Roshan Lal Mehra

Vs

Ishwar Das

Civil Appeal No. 171 of 1958

(CJI B. P. Sinha, S. K. Das, J. R. Mudholkar, A. K. Sarkar, N. Rajgopala Ayyangar JJ)

02.08.1961

JUDGMENT

S. K. DAS, J. -

These are 16 appeals which have been heard together. For facility of considering them on merits, it would be convenient to classify them into three categories. In the first category fall Civil Appeals Nos. 172 to 184 of 1958. In the second category are two appeals, Civil Appeals Nos. 185 and 186 of 1958. In the third category falls Civil appeal No. 171 of 1958. The appeals in the first two categories arise out of a judgment in revision rendered by the High Court of Punjab at Simla on August 26, 1954. That decision was reported in British Medical Stores v. L. Bhagirath Mal [(1955) I.L.R. 8 Punjab 639]. The appeal in the third category arises out of a short order of the said High Court dated March 7, 1956, by which it dismissed an application made by the appellant-tenant under Art. 227 of the Constitution. It appears that the order was based on the decision given by the High Court in the first two categories of cases. The appeals in the first two categories have been brought to this Court on a certificate granted by High Court, and have been consolidated by an order made by the said Court. Civil Appeal No. 171 of 1958 has been brought to this Court in pursuance of special leave granted by this Court on November 19, 1956.

The reason why these appeals have been put in three categories is this. The judgment of the High Court against which these appeals are really directed is the judgment rendered in the first two categories of cases (reported in Messrs. British Medical Stores v. L. Bhagirath Mal [(1955) I.L.R. 8 Punjab 639]. That judgment related to four sets of buildings of Chandni Chowk in Delhi. In Civil Appeals Nos. 172 to 186, we are concerned with two of these buildings owned by the landlord Bhagirath Mal, who has since died and is now represented by some of the respondents. For convenience, however, we shall refer to him as the landlord. The two buildings we are concerned with are called (1) "Chemists' Market", also known as "Medicine Market", and (2) "Prem Building". Both these buildings are part of a colony called "Bhagirath Colony". Several tenants took on rent flats or rooms in the said buildings and the question which fell for determination was the fair and standard rent payable for the said flats or rooms under s. 7A of the Delhi and Ajmer-Marwara Rent Control Act, 1947, (Act XIX of 1947), hereinafter referred to as the Control Act, 1947. In the first two categories of appeals, the main point for consideration before us is whether the judgment rendered by the High Court on August 26, 1954, was correct, the High Court having held that the whole proceedings taken before the Rent Controller were ultra vires and without jurisdiction. The reasons given for this finding by the High Court were not quite the same in respect of the two buildings; somewhat different reasons were given in the cases of the two tenants in the Prem Building. Therefore, it would be convenient to deal with the main judgment of the High Court in Civil Appeals Nos. 172 and 184 of 1958 of the tenants in the building known as "Chemists'

Market". We shall then deal with the special considerations arising in the two appeals preferred by the tenants of the "Prem Building". Lastly, we shall deal with Civil Appeal No. 171 of 1958 which relates to a different building altogether belonging to a different proprietor, namely two ground-floor flats of a house on plot No. 20, Block No. 13 in Western Extension Area, Karolbagh, New Delhi. We shall later state the facts of that appeal, but it is sufficient to state here that the application for fixation of standard rent for the flats in the Karolbagh house was dismissed on the ground that the High Court had held earlier in the first two categories of cases, that s. 7A of the Control Act, 1947 was unconstitutional and void after the coming into force of the Constitution of India on January 26, 1950.

Civil Appeals Nos. 172 to 184 of 1958

Having made these preliminary remarks with regard to the classification of the appeals, we proceed now to state the facts with regard to the first category of appeals relating to the "Chemists' Market" in Bhagirath Colony. On July 30, 1948, nine tenants made an application to the Rent Controller, Delhi, asking for a determination of fair and standard rent of the tenements (shops) rented to them by the landlord, on the ground that under the stress of circumstances which resulted from the partition of the country and scarcity of business premises available in Delhi after partition, they were forced to take on rent the shops in question on an excessive and exorbitant rate of rent charged by the landlord. They alleged that the premises were completed after March 24, 1947, and they were entitled to have the fair and standard rent determined for the shops in question by the rent Controller. On August 12, 1948, the Rent Controller recorded an order to the effect that in order to fix the rent of the shops in question in accordance with s. 7A read with Sch. IV of the Control Act, 1947 a summary enquiry would be held on August 18, 1948. A notice was issued to that effect to the landlord, directing him to attend and bring all relevant authenticated records such as plans, account books, vouchers etc., showing the cost of construction of the building; the landlord was also asked to bring documentary evidence relating to the date of completion of construction of the building. It is necessary explain here why the date of completion of construction of the building was important. The Control Act, 1947 came into force on March 24, 1947. By s. 1(2) thereof, as it originally stood, it was not applicable to any premises the construction of which was not completed by March 24, 1947, and which was not let to a tenant before the enforcement of the Act. Later, there was an Ordinance (Ordinaece No. XVIII of 1947) followed by an Act (Act L of 1947) by which enactment newly constructed buildings were brought within the purview of the Control Act, 1947 by repealing s. 1(2) of the Act in so far as it affected buildings in Delhi and by introducing s. 7A and Sch. IV to the Act. We shall presently read s. 7A and the relevant provisions of Sch. IV. We may just state here that s. 7A laid down that the fair rent of newly construed buildings shall be fixed according to the provisions set forth in Sch. IV. Buildings which were completed earlier than March 24, 1947, had to be dealt with by the Civil Court under s. 7 of the Act. Under s. 7A read with Sch. IV, the Rent Controller had jurisdiction to fix the fair and standard rent in respect of buildings which were not completed before the commencement of the Act. Therefore, the Rent Controller had to determine the date of completion of the building, in order to have jurisdiction under s. 7A of the Control Act, 1947.

