amount merely to an *intimation* of the outstanding and not to a 'demand'. On this point, also, I find myself in respectful agreement with the observations of Narula, J., in *Duni Chand's case* (supra) (1), that no demand is made unless the claim is made for the amount and that a mere intimation by the Municipality to a person that something might be due from him without making claim for the payment of the sum, would not constitute a 'demand' within the meaning of clause (g) of rule 7, which being a disabling provision, has to be construed strictly.

(16) For reasons aforesaid, the conclusion is inescapable that the impugned orders rejecting the nomination papers of the petitioners were manifestly illegal and without jurisdiction. The decision of the learned Single Judge is, therefore, reversed and the appeals are accepted with costs. In the result, both the writ petitions, Nos. 2010 and 2011 of 1967, are allowed and the impugned orders, dated September 4, 1967 (Annexure 'E' to the writ petitions) are quashed, with the direction that fresh elections to the Municipal Committee, Kharar, from Wards 8 and 10, for which the writ petitioners were candidates, be held in accordance with law.

(17) Out of the costs, in each case, 50 per cent shall be paid by the respondent State and 50 per cent by the other respondents. Counsel's fee : Rs. 60 in each case.

MEHAR SINGH, C.J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

THE BRITISH INDIA CORPORATION LIMITED,—*Petitioner.*

versus

THE DEPUTY COMMISSIONER, GURDASPUR, AND ANOTHER,—*Respondents.*

Civil Writ No. 1526 of 1964.

January 31, 1969.

Punjab Municipal Act (III of 1911)—Sections 3(1) (b) 66 and 68—East Punjab Urban Rent Restriction Act (III of 1949)—Section 4—Annual rental value of a building—Fixation of by a Municipal Committee—Rent Control Laws—Whether can be ignored—Fair rent of a building not determined by

Rent Controller—Procedure to be followed in fixing annual rental value of such building—Stated—Sections 66 and 68—Assessment of annual rental value for a particular year—Whether must be completed before the commencement of that year—"Next ensuing"—Meaning of—Assessment list—Whether can take effect retrospectively.

Held, that in matter of fixation of annual rental value of a building by Municipal Committee under section 3(1)(b) of Punjab Municipal Act, the law relating to control of rents cannot be ignored. As a matter of fact such a law lays down the upper limit on the rate of rent for which any house or building can reasonably be expected to let. The expression "reasonably be expected to let" in the section means the amount which a landlord can recover under the law, but not the sum which he chooses to receive from his tenant in violation of law. In cases where fair rent has been fixed by the Rent Controller under the East Punjab Rent Restriction Act, the Municipal Committee is barred from making an assessment on the basis of any other annual rent than the one fixed by the Rent Controller. The mere fact that fair rent has not been fixed in a particular case should make no difference in determining the reasonable letting value of a house or building. It may be that actual contractual rent is being recovered by the landlord from his tenant who has not chosen to make an application to the Rent Controller under the Rent Control Act for fixation of the fair rent but it cannot be over-looked that a ceiling of the fair rent has certainly been fixed by the said Act. Hence the assessing authorities can and should have before them the same criteria as the Rent Controller would have in order to determine the fair rent which alone will be the basis of the annual rental value for which a landlord can reasonably be expected to let the building concerned.

(Paras 7 & 8)

Held, that it is not necessary that a new list of assessment should be prepared every year and it is open to a Municipal Committee to prepare a new list every year or to adopt the valuation or assessment with alterations if any, contained in the list for any year. This has also to be done in advance so as to make it operative for the following year since an opportunity has to be given to the affected assessees if any alterations are being made to their prejudice. The liability to pay tax can arise only when the list has been finally settled after following the prescribed procedure as contained in Chapter V of the Punjab Municipal Act. The assessment for any particular year must, therefore, be completed by the Municipal Committee before the relevant year of assessment commences. The expression "next ensuing" as used in section 66 of the Act when read in its true context leaves no manner of doubt that the tax assessed shall be deemed to be a tax only from the first day of January or the first day of April following the completion of the assessment. The provisions of law relating to assesment of tax as contained in Chapter V of the Act, particularly sections 66 and 68 do not permit a settlement of assessment list which can take effect retrospectively whether this list is newly prepared for a year or is a revised one making alterations affecting any assessee prejudicially. Any tax imposed not in accordance with the prescribed procedure is certainly invalid and cannot create any liability.

