REVISIONAL CIVIL

Before Khosla and Kapur, JJ.

MESSRS. BRITISH MEDICAL STORES AND OTHERS;—*Petitioners*

versus

L. BHAGIRATH MAL AND OTHERS.—*Respondents*

Civil Revision No. 243 of 1951

1954

August 26

Delhi and Ajmer-Merwara Rent Control Act (XIX of 1947)—Section 7-A and Schedule IV—Whether ultra vires *the Constitution of India—Power of Rent Controller to*

(1) A.I.R. 1942 P.C. 6
(2) 57 C.W.N. 526.

fix standard rent—Requisites and extent of—Enquiry—Meaning of—Newly-constructed building—What is not—Constitution of India—Articles 226 and 227—Supervisory jurisdiction of High Court to interfere—Extent of—Change in law made between the decision by the Controller and the decision of the appeal—Law applicable stated—

Nine out of eighteen tenants of a building applied to the Rent Controller for fixation of standard rent under the provisions of section 7-A and Schedule IV of Delhi and Ajmer-Merwara Rent Control Act, 1947 The Rent Controller, without indicating in the order that he was as a matter of fact satisfied as to the excessive nature of the rent fixed between the parties and without there being any indication that that was his objective view, issued a notice to the landlord and nine applicants to appear before him with all evidence. After recording some evidence the Rent Controller inspected the building, made some private enquiries, calculated the value of the land and the building and fixed the standard rent of all the eighteen shops in the absence of the landlord. The landlord filed an appeal in the Court of the District Judge who fixed the standard rent at double the amount determined by the Rent Controller. Both parties filed revisions in the High Court.

Held– (1) that as a result of the coming into force of the Constitution during the pendency of the appeal, the provisions of section 7-A read with Schedule IV of Delhi and Ajmer-Merwara Rent Control Act, 1947, are unconstitutional and have, therefore, become void.

(2) That having regard to the provisions of Schedule IV of the Act, the Rent Controller could not take cognizance of the matter relating to fixation of standard rent without finding that he had reasonable grounds to believe that the rent was in fact excessive. Thus there was in the absence of an objective determination no basis for a valid exercise of the power of the Rent Controller and, therefore, the subjective, i.e., an honest opinion of the Rent Controller does not give him the jurisdiction to take cognizance of the matter.

(3) That in regard to the vacant shops the Rent Controller could not make any determination of rent because none had by contract been fixed.

(4) That in regard to persons who had not made any application and in regard to whom no notice was given to the landlord, the determination of standard rent is contrary to the principles of natural justice.

(5) That the whole procedure followed by the Rent Controller is so out of accord with the principles of natural justice and substantial evidence rule that the decision is vitiated and should be set aside.

(6) That the use of the word "inquiry" in clause 7 of Schedule IV should ordinarily connote an inquiry which approximates to a judicial inquiry where parties are called upon and are given an opportunity to lead evidence and they do lead evidence in support of their respective claims.

(7) That where the walls were already there and what had been done was that the roof was rebuilt and reflooring was done and the walls had been plastered they were nothing more than improvements and were not newly-constructed premises to which section 7-A was applicable.

(8) That the role of the Courts in regard to statutory Tribunals is to serve as a check on the Tribunal—a check against excess of power and abusive exercise of power in derogation of private right. Broadly speaking, judicial control is assured where amongst other things review can be had only on the following grounds:—

(1) *Ultra Vires*: to ensure that the determination by the tribunal was within the authority delegated on the agency.

(2) *Natural Justice*: that at least minimum standards of fairness which in the United States is called "the fundamentals of fair play" are observed.

(3) *Substantial evidence*: that the administrative determination has basis in evidence of rational probative force.

(9) That the High Court exercising power under Article 226 of the Constitution of India is not concerned with the weight of the evidence. The judicial review goes no further than to ascertain whether there is evidence to support the findings, and the question of the weight of the evidence in determining issues of fact lies with the statutory authority.

(10) That the law to be applied at the time of appeal is the law which is in existence at the time the Court is deciding the appeal and the appellate judgment must conform to the law then existing. The appellate Court has to take into consideration all changes, whether of law or of fact, which have supervened since the original judgment was passed.

Petition under section 44 of Act IX of 1919, Delhi and Ajmer-Merwara Rent Control Act, 1947, with Rule 6(1) of Delhi Rent Control (Procedure) Rules, for revision of

the order of Shri S. S. Dulat, District Judge, Delhi, dated the 15th January, 1951, modifying that of Shri R. P. Barman, Rent Controller, dated the 10th January, 1949, ordering to increase the total rent from Rs. 335 to Rs. 670 per month.