We have referred to the notice which the Rent Controller had directed to be issued to the landlord on August 12, 1948; fixing August 18, 1948, as the date for the hearing of the case. On August 18, the landlord made an application by means of a letter sent to the Rent Controller in which he asked for postponement of the case to some date in September. The case was postponed to August 26, 1948, but on that date the landlord again asked for an adjournment. Then on September 1, 1948, an application was made on behalf of the landlord, in which there was a reference to 14 tenants who

had applied for fixation of standard rent for the shops in the Chemists' Market. In this application the landlord stated that he himself had applied for fixation of standard rent under s. 7 of the Control Act, 1947 in the Court of the Subordinate Judge, Delhi and as those applications were pending, he prayed that the proceedings for determining the identical question of fixation of standard rent by the Rent Controller under s. 7A should be stayed. The printed record does not clearly show how and when tenants other than the 9 tenants who had originally applied for fixation of standard rent on July 30, 1948, had also applied for fixation of standard rent for the shops in their occupation. It is clear, however, from the application of the landlord dated September 1, 1948 that 14 tenants including some of those who had applied on July 30, 1948 had applied for fixation of standard rent for the shops occupied by them. On November 9, 1948, the Rent Controller wrote a letter to the landlord in which he referred to some enquiry held in his office on September 1, 1949 and said :

> "On that day you promised to produce some papers to show that these shops were completed before March 24, 1947. As the case is unnecessarily being delayed, you are requested to appear in my office with all the necessary documents at 3 P.M. on Wednesday the 17th November, 1948. It may please be noted that no further adjournment will be possible. Your failing to comply with this notice, ex-parte decision will be given".

On November 15, 1948 the Rent Controller again wrote to the landlord that on a representation made by the landlord's representative, the date had been extended to November 19, 1948 and the landlord should produce all necessary documents relating to the building in question. The Rent Controller again reminded the landlord that there would be a final hearing on November 19. On that date, however, the landlord again made an application saying that as there were regular suits for the determination of the standard rent pending in the Court of the Subordinate Judge, Delhi, the proceedings before the Rent Controller should be stayed. On November 26, 1948 the Rent Controller wrote to the landlord to the following effect :

> "As you have failed to attend my office personally on the fixed date and your attorney did not possess any information or documents regarding the newly constructed "Chemists' Market", you are now directed to submit your written statement on oath, duly countersigned by your advocate, giving full details regarding the date of construction of the said building. Please not that your statement must reach this office before the 3rd December 1948".

Then on December 3, 1948 the Rent Controller wrote to the landlord saying that he would be visiting the premises on December 5, 1948. On December 3, a telegram was sent on behalf of the landlord saying that he was out of station. On that date the Rent Controller recorded the following order :

> "These shops were first let out from 1st April, 1948.
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> Note. - The Advocate for the landlord was requested to tell the landlord that he must submit his statement in writing (counter-signed by the Advocate) within the next 15 days whether he contends or does not contend that this building was completed after 24th March, 1947.
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> The Advocate for the landlord gave an application asking for staying the proceedings as he had applied to the Sub-Judge for fixation of standard rent of the premises. He

was told that I was not prepared to stay the proceedings unless he or his client were prepared to say on oath that the building was completed before the 24th March, 1947."

On December 9, 1948 the Rent Controller again wrote to the landlord to the following effect :

"I am in receipt of your telegram dated the 3rd December, 1948.

On 19th November, 1948, the last date of hearing, your Advocate Shri Jugal Kishore and your General Attorney Shri Kundal Lal were given definite instruction to see that your written statement, as to when the construction of the "Chemists' Market" was started and when completed, was sent to me within 15 days. These instructions were later confirmed in writing vide this office No. R.C. 42/Camp. dated the 26th November, 1948. My instructions, however, have not been complied with so far and it is presumed that you are trying to evade the issue.

I, however, give you another final opportunity and direct you to submit your written statement on oath within one week from the receipt hereof, showing the date of completion of construction of your building known as "Chemists' Market" in Bhagirath Colony, Chandni Chowk, Delhi.

Please take notice that your failure to comply with (torn) within the stipulated period will amount to disobeying the orders of this Court and the case will be referred to appropriate authorities for necessary action in the matter."

The landlord took no steps whatsoever to furnish any written statement. In these circumstances, the Rent Controller passed his final order on January 10, 1949. In that order he recited the facts stated above and ended up by saying that though the landlord had been given sufficient opportunity, he had not made any statement in writing or otherwise and that the landlord was clearly trying to avoid the trail of the issue. The Rent Controller had inspected the building on December 12, 1948 and made local enquiries. He came to the finding that he shops in question were completed only in the beginning of 1948. He said :

"I inspected this building on 12th December, 1948 and made local enquiries when it transpired that the building (shops) was completed only in the beginning of 1948. The very look of the building also confirms this information. On the other hand, no data has been placed before me by the landlord, his attorney or the advocate to show that the construction of the building was completed before 24th March, 1947. According to the admitted statement of the attorney the shops have been let out for the first time in 1948 and otherwise too his statement of 19th November, 1948 shows that the building had not been completed before 24th March, 1947. No completion certificate or house-tax receipts have been produced in support of this contention. It is, therefore, not understandable how it is claimed that the shops were completed before 24th March, 1947. The owner is knowingly avoiding to give a statement himself that the shops were completed before 24th March, 1947. Evidently because he realises that this is not true. It has also not been stated what use was made of these shops till January, 1948, when they were first let out if they had been completed before 24th March, 1947 as alleged.

> It is unbelievable that shops like these could remain unoccupied for nearly 9 to 10 months after completion. I am, therefore, convinced beyond a shadow of doubt that the construction of these shops was completed long after 24th March, 1947, and the fixation of their standard rent definitely falls within the scope of s. 7A of the Delhi and Ajmer-Marwara Rent Control Act, 1947 (as amended). I, therefore, proceed to fix the rent accordingly."