(Para 10)

The British India Corporation Ltd. *v.* The Deputy Commissioner, Gurdaspur, etc. (Sodhi, J.)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari *or any other appropriate writ, order or direction be issued quashing the oreder dated 18th April, 1964, passed by respondent No. 1 as also the resolution of respondent No. 2, dated 30th September, 1963.*

BHAGIRATH DASS AND S. K. HIRAJI, ADVOCATES, for the Petitioner.

MEMO, for Respondent No. 1.

D. N. AGGARWAL, ADVOCATE for Respondent No. 2.

JUDGMENT

SODHI, J.—This judgment will dispose of two connected writ petitions Nos. 1526 of 1964 and 1540 of 1968. The learned counsel for both the parties are agreed that common questions of law and fact arise in both these petitions and arguments have been advanced only in the former writ petition. The only difference on facts in regard to the two writ petitions is that Civil Writ No. 1526 of 1964 is directed against the assessment of house tax levied by Municipal Committee, Dhariwal, in respect of certain property of the petitioner company for the years 1962-63 and 1963-64, whereas in the latter writ petition the challenge is against the enhanced assessment made in similar circumstances for the year 1966-67.

(2) It is alleged in Civil Writ No. 1526 of 1964 that the town of Dhariwal was first a Notified Area Committee and was subsequently declared a Small Town Area Committee. It continued as such up to the year 1952-53 when it was coverted into a Committee to which provisions of the Punjab Municipal Act, 1911, as amended up to date and hereinafter called the Act, became applicable. There was an assessment of house-tax made for various items of the property owned by the petitioner company on the basis of gross annual rent worked out by the Small Town Area Committee constituted under the Punjab Small Towns Act, 1921. The total amount of annual value assessed for the year 1952-53 was Rs. 60,032 and from 1953-54 it was increased to Rs. 64,194 on which amount the house tax was being paid by the company up to the year 1961-62. It occurred to the respondent Municipal Committee to revise the rental value of the various buildings owned by the petitioner Company and by its resolution passed on 21st May, 1962, notices were sent to the petitioners under section 65 of the Act. The objections had to be filed within thirty days and a sub-committee was appointed to hear those objections. The sub-committee did hear the objections and recommended an increase in

the amount of the annual rental value from Rs. 64,194 to Rs. 75,900. The Municipal Committee considered this report at its meeting held on 11th January, 1963, but thought the amount to be too low and decided to increase the same to Rs. 94,070. A copy of the resolution passed by the Municipal Committee, whereby the recommendations of the sub-committee were accepted with variations enhancing the amount to Rs. 94,070, has been attached with the writ petition as Annexure 'C'. The petitioner company preferred an appeal under section 84 of the Act to the Deputy Commissioner, Gurdaspur, who allowed the same on 24th April, 1963, and set aside the assessment made by the respondent Municipal Committee. A copy of the order of the Deputy Commissioner so passed had not been placed on record by either of the parties, but it has been produced now by Mr. D. N. Aggarwal, counsel for the respondent Municipal Committee. The Deputy Commissioner was of the opinion that no opportunity as envisaged by law was given to the petitioner company to be heard by the Municipal Committee itself and that hearing of objections by the sub-committee was not a sufficient compliance with law. A fresh assessment was accordingly ordered after giving an opportunity to the petitioner to be heard. The Municipal Committee again considered the matter and after hearing the representatives of the petitioner company and going through their objections, passed a resolution on 30th September, 1963, confirming the same assessment as had been made in its earlier resolution of 11th January, 1963. An appeal was again filed under section 84 by the petitioner company before the Deputy Commissioner but it was dismissed on 18th of April, 1964. Hence the present writ petition.