Application under Section 7-A read with Article II of the 4th Schedule of the Delhi and Ajmer-Merwara Rent Control Act, 1947, from the order of the Rent Controller, dated 11th/10th January, 1949.

R. L. ANAND and D. K. MAHAJAN, for Petitioners.

BHAGWAT DAYAL, D. K. KAPUR and JUGAL KISHORE, for Respondents.

JUDGMENT

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Kapur, J. These (in Civil Revisions Nos. 243, 267 to 273, 274 to 292, 293 to 295 and 296 to 298 of 1951) are several rules which have been obtained by the landlord against the various tenants and in Civil Revision No. 243 a rule is obtained by the tenants against the landlord, and they are all directed against appellate orders of District Judge Dulat, dated the 15th January, 1951, varying orders of the Rent Controller.

The landlord Bhagirath Mal owns four sets of buildings off Chandni Chowk. They are Chemists' Market which is also called Medicine Market, Jai Hind Buildings, Prem Buildings and Deepak Mahal. Civil Revisions Nos. 243 and 274 to 292 relate to Chemists' Market, Civil Revisions Nos. 267 to 273 to Jai Hind Buildings, Nos. 293 to 295 to Prem Buildings and 296 to 298 to Deepak Mahal. All these buildings are situate in what is called Bhagirath Colony. On the 30th of July, 1948, nine tenants of nine shops in Chemists' Market dealing in radios or electrical goods made an application to the Rent Controller for fixation of rent under section 7-A read with Schedule IV of the Delhi Rent Control Act. The Rent Controller on the 12th August without indicating in the order that he was as a matter of

fact satisfied as to the excessive nature of the rent fixed between the parties and without there being any indication that that was his objective view issued a notice to Bhagirath Mal saying that a summary enquiry will be held and directing him to attend at his office on the 18th August along with all relevant records, plans, account-books, vouchers, etc., and notice was also given to the nine applicants. The notice was in regard to these nine tenants only. It appears that after several adjournments the parties appeared and on the 19th of November some proceedings were taken and statement of Kundan Lal on behalf of the landlord was recorded. On the 3rd December, 1948, a notice was issued to the landlord that the Rent Controller would inspect the premises on the 6th December, 1948, but the landlord informed him that he would not be in Delhi on that date. On the 12th December, 1948, the Rent Controller inspected the premises in the absence of the landlord and on the 10th of January, 1949, he fixed the standard rent for eighteen shops at Rs. 335 per mensem. He has noted in this order about the quality of the building. The value of the land was calculated at Rs. 275 per square yard, but he allowed only one-third of the value as the building is only one-storeyed and not a three-storeyed one and he calculated the value of the plinth area at Rs. 9-8-0 per square foot and the standard rent fixed including ten per cent for repairs, but excluding house tax and charges for a consumption of water and electricity was Rs. 335 per mensem. On appeal being taken to the District Judge the monthly rent was increased from Rs. 335 to Rs. 670 allowing the full value of the land. Both parties are dissatisfied with this order and have come up to this Court in revision.

The Rent Controller has not only fixed the rent of the shops for which application was

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made but has also fixed the rent of the shops occupied by other persons who never applied and therefore could not be parties to the proceedings and also of the vacant shops, and with regard to these shops no notice seems to have been given. The objection taken by the landlord is that section 7-A read with Schedule 4 is discriminatory inasmuch as it provides a different tribunal and procedure for determining the standard rent with regard to premises the construction of which was not completed before the commencement of the Act which was on the 24th March, 1947, and that the method provided by Schedule IV laid down no principles and were vague, indefinite and unreasonable, that the Rent Controller had no jurisdiction to decide whether the buildings were completed before or after March, 1947, nor could he reduce the rent at which the premises were first let and that in this particular case he had made private enquiries and had invited no evidence from the contestants and the calculations which he made for fixing the rent were not shown to the parties for rebutting them if they thought it necessary, and therefore the order of the Controller was vitiated as it was contrary to the principles of natural justice.

I have first to decide as to which law will govern the present case, the law in force at the time of decision by the Controller or the law existing on the date the appeal was decided. At the time when the proceedings started or the Controller gave his decision the case was governed by section 7-A and Schedule IV of the Act. This section provides for the fixation of standard rent of premises in Delhi the construction of which was not completed before the commencement of this Act. The Delhi Rent Restriction Act came into force on the 24th of March, 1947, and section 7-A was added by section 5 of the

amending Act L of 1947. Thus the premises the construction of which was completed after the commencement of this Act are governed by a special procedure given in section 7-A which makes the provisions of Schedule IV applicable to the determination of standard rent of such buildings the relevant portions of which are—

"1. * * * *

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.