After taking into consideration the nature of the construction and the fittings, etc., and other relevant considerations, the Rent Controller fixed the valuation at Rs. 9-7-0 per sq. ft. of plinth area for working out the probable cost of the construction of the building. The cost of the land, he estimated at Rs. 275 per sq. yd.; but he allowed only one-third of the estimate inasmuch as the building was one-storeyed and all the buildings in the vicinity were mostly three-storeyed. On these calculations, he held that the standard rent for all the shops in the building worked out at Rs. 335 per month including 10% for repairs but excluding house-tax and charges for consumption of water and electricity. A calculation sheet was prepared fixing the standard rent for each of the shops including some shops which were vacant, on the aforesaid basis. The calculation sheet showed that the standard rent of 18 shops in the building varied from Rs. 10 per month to Rs. 50 per month.

Against the order of the Rent Controller dated January 10, 1949, nineteen appeals were taken to the District Judge. One of the points taken before the District Judge was that the Rent Controller had no jurisdiction to fix the standard rent inasmuch as the building had been completed before March 24, 1947. The learned District Judge dealt with this point at length, and held that the Rent Controller's finding on the question of jurisdiction was correct. As to fair rent, he held that though the building was single-storeyed, there was no reason why the landlord should not be allowed the full value of the land on which the building stood. Allowing full value for the land and having regard to the rent of premises in the neighbouring area, the learned District Judge modified the order of the Rent Controller and fixed the standard rent of the building at Rs. 670 per month, viz., double of what was fixed by the Rent Controller. The learned District Judge passed his order on January 15, 1951.

It appears that from the order of the District Judge, Delhi dated January 15, 1951, certain application sin revision were made to the Punjab High Court. Most of the applications were by the landlord, but one of them was by a tenant. These applications were heard together by the High Court. The High Court allowed the applications of the landlord and held in effect that the proceedings before the Rent Controller violated the principles of natural justice and were, therefore, bad and without jurisdiction. The High Court, it appears, travelled over a wide field and dealt with a number of questions, though its decision was based on the finding stated above. The first question which the High Court considered was whether s. 7A read with Sch. IV of the Control Act, 1947 prescribed a discriminatory procedure wihtout a reasonable classification in respect of premises completed after March 24, 1947 and thus violated the guarantee of equal protection under Art. 14 of the Constitution. Along with this question was canvassed another connected question viz., whether these cases would be governed by the law in force at the time of the decision given by the Rent Controller or by the law existing at the time when the District Judge heard the appeals. It may be here noted that the Constitution of India came into force on January 26, 1950 and at the date of decision of the Rent Controller, Art. 14 of the Constitution was not in force. The High Court expressed the view that the law to be applied was the law in existence at the time when the District Judge decided the appeals. It further held that s. 7A read with Sch. IV of the Control Act, 1947 was violative of the guarantee of equal protection of laws under Art. 14 of the Constitution, there being no rational nexus between the classification made regarding premises old and new and the objects of the statute. Having given these two findings, the High Court said, however, that it would prefer not

to base its judgment on these findings, because to do so might be giving retrospective effect to the Constitution. The High Court then went on to consider the further contention urged before it that in the proceedings before the Rent Controller there was a violation of the principles of natural justice inasmuch as all recognised principles governing tribunals which exercise quasi-judicial powers or follow a procedure subserving the orderly administration of justice had been disregarded. On this point the learned Judge, delivering the judgment of the Court, expressed himself as follows :

> "In the present case no evidence as to rent was called from the parties or recorded by the Controller nor was any opportunity afforded to the parties to adduce such or any evidence which they considered necessary to submit. The Controller made private enquiries and his order shows that he has based his decision on the cost of the building which he himself calculated without allowing the petitioner an opportunity to show that such calculation was wrong or its basis erroneous. Of course, there is no procedure prescribed by the Schedule and whatever procedure was followed does not subserve the orderly administration of justice. So that the determination is based on private enquiries, unchecked calculations and no evidence of the parties who were afforded no opportunity of proving their respective cases."

With regard to the flats in 'Prem Building' a further ground given by the High Court was that they were not new construction as held by the District Judge, and therefore s. 7A was not applicable for determination of fair and standard rent in respect thereof.

We may first dispose of the constitutional point that s. 7A read with Sch. IV of the Control Act, 1947 violated the fundamental right guaranteed under Art. 14 of the Constitution. We may here read s. 7A and some of the provisions of Sch. IV.

> "7A. The provisions set out in the Fourth Schedule shall apply to the fixation of rent and other matters relating to the premises in Delhi (hereinafter referred to as the newly constructed premises) the construction of which was not completed before the commencement of this Act.
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> The Fourth Schedule
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> 1. "Rent Controller" for the purposes of this Schedule means the person appointed by the Central Government as the Rent Controller.
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> 2. If the Rent Controller on a written complaint or otherwise has reason to believe that the rent of any newly constructed premises is excessive, he may, after making such inquiry as he thinks fit, proceed to fix the standard rent thereof.
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> 3. The Rent Controller in fixing the standard rent shall state in writing his reasons therefor.
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> 4. In fixing the standard rent the Rent Controller shall take into consideration all circumstances of the case including any amount paid or to be paid by the tenant by way of premium or any other like sum in addition to rent.
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> 5 and 6. x x x x x
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> 7. For the purposes of an inquiry under paragraphs 2, 5 and 6, the Rent Controller

may -

(a) require the landlord to produce any book of account, document or other information relating to the newly constructed premises,

(b) enter and inspect such premises after due notice, and

(c) authorise any officer subordinate to him to enter and inspect such premises after due notice.

8 to 10. x x x x x

11. Any person aggrieved by an order of the Rent Controller may, within thirty days from the date on which the order is communicated to him, appeal to the District Judge, Delhi."