(3) Mr. Bhagirath Dass, learned counsel for the petitioner has raised three contentions. It has been submitted that it was incumbent upon the Municipal Committee to have fixed gross annual rent of the buildings in question by keeping in view the provisions of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act No. 3 of 1949), hereinafter called the Rent Control Act. According to the learned counsel, the Rent Control Act is applicable to the town of Dhariwal and in such a situation the gross annual rent of any house or building at which such house or building can be let for use or enjoyment or can reasonably be expected to be so let cannot be more than what is the fair rent of such a building or house as fixed by a Rent Controller and if any such rent is not so fixed, the Municipal Committee must, in the matter of working out the gross annual rent, be guided by the principles laid down in the Rent Control Act for the

determination of fair rent. The other contention is that the assessment made in the instant case is highly arbitrary and gives no formula or basis on which the increase has been worked out. It is submitted in this connection that there must be some objective data on which the increase is based, and in the absence of that the impugned assessment is liable to be quashed. The third contention is that the annual assessment for the year 1962-63 was made on 30th September, 1963, when actually the financial year 1962-63 (from 1st April, 1962 to 31st March, 1963), had run out itself and in regard to assessment year 1963-64, it is urged that the assessment having been made on 30th September, 1963, could also not be valid since in terms of section 66 read with section 68 of the Act it could operate only prospectively with effect from the first day of January or the first day of April of the following year and not retrospectively with effect from January or April, 1963. Emphasis has been laid on the words "ensuing year" as appearing in section 66(1), and "in the following year" as used in section 68 of the Act. Section 66(1) and section 68 are in the following terms:—

"66. (1) After the objections have been enquired into and the persons making them have been allowed an opportunity of being heard either in person or by authorised agent as they may think fit, and the revision of the valuation and assessment has been completed, the amendments made in the list shall be authenticated by the (signatures of not less than two members of the committee), who shall at the same time certify that no valid objection has been made to the valuation and assessment contained in the list, except in the cases in which amendments have been entered therein; and, subject to such amendments as may thereafter be duly made, the tax so assessed shall be deemed to be the tax for the year commencing on the first day of January or first day of April next ensuing as the committee may determine, or in the case of a tax then imposed for the first time for the period between the date on which the tax comes into force and such first day of January or April, as the case may be."

68. *New list need not be prepared every year.*—It shall be in the discretion of the committee to prepare (for the whole or any part of the municipality) a new assessment list every year or to adopt the valuation and assessment contained in the list for any year, with such alterations as

may in particular cases be deemed necessary, as the valuation and assessment for the year following, giving to persons affected by such alterations the same notice of the valuation and assessment as if a new assessment list had been prepared."

(4) Mr. D. N. Aggarwal, learned counsel for the Municipal Committee, controverts the contentions of the learned counsel for the petitioner company and firstly submits that the premises in dispute have not actually been let out to the employees, the amount described as rent is being paid only by way of maintenance charges, and that it is only when the premises have been let out and fair rent actually fixed that it can be said that the letting value, which an owner may reasonably be expected to have, is the fair rent. According to the learned counsel, the reasonable letting value to the owner of the building is what a hypothetical tenant would be prepared to offer keeping in view the economical conditions prevailing in the society and the matter of demand and supply. The contention is that when fair rent has been fixed, the landlord is prohibited under the Rent Control Act from recovering more than that rent and unless it is done, a Municipal Committee is not bound to take fair rent as the basis of the reasonable letting value.

(5) The other argument of Mr. Aggarwal is that the rental value during this period of ten years had much increased and the enhanced assessment is, therefore, reasonable and not arbitrary. He could not, of course, support this contention by pointing out any formula which can be said to have been adopted by the respondent Municipal Committee in increasing the annual valuation and consequently the house tax. As regards the objections of the petitioner company that the increase could not be made to take effect retrospectively the contention of Mr. Aggarwal is that the interpretation placed by the learned counsel for the petitioner on sections 66 and 68 is not correct and all that is necessary is that the proceedings relating to assessment must have commenced before the first day of January or the first day of April following the year for which the assessment is sought to be made. It is also submitted on behalf of the respondent committee that in the instant case, the house tax was levied under the Punjab Small Towns Act, 1921, and reference to the provisions of the Punjab Municipal Act, therefore, irrelevant.