3. The Rent Controller in fixing the standard rent shall state in writing his reasons therefor.

4. 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.

* * * * *

* * * * *

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,

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(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."

Thus according to these provisions, if the Rent Controller has reason to believe that the rent of any premises is excessive whether an application has been made to him or not, he can proceed to fix the standard rent and in determining this rent he is authorised to look into the accounts of the landlord relating to the newly-constructed premises, enter or inspect the premises though after notice, and this is the material on which it appears he has to determine the standard rent. Both under the Act of 1947 before section 7-A was inserted in the Act and after the coming into force of the new Act of 1952 no distinction was and is made as to the tribunals which will determine the standard rent of premises new or old or the procedure to be followed or the principles on which the standard rent is to be fixed. Thus for the period during which section 7-A was in force a different procedure and different tribunals for determination were prescribed by the Act in regard to premises the construction of which was completed before or after the 24th of March, 1947.

As I see the provisions of Schedule IV the Rent Controller could not take cognizance of this matter without giving a finding that he had reasonable grounds to believe that the rent was in fact excessive. Reference may be made to *Nakkuda Ali* v. *Jayaratne* (1), where the words in the Regulation were—

"Where the Controller has reasonable grounds to believe . . . . ."

(1) 54 C.W.N. 883 (P.C.)

which were interpreted by Lord Radcliffe to mean "as imposing a condition that there must in fact exist such reasonable grounds known to the Controller, before he can validly exercise the power of cancellation." p. 889. The Privy Council disagreed with the interpretation of the House of Lords in *Liversidge's case* (1), where the words used were " . . . has reasonable cause to believe." No doubt the words used in the present statute are " . . . . has reason to believe" but it appears to me that these words do not have a different meaning from that given by Lord Radcliffe in *Nakkuda Ali's case* (2), to the words which I have given above. Thus there was in the absence of an objective determination no basis for a valid exercise of the power of the Rent Controller. And therefore in my opinion the subjective, i.e., an honest opinion of the Rent Controller, does not give to the Controller the jurisdiction to take cognizance of the matter and this view is in accord with the decision in Nakkuda Ali's case.

At the time when the learned District Judge decided the appeal the Constitution of India had come into force on the 26th January, 1950. The question is whether the learned District Judge should have decided the appeals in accordance with the law which prevailed at the time he was deciding the appeal or in accordance with the law which was in existence at the time when the proceedings were started, i.e., on the 30th of July, 1948, or when the first Court decided the matter on the 11th of January, 1949.

The landlord petitioner contends that the law in force at the time when the learned District Judge was giving his decision would be applicable to his case. In other words if there was

(1) (1942) A.C. 206
(2) 54 C.W.N. 863 (P.C.)

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any change in the law during the pendency of the appeal the learned District Judge should have decided in accordance with that changed law. Reliance is first of all placed on *Quilter* v. *Mapleson*. (1), where a landlord brought an action to recover the demised property under a proviso of re-entry for breach of a covenant to insure. Relief was claimed under a statute and a judgment was obtained by the plaintiff on the 4th July, 1881, but a stay of proceedings was granted and the plaintiff did not get possession. On the 1st of January, 1882, the Conveyancing and Law of Property Act came into operation which was before the appeal was heard, and it was held that assuming the judgment of the first Court to have been correct according to the law as it then stood, the Court of Appeal could grant to the tenant the relief to which he was entitled according to the law as it stood at the hearing of the appeal and the Court of Appeal was authorised not merely to make an order which ought to have been made by the first Court but to make such further or other orders as the case may require. At page 676 Jessel, M. R., said—

> "It was, in my opinion, intended to give appeals the character of rehearings, and to authorise the Court of Appeal to make such order as ought to be made according to the state of things at the time."

Bowen, L.J., said at page 678—

> "If the law has been altered pending an appeal, it seems to me to be pressing rules of procedure too far to say that the Court of Appeal cannot decide according to the existing state of the law."