This very question was considered by a Full Bench of the same High Court in a later decision (see G.D. Soni v. S.N. Bhalla [A.I.R. 1959 Punj. 381]). In that decision the High Court went into the entire history of legislation with regard to the control of house rent in both old Delhi and New Delhi from 1939 onwards when the second world war broke out. The High Court pointed out that the New Delhi House Rent Control Order, 1939 made under r. 81 of the Defence of India Rules was the first Control Order seeking to control rent of houses in New Delhi and the Civil Lines. From 1939 till 1942 no Rent Control Act applied to the municipal area of Delhi. On October 15, 1942 the Punjab Urban Rent Restriction Act, 1941 with suitable adaptations was extended to that area. Under that Act a landlord could recover only standard rent from the tenant and the term 'standard rent' was defined as meaning the rent at which the premises were let on January 1, 1939 and if not so, the rent at which they were last let. In cases not governed entirely by this definition, the Court was given the power to fix standard rent. In 1944 the then Governor-General promulgated the Delhi Rent Control Ordinance, 1944. Under this Ordinance the Chief Commissioner could apply it to any area within the Province of Delhi and whenever the Ordinance was made applicable to any area, the Punjab Urban Rent Restriction Act, 1941 ceased to be operative. In the Ordinance also standard rent was defined substantially in the same terms as in the Punjab Act. The Central legislature then enacted the Control Act, 1947 which repealed the Punjab Act as extended to Delhi and also the Rent Control Order of 1939 and the 1944 Ordinance. By s. 1(2) the Act was made inapplicable to any premises the construction of which was not completed by March 24, 1947 and under s. 7 of the Control Act, 1947, a Court in case of dispute had to determine the standard rent on the principles set forth in the Second Schedule. We have already stated earlier that s. 1(2) of the Control Act, 1947 was alter repealed (so far as it affected buildings in Delhi), and newly constructed buildings were brought within the purview of the Control Act, 1947 by introducing s. 7A and Schedule IV to it.

From this brief survey of the legislative history of the control of rent of premises situated in the Province of Delhi, it is clear that the Control Act, 1947 brought about uniformity in the law relating to rent control by laying down that the standard rent of newly constructed premises shall be fixed by the Rent Controller while the Court will fix the standard rent in respect of other premises. There is no doubt that a classification was made between premises the construction of which was completed before March 24, 1947 and those the construction of which was completed after that date. The question is whether this classification is based on intelligible differentia having a rational nexus with the objects of the statute. Dealing with this question Bishan Narain, J. delivering the judgment of of Full Bench said :

"The learned counsel for the landlord challenged the validity of these provisions on the grounds (1) that there is no reasonable basis for fixing the standard rent of newly constructed premises differently on a different principle from the principle on which standard rent is fixed for old buildings in the same locality and (2) that there is no reason for discriminating against the landlords of newly constructed buildings by laying down that their standard rent shall be fixed by Rent Controllers appointed by the Central Government while the standard rent of other buildings is to be fixed by courts of law which are bound to follow procedure laid down in the Civil Procedure Code. It is urged that the Rent Controller is not bound by any procedure laid down by the Civil Procedure Code or the Punjab Courts Act.

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Section 7 says that the standard rent shall be determined in accordance with the principles set forth in the Second Schedule. The Second Schedule fixes basic rent as determined under the Control Order of 1939 or under the 1944 Ordinance and in other cases the contractual rent on 1-11-1939 or if not on that day then on the date first let after 1-11-1939.

The standard rent thus fixed is to be increased by certain percentage specified in the Schedule. If the premises were let after 2-6-1944 then the basic rent and the standard rent were to be the same. Obviously this principle for fixation of standard rent could not possibly have any application to premises constructed and let after 24-3-1947. Section 7 then proceeds to lay down that if for any reason it is not possible to determine the standard rent of any premises set forth in the Second Schedule then the courts shall determine it having "regard to the standard rent of similar premises in the same locality and other relevant considerations". Para 4 of Schedule IV lays down :

'In fixing the standard rent the Rent Controller shall take into consideration all the circumstances of the case including any amount paid or to be paid by the tenant by way of premium or any other like sum in addition to rent.'

It was argued on behalf of the landlord that the criteria laid down in s. 7(2) and para 4 of Schedule IV of the Act is substantially different and that there is no valid reason for such a differentiation. He urged that the Rent Controller (1) may ignore the standard rent of similar premises in the same locality while he is under an obligation to take into consideration any amount paid or agreed to be paid by the tenant by way of premium etc. in addition to rent and that the Rent Controller (2) cannot interfere with the agreed rent unless he finds it excessive and in that case he can only reduce the rent fixed between the parties and cannot increase it. It is urged that under s. 7(2) it is open to the Court to increase the standard rent and also not to take into consideration any amount paid by the tenant as premium in addition to rent.

Now the Rent Controller is enjoined by para 4 to take into consideration all the circumstances of the case when fixing standard rent. It is not understood how a Rent Controller can omit to consider the standard rent of similar premises in the same locality. This is obviously a relevant consideration though para 4 does not specifically mention it. It is true that this criteria has been specially mentioned in s. 7(2) of the Act and has not been so mentioned in s. 7A but this circumstance cannot

lead to the inference that it is open to the Rent Controller to ignore it.

The words of para 4 are in fact as wide in effect as the words used in s. 7(2) of the Act. In this context it must not be forgotten that if such a mistake is made by the Rent Controller then the aggrieved party (may he be landlord or the tenant) can appeal to the District Judge whose powers are co-extensive with those of the Rent Controller and who can set right any mistake made by the Rent Controller. I am, therefore, of the opinion that the criterion laid down for fixation of standard rent in s. 7(2) and para 4 is substantially the same in scope and is not different.

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Undoubtedly under Schedule IV the Rent Controller can fix standard rent only if he finds that the rent agreed upon between the parties is excessive. This provision is to protect the landlord from frivolous applications by tenants and it is not clear why a landlord should object to this provision.

The reason for this provision is intelligible. It is well known that rents in Delhi prior to 1-11-1939 were very low and in some cases uneconomic. Therefore the legislature decided that in such cases a landlord should be in a position to get standard rent fixed at a rate higher than fixed by agreement of the parties in 1939 or earlier. No such consideration arises in the case of buildings constructed or completed after 1947.

In 1947 there existed an acute shortage of accommodation in Delhi and the landlords were in a position to dictate terms and, therefore, presumably the rents fixed between the parties were not so low as to require increase. It is for this reason that it was considered unnecessary to provide for increase of rent in Schedule IV. I am, therefore, of the opinion that it is not possible on these grounds to hold that s. 7-A and Schedule IV are unconstitutional.