(6) It cannot be disputed that the premises with regard to which the house tax has been levied are occupied mostly by the

employees of the petitioner company and they are paying rent therefor though it may be less than the normal rent that such premises could fetch in the open market. There are residential quarters, shops and bungalows, the occupants whereof are paying rents to the petitioner company at different rates. It was never the case of the Municipal Committee before the appellate authority that the premises had not been let out. In the return filed in this Court in Civil Writ No. 1526 of 1964, no such plea has been taken by the respondent and the learned counsel cannot be permitted to raise a question of fact for the first time during the course of arguments. In order to determine the house tax, the Municipal Committee has first to determine the annual rental value of the building concerned. The annual value has been defined in section 3(1) (b) of the Act and the definition runs as under :—

"3(1) 'annual value' means—

* * * * * * * *

(b) in the case of any house or building, the gross annual rent at which such house or building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith, may reasonably be expected to let from year to year, subject to the following deductions—

(i) such deduction not exceeding 20 per cent of the gross annual rent as the committee in each particular case may consider a reasonable allowance on account of the furniture let therewith;

(ii) a deduction of 10 per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent. The deduction under this sub-clause shall be calculated on the balance of the gross annual rent after the deduction (if any) under sub-clause (i);

(iii) where land is let with a building such deduction, not exceeding, 20 per cent, of the gross annual rent, as the committee in each particular case may consider reasonable on account of the actual expenditure, if any, annually incurred by the owner on the upkeep of the land in a state to command such gross annual rent.

Explanation I.—For the purposes aof this clause it is immaterial whether the house or building, and the furniture and the land let for use or enjoyment therewith, are let by the same contract or by different contracts, and if by different contracts, whether such contracts are made simultaneously or at different times.

Explanation II.—The term "gross annual rent" shall not include any tax payable by the owner in respect of which the owner and tenant have agreed that it shall be paid by the tenant."

(7) The sole question that arises for determination is as to what can be said to be the gross annual rent at which the premises in dispute could be reasonably expected to be let for use or enjoyment for the year under assessment. It is true that it is not the actual rent fetched that matters but it is the value to the owner of the house or building. The expression "reasonably" came up for consideration before their Lordships of the Supreme Court in *The Corporation of Calcutta* v. *Smt. Padma Debi and others* (1), and it has been observed that :—

"The word "reasonably" is not capable of precise definition. "Reasonable" signifies "in accordance with reason". In the ultimate analysis it is a question of fact. Whether a particular act is reasonable or not depends on the circumstances in a given situation. A bargain between a willing lessor and a willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of reasonableness. An inflated or deflated rate of rent based upon fraud, emergency, relationship, and such other considerations may take it out of the bounds of reasonableness."

It was a case where the Corporation of Calcutta sought to impose tax and in fixing the annual valuation of certain premises, it took as the basis the monthly rental value of the premises. The West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (XVII of 1950), came into force after the notices of assessment based on the annual valuation as fixed by the Corporation has been issued. The Rent Controller fixed the standard rent and an objection was raised by the assessees that the Corporation had no power to fix the annual valuation at a figure higher than the standard rent. The objection

(1) A.I.R. 1962 S.C. 151.

was overruled by the Special Officer who confirmed the assessment as levied by the Corporation. The assessees aggrieved by the order of the Corporation filed an appeal in the Court of Small Causes and the learned Judge upholding the objection of the assessees allowed the appeal fixing the annual valuation on the basis of the standard rent as determine by the Rent Controller. The High Court, on appeal, affirmed the decision of the Judge of the Court of Small Causes, and an appeal to the Supreme Court, on a certificate granted by the High Court, was also dismissed. An argument was raised before the Supreme Court that under section 127 of the Calcutta Municipal Act, 1923, the Corporation had to ascertain only the hypothetical rent realisable from a hypothetical tenant at the time of assessment and not the actual rent payable at that time by any tenant. It was accordingly contended that the Corporation was not bound to take into consideration the standard rent fixed by the Rent Controller under the Rent Control Act. This argument was repelled by their Lordships of the Supreme Court. The Rent Control Act applicable to Calcutta not only laid down a procedure for fixation of the fair standard rent and prohibited the recovery of any rent more than the standard rent but also provided certain penalties for the landlord who knowingly received whether directly or indirectly any sum on account of rent of any premises in excess of the standard rent. It was observed by their Lordships that a landlord could not reasonably be expected to let a building for a rent higher than the standard rent and the law of the land with its penal consequences could not be ignored in ascertaining the reasonable expectation of a landlord in the matter of rent. The following observations are of great significant and may be quoted in extenso :—