(1) 9 Q.B.D. 672

The next case referred to is *The Attorney-General* v. *Birmingham, Tame, and Rea District Drainage Board* (1), where it was held that an appeal to the Court of Appeal is by way of rehearing, and the Court may make such order as the Judge of first instance could have made if the case has been heard by him at the date on which the appeal was heard. At page 801 Lord Gorell said—

> "The Court also has power to take evidence of matters which have occurred after the date of the decision from which the appeal is brought (see Order LVIII., r. 4).
>
> It seems clear, therefore, that the Court of Appeal is entitled and ought to rehear the case as at the time of rehearing, and if any authority were required for this proposition it is to be found in the case of *Quilter* v. *Mapleson* (2)."

I may here point out that Order LVIII, rule 4, of the Supreme Court Rules of England corresponds to Order XLI, rule 33, of the Code of Civil Procedure in India.

The rule accepted by the Federal Court of India is the same. In *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* (3), it was held that the Federal Court of India as a Court of Appeal was entitled to take into consideration legislative changes which had supervened since the decision under appeal was given. At page 87 Gwyer, C. J., said—

> "With regard to the question whether the Court is entitled to take into account legislative changes since the decision

(1) 1912 A.C. 788
(2) (1882) 9 Q.B.D. 672
(3) 1940 F.C.R. 84

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under appeal was given, I desire to point out that the rule adopted by the Supreme Court of the United States is the same as that, which, I think, commends itself to all three members of this Court."

And this rule was laid down in two cases. In *Patterson* v. *State of Alabama* (1), Chief Justice Hughes said—

> "We have frequently held that in exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the cases as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

This view was re-affirmed by the Court in *Minnesota* v. *National Tea Co.* (2), Sulaiman, J., at pages 93 and 94 approved of this view of the law, and Varadachariar, J., at page 103 was of the same opinion. In this case both Sulaiman, J., and Varadachariar, J., approved of the law laid down in *Quilter* v. *Mapleson* (3).

No doubt in *Ponnamma* v. *Arumogam* (4), which was a case from Ceylon, Lord Davey delivering the judgment of the Privy Council observed—

> "Their Lordships have only to say whether that judgment (the judgment of the Supreme Court of Ceylon) was right when it was given."

(1) 294 U.S. 600, 607
(2) 309 U.S. 551
(3) 9 Q.B.D. 672
(4) 1905 A.C. 383

But in a later case *K. C. Mukherjee* v. *Ram Rattan Kuer* (1), *Quilter* v. *Mapleson* (2), was referred to and it was observed by Lord Thankerton in the course of the argument that the duty of a Court is to administer the law of the land at the date when the Court is administering it, and their Lordships did not deal with the judgment of the Patna High Court on its merits, but dismissed the appeal on the strength of a provision contained in an enactment which was passed only during the pendency of the appeal before the Privy Council.

More recently this matter has been debated in some of the Indian Courts. In *Syed Unnisa* v. *Rahimuthunissa* (3), there was a change in the law of inheritance of Mohammadans while the first appeal was pending before a Subordinate Judge, but he refused to apply the change in law to the case and in second appeal the learned Single Judge of the Madras High Court held that the appeal should have been decided in accordance with the change in the law. Reliance was placed in this case on *Shyamakant Lal* v. *Rambhajan Singh*, (4) and on *Lakshmi Ammal* v. *Narayanswami* (5).

The Nagpur High Court in *Chhote Khan* v. *Mohammad Obedullakhan* (6), held by a majority of two to one that a Court can take into consideration subsequent events, viz., passing of a new Act during the pendency of litigation and adjudicate on the rights of the parties in the light of the Act.

In Crawford on Statutory Construction (Interpretation) of Laws the effect of a repealed law has been discussed and it is there stated "a repeal will generally, therefore, divest all inchoate rights

(1) I.L.R. 1935 Pat. 268
(2) 9 Q.B.D. 672
(3) A.I.R. 1953 Mad. 445
(4) A.I.R. 1939 F.C. 74
(5) A.I.R. 1950 Mad. 321
(6) I.L.R. 1953 Nag. 702 (F.B.)

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which have arisen under the repealed statute and destroy all accrued causes of action based thereon. As a result such a repeal, without a saving clause, will destroy any proceedings, whether not yet begun, or whether pending at the time of the enactment of the Repealing Act, and not already prosecuted to a final judgment so as to create a vested right." Reliance is there placed on *Wall* v. *Chesapeake & Ohio. Ry. Co.* (1), where the law was laid down in the following terms:—

> "There is no vested right in a public law which is not in the nature of a private grant. However beneficial an act of the legislature may be to a particular person, or however injuriously its repeal may affect him, the legislature would clearly have the right to abrogate it."