The learned counsel then brought to our notice two other matters in which the newly constructed buildings have been treated differently from the old buildings. He pointed out that under para 10(2) of Schedule IV the standard rent fixed by Rent Controller must necessarily be retrospective in effect while under s. 7(5) the Court can fix the date from which the payment of standard rent would become effective. He further pointed out that under s. 4(2) a landlord on making improvements can increase the standard rent by an amount not exceeding 6 1/4 per cent of the cost of improvement while under para 6 of the Schedule IV the Rent Controller can increase the standard rent in such circumstances to an amount not exceeding 7-1/2 per cent of the cost of improvement.

These are, however, no grounds for holding the impugned provisions to be unconstitutional. The Delhi and Ajmer-Marwara Rent Control Act, 1947, came into force on 24-3-1947 originally for two years only and s. 7-A with Schedule IV were introduced in September 1947. Therefore the standard rent for new buildings could well be fixed from the beginning of the lease. The old buildings were let long before 1947 and, therefore, it was considered advisable to leave it to courts to fix the date from which the payment of standard rent would become effective.

This is a rational difference. So is the matter of difference of return on the cost of improvements. There is no reason for equating the return on cost of improvements of old buildings with the return on the cost of improvements of new buildings. This is a matter for the legislature to consider and this possible slight difference in returns cannot be said to be discriminatory and violative of Article 14 of the Constitution.

For these reasons I am of the opinion that the criteria for the fixation of standard rent for new and old buildings is substantially the same and does not violate Article 14 of the Constitution and there is no valid reason for coming to the conclusion that the standard rent of old and new buildings of the same type and in the same locality would necessarily be different. The first ground, therefore, fails and rejected.

The second ground also has no force. It is urged that in Schedule IV there is no provision for recording the evidence of the parties nor is it laid down whether the evidence is to be on oath. It is further urged that the principles of natural justice have been disregarded by Schedule IV and it is open to the Rent Controller to fix standard rent arbitrarily without recording any evidence. Now para 2 Schedule IV says that the Rent Controller shall make such enquiry as he considers fit to fix the standard rent.

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In fixing standard rent the Rent Controller decides a dispute between a landlord and a tenant. To do this effectively he has to take evidence and to hold a judicial inquiry particularly when he has to give reasons for his decision. Para 7 is also indicative of such a judicial inquiry. There is no reason for presuming and assuming that the Rent Controller would not hold such an inquiry. If he does not do so then the aggrieved party can always appeal to the District Judge, Delhi who invariably is a very senior and experienced judicial officer.

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In this context it must not be forgotten that considering the recent rise in prices of land, building material and labour costs in Delhi the standard rent should be correlated to these costs. In the circumstances the legislature in its wisdom has thought fit that the enquiry into standard rent of new building should continue to remain with the Rent Controllers who can expeditiously decide the matter.

In this context it can be reasonably expected that the Central Government will appoint only those persons as Rent Controllers who can use their own knowledge and experience to calculate these costs. In these circumstances it cannot be said that the differentiation in the procedure adopted in the statute has no rational relation to the object sought by the legislature."

We agree with these observations of the Full Bench, and we further accept the view expressed by it that the criteria for the fixation of standard rent for both new and old buildings under the Control Act, 1947 are not substantially different. The minor differences that exist in the matter, which have been adverted to in the judgment of the High Court, can be justified on the grounds of (a) difference in the cost of construction of old and new buildings, (b) difference in the rate of return on

investments made in building houses before and after 1947, (c) the need to encourage the building of houses to meet the acute shortage of accommodation in Delhi after 1947, and (d) the opportunity presented of charging excessive rent after 1947. Perhaps, it is also necessary to emphasise again that the provisions in Schedule IV of the Control Act, 1947, do not give an arbitrary power to the Rent Controller. Paragraph 3 of the Schedule requires the Rent Controller to state in writing his reasons for fixing the standard rent. Paragraph 4 states that in fixing the standard rent, the Rent Controller shall take into consideration all the circumstances of the case including any amount paid or to be paid by the tenant by way of premium or any other like sum in addition to rent. Paragraph 7 gives the Rent Controller power to require the landlord to produce any book of account, document or other information relating to the newly constructed premises, to enter and inspect such premises after due notice, and to authorise any officer subordinate to him to enter and inspect any such premises after due notice. Paragraph 11 provides for an appeal to the District Judge by any person aggrieved by an order of the Rent Controller. These provisions clearly indicate that the power given to the Rent Controller is not an arbitrary power. The power has to be exercised by the Rent Controller on a judicial consideration of all the circumstances of the case. We think that the High Court was in error in the view it expressed that no reasonable procedure is prescribed by the provisions of Schedule IV and the Rent Controller is at liberty to do whatever he likes.

This brings us to the main question for decision in these appeals - was there a violation of the principles of natural justice in the procedure which the Rent Controller actually followed in fixing the standard rent ? We are unable to agree with the High Court that there was any such violation. On behalf of the landlord, it has been contended before us that in respect of both the matters, completion of construction of the building and fixation of standard rent, the Rent Controller proceeded on (i) private enquiries, (ii) local inspection without notice, and (iii) inadmissible evidence. Before we deal with this argument, it is necessary to say a few words about the principles of natural justice. This Court considered the question in New Prakash Transport Co., Ltd. v. New Suwarna Transport Co., Ltd. [(1957) S.C.R. 98]. After a review of the case law on the subject, it pointed out that the rules of natural justice have to be inferred from the nature of the tribunal, the scope of its enquiry and the statutory rules of procedure laid down by the law for carrying out the objectives of the statute. The mere circumstance that the procedure prescribed by the statute does not require that evidence should be recorded in the manner laid down for ordinary courts of law does not necessarily mean that there is a violation of the principles of natural justice. In Union of India v. T.R. Varma [(1958) S.C.R. 499, 507] this Court said :

> "Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed."

