duration of the Act of 1920 was extended until

the end of March 1924.

5. By the Calcutta Rent (Amendment) Act, 1924 (Bengal Act No. 1 of 1924) the duration of the Act was extended until the end of March 1927

but it was provided by this last amending Act that, after the 31st March 1924, the principal Act should cease to apply to any premises the rent of

which exceeded Rs. 250 a month or Rs. 3,000 a year on the 1st November 1918.

6. The President of the Calcutta Improvement Tribunal has held that by virtue of this proviso he cannot entertain appeals to him from decisions of

the Rent Controller in cases in which the proceedings before him had not terminated on the 31st March 1924, if such proceedings related to

premises the rent of which exceeded Rs. 250 a month or Rs. 3,000 a year on the 1st November 1918.

7. The President considers that the Calcutta Rent Act was a temporary Act and that, after the 31st March 1924, it ceased to have effect so far as

regards premises the rent of which on the 1st November 1918 was over Rs. 250 a month or Rs. 3,000 a year, and that as regards such premises

he was functus officio after the 31st March 1924.

8. The petitioners, who obtained these Rules, contend that this is not so and that the amending Act of 1924 in effect repealed the principal Act as

regards premises of a rental over Rs. 250 a month or Rs. 8,000 a year on the 1st November 1918, and that by virtue of Section 6 of the General

Clauses Act (Act X of 1897) appeals pending before the Rent Controller and undisposed of on the 31st March 1924 are saved. It is said that by

the amending Act of 1924 the Calcutta Rent Act is extended to the 31st March 1927 with a proviso that the Act ceases after the 31st March

1924, to apply to premises of a rental of over Rs. 250 a month and Rs. 3,000 a year on the 1st November 1918, or to put it in another way that

the Act of 1924 is an extending Act which, however, also repeals certain matters in the principal Act. The question has to be determined upon the

construction of the amending Act of 1924 which was published in the Calcutta Gazette of the 26th March 1924 and came into force on that day. It

seems to me that reading Sub-sections (2) and (2) of Section 2 together the effect of the amending Act was to extend the principal Act to the 31st

March 1927 as regards premises of a less rental than Rs. 250 a month or Rs. 3,000 a year on the 1st November 1918, leaving the principal Act

as amended by the Act of 1924 to expire on the 31st March 1924 as regards premises of a rental above these amounts. In this view the Act of

1924 cannot be regarded as a repealing Act to which the principles of Section 6 of the General Clauses Act would apply, with the result that the

decision of the President of the Tribunal is in my opinion correct, for it is, I think, well settled that if an Act is, a temporary Act it comes to an end

for all purposes at the end of the period for which it is enacted, see Craies on Statute Law, 3rd Edition, page 242, where the law is stated in the

following passage:

As a general rule, and unless it contains some special provision to the contrary, after a temporary Act has expired no proceedings can be taken

upon it, and it ceases to have any further force.

9. And the learned editors refer to a case of *Spencer v. Hooton* (1920) 4, *Munitions Ap.* 67 to which I have not been able to refer, where Roche

J. held that he had no jurisdiction to hear appeals from Munitions Tribunals in proceedings taken under the Wages (Temporary Regulation) Act by

reason of the Act giving him jurisdiction, which was a temporary Act, having expired before the appeals came on for hearing.

10. It cannot be disputed that the Calcutta Rent Act was a temporary Act, enacted originally for three years, which period was extended for a

further year by the amending Act of 1923, and I think upon the true construction of the amending Act of 1924 there was no repeal of the original

Act but that the Act was only extended for a farther period of three years as regards premises of a less value than Rs. 250 a month or Rs. 3,000 a

year on the 1st November 1918 and that the original Act ceased to operate on the 31st March 1924 as regards premises above this value, there

being no provision to the contrary which would save pending proceedings.

11. We must take the position as we find it according to the true construction of the legislative enactments, and we are not concerned with any

case of hardship or suggested hardship which may arise from our decision if, as we do, we think the position is clear.

12. This disposes of the point which is common to the three appeals, and we accordingly discharge Rules 1025 of 1924 and 1033 of 1924 with

costs, 3 gold mohurs, in each Rule.

13. But in Rule No. 611 of 1924 a further contention is put forward to understand which it is necessary to state a few facts. The premises to which

the rule relates are 9 Theatre Road which on the 1st November 1918 was let out as a whole at a rental of Rs. 650. In 1922 the lower flat of these

premises was let out separately for Rs. 500 excluding certain godowns. In February 1923 the tenant of this lower flat applied for standardisation of

rent which the Rent Controller fixed on the 1st August 1923 at Rs. 321 including fans and light. On the 31st August 1923 an application for

revision of the order of the Rent Controller was made under the provisions of Section 18 of the Rent Act to the President of the Tribunal under the

Calcutta Improvement Act. The case went on before the President until the 31st March 1924, when the President said that the rent could not

include the hire of the fans, and that if he had to fix the standard rent he would do so without including fans, excluding which the rent would be Rs.

261. The case was not concluded on the 31st March, and on the 11th April when the matter was again before him the President held that he had

no jurisdiction to further deal with the matter as the Calcutta Rent Act had expired as regards premises of a rental above Rs. 250 a month and Rs.

3,000 a year on the 1st November 1918.

14. The contention of the petitioner is that the President was wrong in so deciding on the ground that the premises were not let out separately on

the 1st November 1918 and that there was no rent of these premises on that date, the house being then let out as a whole.

15. We do not think that this contention is well founded and we agree with the President that the premises having been let as a whole on the 1st

November 1918 it was a fact capable of ascertainment what share of the total rent should be allocated to the lower flat on this date and that this

being so the lower flat was notionally let out at a rent on that date and that as the rent exceeded Rs. 250 he has rightly held for the reasons stated in

the earlier part of this judgment that he had no jurisdiction after the 31st March 1924. But a further contention is put forward by the respondent

that the President had jurisdiction as the real rent of the lower flat was less than Rs. 250, the apportionment made by him being incorrect and that

the difference between the lower and upper flat is more than the 10 per cent, which he has found as the upper flat contains an additional room.

Both the Rent Controller and the President have found the rent of the lower flat to be more than Rs. 250 and we must accept this for the purposes

of revision. We think that there is no substance in the contentions raised and that the Rule should also be discharged but we make no order as to

costs in this Rule.

Chakravarti J.

16. Agreed.