> "In this view, the law of the land must necessarily be taken as one of the circumstances obtaining in the open market placing an upper limit on the rate of rent for which a building can reasonably be expected to let.
>
> It is said that S. 127(a) does not contemplate the actual rent received by a landlord but a hypothetical rent which he can reasonably be expected to receive if the building is let. So stated the proposition is unexceptionable. Hypothetical rent may be described as a rent which a landlord may reasonably be expected to get in the open market. But an open market cannot include a "black market", a term euphemistically used to commercial transactions entered into between

parties in defiance of law. In that situation, a statutory limitation of rent circumscribes the scope of the bargain in the market. In no circumstances the hypothetical rent can exceed that limit."

The aforesaid observations leave no manner of doubt that in the matter of fixation of annual rental value, the law relating to control of rents account be ignored. As a matter of fact, such a laws lays down the upper limit on the rate of rent for which any house or building can reasonably be expected to let. A Division Bench of this Court in a case reported as *Municipal Corporation of Delhi* v. *Ganesh Das,* (2), had an occasion to consider section 3(1) (b) of the Act defining the annual value and held, relying on an unreported judgment of this Court in *Oriental Government Security Life Insurance Company Limited* v. *The New Delhi Municipality, New Delhi,* (3), that the Rent Control Act modified the definition of the 'annual value' as given in the Punjab Municipal Act and observed that the expression "reasonably be expected to let" means the amount which a landlord can recover under the law, but not the sum which he chooses to receive from his tenant in violation of the law. It was, of course, a case where fair rent had been fixed by the Rent Controller. There was no reference in this case to the *Corporation of Calcutta's case* (1), decided by the Supreme Court.

(8) The position is, therefore, clear beyond doubt that in cases where fair rent had been fixed the Municipal Committee is barred from making an assessment on the basis of any other annual rent than the one fixed by the Rent Controller. The learned counsel for the respondent submits that in cases where no rent has actually been determined under the Rent Control Act containing no such penal provisions as are to be found in the Calcutta Municipal Act, 1923, it is open to a Municipal Committee to ascertain the hypothetical rent which may be got in the open market from a willing lessee. He has in this connection invited my attention to an unreported judgment of the Division Bench of Delhi High Court in *Vidya Parkash* v. *The Municipal Committee, Simla,* (4), where the same view as now contended before me by Mr. Aggarwal has been taken. The learned Judges in making reference to the case of the *Corporation of Calcutta,* (1), have observed that certain provisions of the East Punjab Urban Rent Restriction Act are different from those of the Rent Control Act

(2) 1964 P.L.R. 361.

(3) Civil Reference 16 of 1953.

(4) C.M. 123 of 1968.

applicable in Calcutta inasmuch as the latter Act provides penalities for charging more than the standard rent. Reliance has also been placed by the learned Judge on some observations made by their Lordships of the Supreme Court in *Motichand Hirachand and others* v. *Bombay Municipal Corporation* (5). With greatest respect, I cannot persuade myself to agree with the view taken in the Bench decision of the said High Court which to my mind is not in consonance with the ratio in either of the two Supreme Court cases. The mere fact that fair rent has not been fixed in a particular case should make no difference in determining the reasonable letting value of a house or building. It may be that actual contractual rent is being recovered by the landlord from his tenant who has not chosen to make an application to the Rent Controller under the Rent Control Act for fixation of the fair rent but it cannot be overlooked that a ceiling of the fair rent has certainly been fixed by the said Act. It is no doubt correct that the Punjab Rent Control does not contain the penal provisions as those in the Calcutta Rent Control Act but it cannot also be said that where the Punjab Act applies it is lawful for a landlord to charge more than the fair rent. If the test of the annual rental value is the value of the property to the owner, and according to the prevailing law a landlord is not entitled to more than fair rent, I do not understand how can it possibly be said that simply because a tenant is paying certain black market rent as contractual rent, that should be treated by the assessing authority as the annual rental value. If this argument were accepted, the annual rental value can immediately enlarge at the volition of the landlord only if he cares to make an application to the Rent Controller for determination of the fair rent. Where a tenant has agreed to pay certain amount of rent which is in excess of the fair rent and then makes an application for the fixation of the same, he is entitled under section 8 of the Rent Control Act to recover the amount which he has already paid in excess of the fair rent. Can it in these circumstances be argued that the recovery of any amount in excess of fair rent is lawful for a landlord? It will lead to startling results if the annual rental value is allowed to be assessed more than what could be fair rent whether the same has been got fixed or not on an application to the Rent Controller. The assessing authorities can and should have before them the same criteria as the Rent Controller would have in order to determine the fair rent which alone will be the basis of the annual rental value for which a landlord can reasonably be expected to let the buliding concerned.