Judged in the light of the observations referred to above, was there a violation of the principles of natural justice in the cases under our consideration ? We have pointed out earlier that the landlord was repeatedly given an opportunity of producing such evidence as he wished to produce. On August 12, 1948 he was asked to bring all relevant records including account books, vouchers etc. He did not choose to do so. He asked for an adjournment which was granted to him. On September 1, 1948 the landlord again asked for time. This was also granted to him and he was told that the

cases would be finally heard on November 17, 1948. He was also informed that no further adjournment would be given. It appears from the record that on September 1, 1948 some statements were recorded in the presence of the representative of the landlord. On November 19, 1948 which was the date fixed for final hearing, the landlord again asked for time and time was again granted to him. On December 3, 1948 the landlord was told that the Rent Controller would inspect the house on Sunday December 5, 1948 between 9 A.M. and 1 P.M. The landlord was asked to be present. On December 3 the Advocate of the landlord was present and was informed that the landlord must submit his written statement in writing within 15 days. The Advocate, however, gave an application for post-ponement of the cases on the ground that certain proceedings were pending before the Subordinate Judge, Delhi. On December 9, 1948 the landlord was again given one week's time to file his written statement and produce such other evidence as he wished to produce. In these circumstances it is difficult to understand how the landlord can complain that there has been a violation of the principles of natural justice and that he had no opportunity of producing evidence or of cross-examining the witnesses whose statements were recorded by the Rent Controller. It is indeed true that the Rent Controller made some local enquiries when he inspected the building on December 12, 1948. If, however, the landlord chose to be absent in spite of repeated intimation to him, he cannot be heard to say that the enquiries were made in his absence and are, therefore, bad. To hold in such circumstances that there has been a violation of the principles of natural justice would be to put a premium on the recalcitrance of a party. Even in the ordinary courts of law, if a party chooses to be absent in spite of notice, evidence is recorded ex-parte and the party who chooses to be absent cannot be heard to say that he had no opportunity of being present or of cross-examining the persons whose statements were recorded by the court. After all, what natural justice requires is that a party should have the opportunity of adducing all relevant evidence and that he should have an opportunity of the evidence of his opponent being taken in his presence. Such an opportunity was clearly given to the landlord in the present cases. If anybody is to blame for the ex-parte order of the Rent Controller, it is the landlord himself. It appears from the order of Rent Controller that the attorney or advocate of the landlord did appear on several dates and even made a statement as to the letting out of the building in question, but took no other part in the proceeding except asking repeatedly for adjournment. The Rent Controller was not far wrong when he said that the landlord was bent upon avoiding a trial of the issue before the Rent Controller on the ground that he had made applications under s. 7 to the Subordinate Judge, Delhi, for fixation of standard rent. In view of the recalcitrant attitude which the landlord adopted the Rent Controller did his best in the circumstances. He took into consideration such relevant circumstances as the cost of the land, cost of construction, cost of fittings, the open area in front of the shops, cost of repairs etc. The learned District Judge also took into consideration the return which the landlord could reasonably expect on his outlay and also the rent of other premises in the area. Taking these additional circumstances into consideration, the District Judge doubled the standard rent which the Rent Controller had fixed. It does not appear from the order of the learned District Judge that any objection was pressed before him on the ground that in the actual proceedings before the Rent Controller there was a violation of the principles of natural justice, though in paragraph 7 of the grounds of appeal it was stated that the procedure adopted by the Rent Controller was contrary to the provisions of law etc. Such a ground appears to have been seriously pressed for the first time in the revision applications to the High Court.

Some grievance has been made before us of the circumstance that in his letter dated December 3, 1948 the Rent Controller said that he would inspect the building on December 5, 1948. He, however, actually inspected the building on December 12, 1948 as his order shows. Our attention has been drawn to para 7(b) of Sch. IV and it has been contended that the inspection was made

without notice to the landlord. This, it is stated, has vitiated the entire proceedings. This argument might have had some force, but for the attitude adopted throughout the proceedings by the landlord. On the very date on which the Rent Controller intimated to the landlord that he would visit the building on December 5, 1948, the landlord sent a telegram purporting to be on his behalf stating that he was out of station. The Rent Controller then noted an order on that very date stating that the advocate for the landlord gave an application for staying the proceedings. The application was rightly refused by the Rent Controller. In these circumstances we do not think that the landlord can make any complaint that the inspection was without notice or that he had no opportunity of being present at the time of the inspection. It is obvious that from the very beginning the landlord had taken up an attitude of non-co-operation in the proceedings before the Rent Controller. It is worthy of note that even in statement of the case in this Court, the landlord has made no grievance that the inspection was held without notice to him; nor did he take any such plea before the District Judge.

A further contention urged on behalf of the landlord arises out of para 2 of Sch. IV. That paragraph says that if the Rent Controller "has reason to believe that the rent of any newly constructed premises is excessive, he may after making such enquiry as he thinks fit, proceed to fix a standard rent thereof". The argument before us is that before proceeding to fix the standard rent the Rent Controller did not hold a preliminary enquiry nor did he record a finding to the effect that the rent charged by the landlord was excessive; therefore, the provisions of para 2 were violated. We do not think that there is any substance in this contention. In the application which 9 tenants made on July 30, 1948 they definitely stated that under the stress of circumstances resulting from a partition of the country and the heavy demand for business premises in Delhi, they were forced to accept the excessive and exorbitant rent which the landlord was charging from them. On this application a note was recorded by the Rent Controller's office to the effect that the entire case relating to the fixation of standard rent for the building in question was already under consideration, presumably because other tenants had also made similar applications. The Rent Controller thereupon recorded an order which said that "in order to fix the rent of the premises in accordance with s. 7A of the Control Act, 1947 a summary enquiry would be held by him". It is obvious from this order that the Rent Controller was prima facie satisfied that the rent charged was excessive and action was required under s. 7A of the Control Act, 1947. The argument urged on behalf of the landlord really comes to this, viz. that under para 2 of Sch. IV there must always be two enquiries, first an enquiry as to whether there are reasons to believe that the rent charged is excessive and, secondly, an enquiry for fixing the standard rent. We do not think that para 2 necessarily involves two enquiries in all circumstances. In a case where the Rent Controller has a written complaint, as in these cases, the complaint itself may give reasons which the Rent Controller may prima facie accept that the rent charged by the landlord is excessive. In the cases before us the tenants had stated the reasons, which were common to all, why they had to submit to excessive and exorbitant rate of rent charged by the landlord. It was, we think, open to the Rent Controller to accept those reasons as prima facie good reasons for proceeding to make an enquiry to fix the standard rent in that enquiry it was open to the Rent Controller to give the necessary finding that the rent charged by the landlord was excessive. The final order of the Rent Controller shows without doubt that he was satisfied that the rent charged by the landlord was exorbitant and excessive. We are unable to hold that in these circumstances there has been any contravention of para 2 of Sch. IV of the Control Act, 1947.