At another place the law has been stated as follows:—

> "Pending judicial proceedings based upon a statute cannot proceed after its repeal. The rule holds true until the proceedings have reached a final judgment in the court of last resort, for that Court when it comes to announce its decision, conforms it to the law then existing and may therefore reverse a judgment which was correct when pronounced in the subordinate tribunal from whence the appeal was taken, if it appears that pending the appeal a statute which was necessary to support the judgment of the lower Court has been withdrawn by an absolute repeal.

(1) 125 N.E. 20

Crawford on Statutory Construction." There is an important distinction between rights dependent upon a statute and those which are not. Such an action falls with the repeal of the Statute even after the action thereon has been instituted in the absence of a saving clause. The following language from *Wall* v. *Chesapeake & Ohio Ry. Co.* (1), will give some idea of the effect of a repeal before final judgment has been rendered:—

> "It is well settled that if a statute giving a special remedy is repealed without a saving clause in favour of pending suits, all suits must stop where the repeal finds them. If final relief has not been granted before the repeal went into effect, it cannot be after. If a case is appealed, and pending the appeal the law is changed, the appellate court must dispose of the case under the law in force when its decision was rendered."

But a different attitude has been taken by the Court where a criminal statute was involved: see page 601 of Crawford on Statutory Construction. In my opinion, therefore, the law to be applied at the time of appeal is the law which is in existence at the time the Court is deciding the appeal and the appellate judgment must conform to the law then existing.

It may here be stated that although by the Constitution Art. 367 the General Clauses Act has been made applicable but the general saving clause given in section 6 of that Act is applicable

(1) 125 N.E. 20

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to express repeals and not where statute is by implication repealed, Per Fazl Ali, J., in *Keshavan Madhava Menon's case* (1).

The effect of the coming into force of the Constitution of India on pending proceedings was considered in 2 cases by the Supreme Court but neither of them were at the appellate stage. In *Keshavan Madhava Menon's case* (1), the majority of the Judges held that Art. 13(1) of the Constitution is not retrospective and it cannot be read as obliterating the entire operation of the inconsistent laws. Such laws, therefore, exist for all past transactions and for enforcing all rights and liabilities incurred before the Constitution.

In the second case *Lachhmandas Kewalram Ahuja* v. *State of Bombay* (2), Menon's case was explained that it related to substantive rights acquired or liabilities incurred under the Indian Press (Emergency Powers) Act before the Constitution, but under what procedure those rights are to be explained was not decided in that case. Das, J., said at page 369—

> "Under what procedure the rights and liabilities would be enforced did not come up for consideration in that case, as the procedure adopted throughout was the same, namely the procedure prescribed by the Code of Criminal Procedure."

The rule to be deduced from these two cases may be stated in the words of Das, J., himself. His Lordship said at page 369 of *Ahuja's case* (2):

(1) 1951 S.C.R. 228, 240
(2) 1952 S.C.A. 352

"Although the substantive rights and liabilities acquired or accrued before the date of the Constitution remain enforceable as held in *Keshavan Madhava Menon's case* (1), nobody can claim, after that date, that those rights or liabilities must be enforced under that particular procedure although it has since that date come into conflict with the fundamental right of equal protection of laws guaranteed by Art. 14."

In the present case the substantive right to get standard rent fixed is not assailed but the attack is directed against the discrimination in regard to the tribunal appointed under section 7-A and Schedule IV to determine the standard rent and the method of determining it and the procedure or want of procedure indicated by those provisions. Because the result of the operation of section 7-A and Schedule IV is to reduce the rents from those fixed by contracts which necessarily will affect the prices of the petitioner's properties, as the rent fixed will enure for the future also.

There is no doubt that Art. 13(1) is not retrospective but is prospective and the transactions which are past and closed and rights which have already vested will remain unaffected. Therefore if the determination of the rents under section 7-A and Schedule IV before the Constitution had not been appealed against or the appeal had been decided before the Constitution, it might not have been open to the petitioner to challenge the question of their constitutionality. But in this case the appeal was decided after the Constitution when, it is submitted, the whole question would be reopened. At that time if by virtue of

(1) 1951 S.C.R. 228

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Art. 14 this section had become unconstitutional because of discrimination would not, so it was contended, the petitioner be entitled to plead Art. 13(1) in support of his claim particularly on the ground that it is the final order of the District Judge which is going to prejudicially affect his rights and this order was passed after the Constitution?