(5) A.I.R. 1968 S.C. 441.

In my opinion, it should make no difference if the Punjab Rent Control Act does not contain similar penal provisions as are to be found in the Calcutta Rent Control Act. It may be that the Punjab Rent Control Act not require that fair rent of every building must be fixed by the Rent Controller but it does not mean that non-fixation of the fair rent can give any legal sanction to charge a rent more than what is the fair rent. In the Bench decision of Delhi High Court, if I may say with all respect, the true import of the observations made by their Lordships of the Supreme Court in the *Corporation of Calcutta's case* (1), and also in that of *Motichand Hirachand's case* (5), has not been correctly appreciated. In *Motichand Harichand's case* (5), the only question before their Lordships was as to whether the assessing authority could legitimately take into consideration for determining the annual rent some extra income which that building could yield. It was in these circumstances that it was observed that the hypothetical tenant would take extra income into account, and the purpose of rating is the rent which a hypothetical tenant looking at the building as it is would be prepared to pay. There was a building situate at the corner of Marine Drive and Sandhurst Road in Bombay. This building consisted of several floors and the Municipal Corporation of Bombay had been assessing the rateable value of the value of the building as equivalent to the rents recovered by the owners. After the assessment had been made for the year 1956-57, it was found by the assessing authority that the terrace of the building was used for advertising purpose and this gave an additional income to the landlord. The Corporation sought to amend the assessment by increasing the rateable value. The landlord objected to this increase and the Chief Judge, Small Causes Court, disallowed the same. The High Court on appeal set aside the order of the Chief Judge, Small Causes Court, holding that the Municipal Corporation was entitled to take into account income earned by the owners under an agreement with the tenant relating to income from use of the terrace for advertisement purposes. Their Lordships of the Supreme Court in this context observed that in valuing the property "every intrinsic quality and every intrinsic circumstances which tends to push the rental value up or down must be taken into consideration. In other words, in estimating the hypothetical rent 'all that could reasonably affect the mind of the intending tenant ought to be considered'." It was also observed by their Lordships that:—

> "While estimating the rent which he could be prepared to pay he would naturally take into consideration all the advantages, together with the disadvantages attached to the

property, that, is the maximum beneficial use to which he would be able to put the property. In doing so he is bound to take into consideration the fact of the property being situated at an unique place as the instant property undoubtedly is, viz., at the juncture of two of the most prominent roads with the additional advantage of Chowpatty Sea Face being opposite to it where in the evenings and on week-ends, it cannot be questioned, large crowds usualy gather. Coupled with this would be the advantage that a neon-sign advertisement can be vividly seen if fixed on the top of the building by people pedestrians and those in vehicles, from fairly long distances in all directions, especially as the advertisement happens to be a rotating one. There can, therefore, be no doubt that if a property possesses such an amenity, such amenity is bound to add to its beneficial value and the tenant who desires to take it on lease is bound to take into consideration while making up his mind as to the rent which he can profitably offer as to how much income he would be able to derive from exploiting such an amenity."

I fail to see how the Bench decision has drawn help from this judgment which on facts is clearly distinguishable and says nothing contrary to what had been laid down earlier in the *Corporation of Calcutta's case* (1).