Another objection taken by the landlord to the proceedings before the Rent Controller arises out of the circumstance that the Rent Controller in fixing the standard rent for the entire building had fixed the rent even for vacant shops i.e. shops which were not in occupation of any tenant at the time. In the final order which the Rent Controller passed, he fixed the standard rent for all the shops at Rs. 335/- per month and in the calculation sheet, which was part of the final order made by the Rent

Controller on January 11, 1949, three shops have been shown to be vacant. It has been contended before us that the Rent Controller had not jurisdiction to fix the standard rent for vacant shops and the argument is that the way he proceeded to fix the rent for the entire building vitiated the proceedings before him. It has further been argued that only 9 tenants, six of whom are appellants before us, applied for the fixation of standard rent on July 30, 1948. Therefore, the Rent Controller had no jurisdiction to fix the standard rent in respect of persons who had not applied for such fixation. It has been contended before us that in six of the appeals before us (viz. Civil Appeals Nos. 176, 178, 181, 182, 183 and 184 of 1958) the appellants had made no application for fixation of standard rent.

We take up first the question of vacant shops. It is clear from s. 7A and the provisions of Sch. IV that the Rent Controller has to fix the standard rent of newly constructed "premises" if the condition stated in para 2 of Sch. IV is satisfied. The word "premises" as defined in s. 2 of the Act means "any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose etc." Each shop let out or intended to be let out separately is therefore "premises" within the meaning of the Control Act, 1947. It may, therefore, be correct to say that it was not necessary for the Rent Controller to fix the standard rent for vacant shops. It is obvious, however, that for shops which had been let out to tenants the Rent Controller had to take into consideration the cost of the entire building, value of the land, the fittings etc. In other words he had to take the entire building into consideration for the purpose of fixing the standard rent of the shops in the building let out to various tenants. That being the position, we do not consider that the proceedings before the Rent Controller were rendered abortive merely because the Rent Controller also fixed the standard rent for some of the vacant shops. For the purpose of these appeals, the standard rent fixed for the vacant shops may well be ignored; that will not affect the rent fixed for the shops which had been let out to tenants.

As to the point that some of the appellants had made no application for fixation of standard rent, we are unable to accept the contention as correct. It is indeed true that 9 tenants had made an application for fixation of standard rent on July 30, 1948, but it appears that there were other applications also from other tenants. This is clear from the office note, to which we have already referred earlier, appended to the application of 9 tenants. Moreover the application which the landlord himself had made on September 1, 1948 showed that 14 tenants had made applications for the fixation of standard rent of their shops in Chemists' Market in Bhagirath Colony. Unfortunately, all the applications have not been printed in the paper book. The order of the Rent Controller shows that he treated all the applications as though they gave rise to a single proceeding, because they related to the same building. This point which has now been taken before the District Judge who said that there were 19 appeals before him arising out of a single order of the Rent Controller fixing rent for 18 different shops of a building belonging to the landlord. In the calculation sheets which the Rent Controller and the learned District Judge had prepared and which give the names of all the tenants the standard rent for whose shops was fixed, are shown the names of all the appellants. It is, we think, too late in the day for the landlord to contend that some of the appellants had not applied for the fixation of standard rent. In any view of the matter, the landlord has not placed sufficient materials before us in support of that contention. We may point out here that M/s. Narang Medicine Co., appellant in Civil Appeal No. 18 of 1958, did not join in the application made on July 30, 1948. Yet we find from the record that a copy of the letter which the Rent Controller wrote to the landlord on November 9, 1948, was sent to M/s. Narang Medicine Co. As we have earlier pointed out the very petition of the landlord dated September 1, 1948, shows that many more than 9 tenants had applied for fixation of standard rent for their shops in Chemists' Market, Bhagirath Colony. Therefore, we are unable to uphold the contention of the landlord that the Rent Controller had fixed

the standard rent of some of the shops, tenants whereof had not applied for the fixation of the standard rent.

This concludes the discussion with regard to the Chemists' Market in Bhagirath Colony. In these appeals we have come to the conclusion, for reasons given above, that the High Court was wrong in interfering with the order of the District Judge in appeal. We would, therefore, set aside the order of the High Court dated August 26, 1954, and restore that of the learned District Judge in appeal, so far as the appellants herein are concerned.

Civil Appeals Nos. 185 and 186 of 1958.

We now turn to the two appeals relating to Prem Building. The two tenants are M/s. Dhawan & Co., and Firm Gokal Chand-Madan Chand. M/s. Dhawan & Co. had made an application for fixation of standard rent on June 14, 1948. A similar application was made by Firm Gokal Chand - Madan Chand on the same date. In the applications an averment was made that the flats were completed after March 24, 1947, and that the tenants being without any accommodation and under the pressure of circumstances were forced to accept the exorbitant rent of Rs. 360 per month in one case and Rs. 350 per month in the other. Both of them asked for fixation of standard rent under s. 7A of the Control Act, 1947. Both the landlord and the tenants appeared before the Rent Controller and made statements before him. The main question taken before the Rent Controller on behalf of the landlord was that the second-floor on which the two flats of the tenants were situated was completed before March 24, 1947, and therefore, no proceeding in respect thereof was maintainable under s. 7A of the Act. The Rent Controller went into the evidence adduced before him very carefully and came to the conclusion that though the ground-floor and the first-floor of the building were old, the second-floor was constructed sometime in August, 1947. He, therefore, held that the second-floor was a new construction within the meaning of s. 7A of the Control Act, 1947 and he fixed the standard rent for each flat at Rs. 96-8-0. The matter was then taken in appeal to the District Judge. Again the main contention before the District Judge was that the Rent Controller had no jurisdiction as the premises in question were not newly constructed. The District Judge dealt with this point in the following way :