In *Ahuja's case* (1), it was said that the Constitution does not invalidate that part of the proceedings "which has already been gone through." But if the appeal is a rehearing and the appeal Court is to decide in accordance with law in force at the time it is deciding it is submitted that the decision should be in accordance with that law which avoids discrimination and is in accord with the procedure prescribed by the Civil Procedure Code. If the law as stated in Crawford on Statutory Interpretation is to be accepted the answer on the question of constitutionality of section 7-A and Schedule IV should be in favour of the petitioner but would it not mean following the view of Fazal Ali, J., in *Menon's case* (2), and would it not be out of accord with the majority view and particularly the view taken in *Ahuja's case* (1), by the Court, viz., the constitution does not invalidate that portion of the proceedings "which has already gone through?" Even though those were criminal matters which Crawford has distinguished, yet by declaring the procedure unconstitutional we shall be giving retrospectivity to the Constitution which would be contrary to the law laid down by the Supreme Court.

Standard rent is defined in section 2(c) of the Act—

"2(c) In this Act, unless there is anything repugnant in the subject or context

(1) 1952 S.C.A. 352
(2) 1951 S.C.R. 228

'standard rent', in relation to any premises, means—

(i) standard rent of the premises as determined in accordance with the provisions of the Second Schedule, or

(ii) where the standard rent has been fixed by the Court under section 7, the rent as fixed by the Court, or

(iii) where the standard rent has been fixed under section 7-A, the rent so fixed."

Therefore the very definition is different for premises old and new, old being those the construction of which was completed before and new are those of which it was completed after the 24th of March, 1947. Thus according to this definition itself the standard rent in the case of old premises is to be determined under section 7 of the Act by regularly constituted Courts of law in accordance with the well recognised procedure of the Civil Procedure Code which is in accord with the judicial notions accepted by all civilised nations. But in the case of newly-constructed premises a different tribunal is established and in my view no procedure is laid down as it will presently be seen.

The constitutionality of section 7-A of the Act read with Schedule IV is assailed on the ground that it violates the principle of equality before the law and equal protection of law guaranteed by Art. 14 of the Constitution. The petitioners firstly object to the classification of the premises into newly-constructed premises and old premises. It is submitted that this does not pass the test of permissible classification as there

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is no nexus between the basis of classification and the object of the Act, the test laid down by Das, J., in *Lachhmandas Kewalram Ahuja's case* (1). I cannot find any rational relation between the differentiation and the object sought to be achieved by the Act and none has been pointed out by the learned Advocate for the tenants-respondents.

I am of the opinion that if the provisions of Art. 13(1) of the Constitution could be made applicable to the facts of this case there would be clear violation of the principle of equal protection of the law. But by applying this principle the Constitution will be having a retrospective effect which majority in Menon's case and the Court in Ahuja's case have held to be prospective. And therefore I would prefer not to give an opinion on this point and would not base my judgment on the violation of the equal protection of the law clause.

In the case of any newly-constructed premises which fall under section 7-A read with Schedule IV, the Rent Controller, who may be a layman as in this case, whether a written complaint is made to him or otherwise if he has reason to believe that the rent is excessive may, after making such enquiries as he thinks fit, proceed to fix the standard rent. All that the Schedule requires is that—

(i) he shall give reasons;

(ii) he shall take into consideration any sum paid or to be paid as premium or any sum in addition to the rent;

(1) 1952 S.C.A. 352 at p. 371

(iii) he may for purposes of the enquiry call upon the landlord to produce the books of account, document or other information relating to the newly-constructed premises but what use he is to make of them is not stated;

(iv) he may enter or inspect, after notice, the premises or authorise his subordinate official to do so.

Though an enquiry, and I shall deal with the meaning of this word later, seems to be contemplated in clause 7 of the Schedule, under clause 2 its scope is left to the vagaries of the Rent Controller and he can hold such enquiry as he thinks fit which may be none at all. In this case the notice issued to the petitioner itself said that it will be a summary enquiry whatever it may mean. As I have said no procedure is prescribed and no standards are laid down. There is no provision for evidence by the parties nor whether it is to be on oath. It appears that the Controller can make private enquiries as he has done in this case. No enquiry as it is understood by lawyers was held. The rents seem to have been fixed on data which the Controller collected as a result of his own observation. Thus all recognised principles governing tribunals which exercise quasi-judicial powers in accordance with principles of natural justice or procedure subserving the orderly administration of justice have been disregarded. And according to schedule IV it is nothing but arbitrary power which the Controller exercises. There is no reasonable basis and none has been shown for fixing the rents of newly-constructed premises differently or at a different figure than the rents which are being paid for similar premises in the same locality and which from a commercial point