(9) I also do not find any merit in the contention of the learned counsel for the respondent that the definition of 'reasonable letting value' in the Punjab Municipal Act, 1911, is different from that of 'fair rent' in the Punjab Rent Control Act and that 'reasonable letting value' under the former Act is to be determined by the theory of supply and demand and what a willing prospective lessee is prepared to pay in respect of the building concerned irrespective of the prevailing law relating to rent control. This approach to my mind is wholly erroneous. Under the Rent Control Act, there is a definite formula laid down for determining the fair rent and that will be rental value for the year of assessment whichever that year be. The method of ascertaining 'annual value' for the purposes of Punjab Urban Immovable Property Tax Act, 1940, is given in Rule 4 of the Punjab Urban Immovable Property Tax Rules, 1941, and is also given below:—

"4. (e) An enquiry shall be made about the gross annual rent earned or which could reasonably be earned in respect

of the property during the financial year immediately preceding the current financial year.

(f) If in the opinion assessing authority the average gross annual rent of any property ascertained under clause (e), when compared with any other property in that locality, be not fair or reasonable, the assessing authority shall determine, from such other data as may be available, the gross annual rent at which such property may reasonably be expected to let from year to year."

It will be seen that "annual rent" as referred to in the aforesaid Rule is understood in the same sense as in the Act. Mahajan, J., in *Inder Mohan* v. *The Excise and Taxation Commissioner, Punjab, and others* (6), has held when the property is subject to the provisions of the East Punjab Urban Rent Restriction Act, 1949, it cannot earn nor can it reasonably be expected to earn more rent than what that Act permits. In this case the assessing authority acting under the Punjab Urban Immovable Property Tax Act proceeded to make assessment of a house owned by Inder Mohan. The assessing authority fixed the rental value of the house at Rs. 1,260 and an objection was raised that this much amount could never be the rent for the house in view of the provisions of the Rent Control Act. The objection was overruled by the assessing authority and on a writ petition being preferred under Article 226 of the Constitution of India, the learned Judge directed the assessing authority to proceed to determine the annual rental value in accordance with the provisions of the Rent Control Act. In a similar situation, Shamsher Bahadur, J., has held in *Tejaswi Chand Khanna* v. *The Joint Excise and Taxation Commissioner, Punjab and others* (7), that where a fair rent has not been fixed by the Rent Controller, the assessing authority has a determine the same in accordance with the provisions of the Rent Control Act. The *Corporation of Calcutta's case* (1), was relied upon by the learned Judge in this connection. It was a case under the Punjab Urban Immovable Property Tax Act which, as already mentioned, has the same definition of 'annual rent' as to be found in the Act. The same view has been taken by S. K. Kapur, J., in *Girdhari Lal* v. *Excise and Taxation Officer*, (8), which has not been accepted by the Division Bench of the Delhi High Court I am in respectful agreement with

(6) I.L.R. (1962) 2 Pb. 884.

(7) C.M. 2662 of 1962 decided on 23rd February, 1967=1967 P.L.R. 49 (S.N.) at page 30.

(8) 1967 P.L.R. 356 Delhi Section.

the view of law taken by Mahajan, Shamsher Bahadur and S. K. Kapur, JJ. It must, therefore, be held that the annual rent at which a building or a house may be let for year to year cannot be assessed by the assessing authority under the Act at an amount higher than what is or will be the fair rent of the same whether it has been determined or not by the Rent Controller acting under the Rent Control Act. The assessing authority has to make an assessment of annual rent in accordance with the provisions of the Rent Control Act keeping in view the criteria laid down therein for determining the fair rent.

(10) The next contention of Mr. Bhagirath Dass, learned counsel for the petitioner, that on a correct interpretation of sections 66 and 68 of the Act, the assessment lists of house tax as envisaged in the Act have to be completed before the first day of January or first day of April following the year for which the tax is proposed to be levied, is also not without merit. It is provided in section 62(11) that a tax leviable by the year shall come into force on the first day of January or on the first day of April or on the first day of July or on the first day of October in any year. A Municipal Committee when it proceeds to make an assessment has first to prepare an assessment list of all buildings and lands on which the tax is to be imposed giving certain particulars including the annual value thereof as defined in section 3(1) of the Act. The proposed assessment list is then published and a public notice given thereof making it available for inspection to every person claiming to be either owner or occupier of property included in the list. He may inspect the lists so prepared either himself or through his authorised agent. The public notice has also to specify the time not less than one month after the date of publication within which all objections to the proposed valuation and assessment have to be submitted in writing. The objections are then enquired into and the persons making the same have to be allowed an opportunity of being heard either in person or by authorised agent. The final assessment list is then completed which has to be authenticated by the signatures of not less than two members of the committee. In terms of section 66, this final assessment is deemed to be the tax for the year commencing on the first day of January or the first day of April next ensuing as the Municipal Committee may determine. It is a common ground that it is not a case of imposition of tax for the first time but of revision of tax. It is not necessary that a new list of assessment should be prepared every year and it is open to a Municipal Committee to prepare a new list every year or to adopt