> "The premises are two flats on the second floor of a large building belonging to the appellant, and the rent Controller has found that these flats were constructed after 24th March, 1947. The record shows that the general attorney for the appellant admitted before the Rent Controller that only a temporary construction was in existence on the second floor before 24th March, 1947, and that temporary construction consisted of wooden purlins with corrugated iron sheets and stone-slabs on top of them. Subsequently, however, this construction was brought down and proper flats were built with reinforced concrete roofs, and it is in evidence that the first tenant, who occupied one of the flats, did so in September, 1947, and a second tenant went into occupation in January, 1948. It is on this evidence abundantly clear that the premises or the flats now in dispute were in every sense newly constructed premises and the Rent Controller was competent to fix the rent."

It is clear from the orders of the Rent Controller and of the District Judge in appeal that the question whether the second floor was newly constructed or not was really a question of fact, though undoubtedly a jurisdictional fact on which depended the power of the Rent Controller to take action under s. 7A. If the Rent Controller had wrongly decided the fact and assumed jurisdiction where he had none, the matter would be open to reconsideration in revision. The High Court did not,

however, go into the evidence, nor did it say that the finding was not justified by the evidence on record. The High Court referred merely to certain submissions made on behalf of the landlord and then expressed the opinion that what was done to the second floor was mere improvement and not a new construction. We think that the High Court was in error in interfering with the finding of fact by the Rent Controller and the District Judge, in support of which finding there was clear and abundant evidence which had been carefully considered and accepted by both the Rent Controller and the District Judge.

In these two appeals we have come to the conclusion that the judgment of the High Court dated January 26, 1954, should be set aside and that of the District Judge restored. We may here note that so far as the standard rent fixed by the Rent Controller was concerned, the District Judge himself noted that the learned advocate for the landlord was not able to find any fault with the assessment made by the Rent Controller.

Civil Appeal No. 171 of 1958.

We now come to Civil Appeal No. 171. The facts of this appeal are somewhat different. We have already stated that this appeal relates to two flats on the ground floor of plot No. 20, Block No. 13, Western Extension Area, Karolbagh. The tenant, who is the appellant before us, took the flats on a rent of Rs. 220 per month including tax on December 15, 1950. On May 15, 1951 he made an application for fixation of standard rent under s. 7A of the Control Act, 1947, on the ground that the rent charged was excessive and exorbitant. The application was contested by the landlord. On December 7, 1951, the Rent Controller fixed Rs. 150 per month as the standard rent inclusive of tax. The landlord filed an appeal to the District Judge which was dismissed on May 12, 1953. The landlord then filed an application in revision to the High Court and the High Court accepted the application on May 10, 1954, and remanded the case for a fresh trial. When the case came back to the Rent Controller, the landlord made an application to the Rent Controller to the effect that s. 7A read with Scheduled IV of the Control Act, 1947, was rendered unconstitutional and void on the coming into force of the Constitution of India. Apparently, this point was taken in view of the judgment of the Punjab High Court dated August 26, 1954, already discussed in the other appeals. On May 30, 1955, the Rent Controller held, on the basis of the aforesaid decision, that s. 7A read with Schedule IV of the Control Act, 1947, was unconstitutional and therefore the application was not maintainable. Accordingly, he dismissed the application. The matter was then taken to the District Judge in appeal. The learned District Judge who was bound by the decision of the Punjab High Court also held that s. 7A of the Control Act, 1947, was unconstitutional and therefore the application was not maintainable. The tenant-appellant then made an application under Art. 227 of the Constitution to the Punjab High Court. That application was summarily dismissed on March 7, 1956.

We have already dealt with the constitutional points as to whether s. 7A read with Sch. IV of the Control Act, 1947 is void after the coming into force of the Constitution of India by reason of a violation of the fundamental right guaranteed under Art. 14 of the Constitution and we have come to the conclusion that s. 7A and the relevant provisions of Sch. IV of the Control Act, 1947 are not unconstitutional. That being the position, the main ground on which the application of the appellant was dismissed disappears and the application must now be dealt with in accordance with law. Our attention has, however, been drawn to the Delhi and Ajmer Rent Control Act, 1952 (Act No. XXXVIII of 1952), which by s. 46 repealed the Control Act, 1947. That section, however, contains a saving clause which is as follows :

"46. Repeals and savings. - (1) x x x

(2) Notwithstanding such repeal, all suits and other proceedings pending at the commencement of this Act, whether before any court or the Rent Controller appointed under the Fourth Schedule to the said Act, shall be disposed of in accordance with the provisions of the said Act as if the said Act had continued in force and this Act had not been passed :

Provided that the procedure laid down in this Act shall, as far as may be, apply to suits and other proceedings pending before any Court."

We consider it unnecessary to determine the effect of the aforesaid saving clause in the present appeal. Neither the Rent Controller, nor the District Judge, nor the High Court considered the effect of the saving clause. The application of the appellant was dismissed on the simple ground that s. 7A read with Sch. IV of the Control Act, 1947 was unconstitutional. We consider that that ground is not correct and the application of the tenant-appellant for fixation of standard rent must now be determined in accordance with law. It would be for the competent authorities to consider now the effect of s. 46 of the Delhi and Ajmer Rent Control Act, 1952 or of any other law, bearing on the question which may have come into existence since then.

We would, therefore, allow this appeal and set aside the orders of the Rent Controller, the District Judge and the High Court dismissing the application of the appellant. The application must now be dealt with in accordance with law by the authority competent to do so in the light of the observations made above.

In the result the appeals in all three categories are allowed as indicated above. The appellants in all the appeals will be entitled to their costs, but there will be one set of hearing fee for each of the three categories of appeals.

Appeals allowed.

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