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of view may be equally valuable. The power given to the Controller is without limit and the schedule vests in him an unfettered and unguided discretion in fixing the standard rent. Under the pretence of regulating rents under this Schedule, the Rent Controller can fix the rent which may be so ridiculous as to reduce the value of the landlord's property to any unreasonable figure. To a case such as this the observation of Mr. Justice Mathews in the American case *Yick Wo* v. *Hopkins* (1), where he said—

> "When we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favouritism and other improper influence and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to every one who gives to the subject a moment's consideration. In fact an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

become aptly applicable, although this observation must be read in terms of the "due process clause."

Another ground raised by the petitioner is that the decision of the Rent Controller is contrary to the principles of natural justice. I have already analysed the provisions of Schedule IV

(1) 118 U.S. 356 at page 373

and they are so out of accord with the principles of natural justice that a decision given under that schedule must apart from any question of infringement of the Constitution, be held to be a violation of the maxim of the administration of justice in this country *audi alteram partem* which according to the Supreme Court is *legem terree;* see *Bharat Bank's case* (1), *Veerappa Pillai* v. *Raman & Co.* (2), *and Parry & Co.* v. *Commercial Employees* (3).

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. And the matter falls within the observations of Mahajan, J., in *Bharat Bank's case* (1), where his Lordship said—

> "It seems to me therefore that the procedure adopted by the Tribunal was against all principles of natural justice and the award is thereby vitiated and should be set aside."

(1) 1950 S.C.R. 459
(2) 1952 S.C.A. 287
(3) 1952 S.C.A. 299

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I would like to add that the use of the word "enquiry" in clause 7 of Schedule IV should ordinarily connote an inquiry which approximates to a judicial inquiry where parties are called upon and are given an opportunity to lead evidence and they do lead evidence in support of their respective claims. Lord Esher, M. R., in *Baroness Wenlock* v. *River Dee Company* (1), observed—

> "The reference under s. 56 is to be for inquiry and report. It does not appear to me that the word 'inquiry' only includes an inquiry which the referee is to make with his own eyes. The word 'inquiry' in my opinion signifies an inquiry in which he is to take evidence and hold a judicial inquiry in the usual way in which such inquiries are held. The word 'inquiry' is used because it is not meant to have the same result as a trial."

The role of the Courts in regard to statutory Tribunals is to serve as a check on the Tribunal, a check against excess of power and abusive exercise of power in derogation of private right. Broadly speaking judicial control is assured where amongst other things review can be had only on the following grounds:—

1. *Ultra Vires*: to ensure that the determination by the tribunal was within the authority delegated on the ~~age~~ agency.
2. *Natural justice*: that at least minimum standards of fairness which in the United States is called "the fundamentals of fair play are observed: see *Federal Communications Commission* v. *Pottsville Broadcasting Company*, (2).

(1) (1887) 19 Q.B.D. 155 at p. 158
(2) 309 U.S. 134

3. *Substantial evidence* : that the administrative determination has basis in evidence of rational probative force.

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In the present case principles of Natural Justice have not been observed and no evidence called from either of the parties. There is no "substantial evidence." I do not mean to say that this Court exercising powers under Article 226 of the Constitution of India is concerned with the weight of the evidence. The judicial review goes no further than to ascertain whether there is evidence to support the findings, and the question of the weight of the evidence in determining issues of fact lies with the statutory authority. See *St. Joseph Stock Yards Company* v. *United States of America* (1). As has been remarked the "substantial evidence" rule becomes a test of the rationality of determination by the statutory tribunals, which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion: see *Consolidated Edison Company* v. *National Labor Relations Board* (2).

If this test is applied to the facts of the present case the requisites have hopelessly been ignored. There was not even an attempt to call for evidence nor even a pretence of anything approaching a trial and the whole of the determination by the Rent Controller was based on his private enquiries, visual examination and arithmetical calculations made *ex parte*, something similar to what Lord Esher, M. R. has stated, i.e., "which a referee is to make with his own eyes is not sufficient for the purposes of inquiry."

Even if the provisions of section 7-A read with Schedule IV may be unconstitutional because of

(1) 298 U.S. 38
(2) 305 U.S. 197

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the coming into force of the Constitution it is not necessary to base the present judgment on that ground. There has been such a violation of the principles of natural justice and there is such contravention of the substantial evidence rule that the order of the Rent Controller must be set aside on that ground.