the valuation or assessment, with alterations if any, contained in the list for any year. This has also to be done in advance so as to make it operative for the following year since an opportunity has to be given to the affected assessees if any alterations are being made to their prejudice. The liability to pay tax can arise only when the list has been finally settled after following the prescribed procedure as contained in Chapter V of the Act. The assessment for any particular year must, therefore, be completed by the Municipal Committee before the relevant year of assessment commences. The expression "next ensuing" as used in section 66 of the Act when read in its true context leaves no manner of doubt that the tax assessed shall be deemed to be a tax only from the first day of January or the first day of April following the completion of the assessment. The provisions of law relating to assessment of tax as contained in Chapter V of the Act, particularly sections 66 and 68 do not permit a settlement of assessment list which can take effect retrospectively whether this list is newly prepared for a year or is a revised one making alterations affecting any assessee prejudicially. Any tax imposed not in accordance with the prescribed procedure is certainly invalid and cannot create any liability. There may be an appeal preferred to the prescribed appellate authority by any assessee but the time taken before the appellate authority cannot validate a tax which is otherwise invalid because it has not been imposed by the Municipal Committee in accordance with the procedure prescribed and completed before the year of assessment.

(11) The thrid contention of Mr. Bhagirath Dass is that the increase in assessment is arbitrary giving no guiding principle or formula which the authorities can be said to have adopted in effecting the increase. This contention is also full of force. The assessing authority except saying that the value of the property has increased does not say how and on what date this assumption is warranted. The assessing authority proposing to impose a tax must act on objective data and direct its mind to the circumstances justifying the increase. It must also say so in its assessment order so that the assessee can know why the increase has been effected. In other words, as a quasi-judicial body it must pass a speaking order. I am afraid, in the instant case, the order does not disclose any material that could reasonably lead to the increase in assessment. A Division Bench of this court in *Kaviraj Khazan Chand* v. *The New Delhi Municipality* (9), while dealing with the provisions of sections 63 to 66 of the Act

(9) 1960 P.L.R. 97.

has said that the inviting of objections is not a mere farce and that the owners or occupiers are entitled for the proper disposal of their objections to be informed of the formula on which it was proposed to base the new assessments. I am afraid, no such guiding principle is to be found in the impugned order of assessment.

(12) The contention of Mr. Aggarwal, learned counsel for the respondent Municipal Committee, that the tax was imposed under the Small Towns Act, 1921, and not under the Punjab Municipal Act warranting the applicability of sections 61 to 68 of the Act is to be noted only to be rejected. The Punjab Small Towns Act was repealed by the Punjab Municipal Amendment Act (XXXIV of 1954) and with effect from 11th December, 1954, the Punjab Municipal Act became applicable. Notices were also issued under the Punjab Municipal Act.

(13) For the foregoing reasons, the writ petition is allowed and the impugned order of enhanced assessment passed by the Municipal Committee, Dhariwal, as affirmed by the appellate authority, in quashed. The Municipal Committee can, however, if so advised, make a fresh assessment in the light of the observations made above by taking into consideration the provisions contained in the Rent Control Act for fixation of fair rent. There will be no order as to costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

MANOHAR SINGH SETHI AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2215 of 1964.

January 31, 1969.

Punjab Passengers and Goods Taxation Act (XVI of 1952)—Section 6(2)—Penalty under—Whether can be imposed without assessment of tax—Assessee not producing accounts—Assessing authority—Whether relieved of its duty under section 6—Consolidated sum—Whether can be imposed as penalty.

Held, that section 6(2) of Punjab Passengers and Goods Taxation Act, 1952, provides for a penalty to be imposed in addition to the amount of tax,