Therefore I am of the opinion—

(1) because of the want of any material for an objective view by the Controller as to the excessive nature of the agreed rent, the foundation for the valid exercise of jurisdiction was not laid. See *Nakkuda Ali's case* (1);

(2) that the appellate Court has to take into consideration all changes whether of law or of fact which have supervened since the original judgment was passed;

(3) as a result of the coming into force of the Constitution during the pendency of the appeal the provisions of section 7-A read with Schedule IV are unconstitutional and have, therefore, become void;

(3) (a) but by applying Art. 13(1) and Art. 14 to this case the Constitution will become *retro-active* which is contrary to the Supreme Court judgments;

(4) that in regard to the vacant shops the Rent Controller could not make any determination of rent because none had by contract been fixed;

(1) 54 C.W.N. 883 (P.C.)

(5) in regard to person who had not made any application and in regard to whom no notice was given to the landlord the determination is contrary to the principles of natural justice;

(6) the whole procedure is so out of accord with the principles of natural justice that the decision is vitiated and should be set aside; and

(7) the substantial evidence rule has been contravened.

I shall now take up the other questions which have been raised in regard to the various sets of premises.

"Medicine Market"

The Controller has not only determined the rents for premises for which no application had been made to him, but he has also determined the rents of vacant shops, which determination under the new Act of 1952 will affect the rents for future also. In my opinion, it was not open to the Rent Controller to determine the rents of vacant premises because he cannot have any opinion about the excessive nature of rent when no rent is fixed.

The applicants for determination of rent were nine tenants and not 18 and in regard to the other nine there was no notice to the landlord and therefore any determination of the rent without notice to the landlord would be contrary to natural justice: see *Bharat Bank's case* (1), and other cases noted above.

(1) 1950 S.C.R. 459, 500

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It was next submitted that the return of 6 per cent which has been ordered by the Rent Controller is unreasonable and the right of the Court to determine the reasonableness of the rights was sought to be supported by a passage from Willoughby on the Constitution of the United States, P. 821, where the law has been stated in the following words:—

> "The Courts may also hold such an administratively determined rate to be so high as to be unduly oppressive or extortionate to the public."

This view of the law must be accepted in this country also.

In their application the petitioners have stated that the bank rates for advances are from Rs. 9 to Rs. 12 per cent and that the rent at 6 per cent is so low as to be unreasonable particularly when for improvements the schedule itself prescribes a ceiling of 7½ per cent. The respondents have filed no affidavits to the contrary but rents of buildings do not necessarily correspond to the Bank rate. But in the absence of any evidence it is difficult to decide this question. If normal procedure of the Civil Procedure Code had been followed the result might have been different. This much, however, is clear that parties have been prejudiced and that may be an additional reason for setting aside the Controller's order.

It was then submitted that the application of Schedule IV and section 7-A of the Rent Restriction Act does not exclude the applicability of Schedule II of the Act where increase in the case of commercial premises has been allowed by 50 per cent. No doubt these are commercial

premises, and in my opinion applicability of Schedule II, is not expressly excluded in regard to premises which fall under section 7-A, but this point does not seem to have been raised before the Controller or the District Judge and I do not think that it can be raised at this stage, and as we are holding the whole proceedings under section 7-A to be *ultra vires*, it is not necessary to go into this point.

I would therefore quash the order of the Rent Controller and leave the parties to have their rights determined in accordance with law. No order as to costs.

"Jai Hind Buildings".

It is a three-storeyed building in which six persons were living on the second floor who did not make any application to the Rent Controller under section 7-A of the Delhi Rent Restriction Act of 1947. No notice was given in regard to this building. On the 4th of February, 1948, Kuldip Sehgal of "Kuldip Pictures" who was paying Rs. 450 rent for the first floor applied for the fixation of standard rent of that floor. On the 3rd of May, 1948, Nanak Chand, who was a tenant of a godown in the ground floor and was paying Rs. 150, applied for fixation of standard rent which question had previously been raised before a civil Court but was not decided as the premises were found to be newly-constructed.

The Rent Controller has fixed the rent of the second floor to be Rs. 232 per mensem and has apportioned this amongst six tenants of the second floor, none of whom had applied for fixation of standard rent nor was any notice issued in respect of their tenancies. In my opinion the decision without any notice to the landlord and without

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an opportunity for producing evidence would be contrary to natural justice. Besides that what I have stated in regard to Chemists' Market would be applicable to these premises also. I would therefore allow these petitions, set aside the orders of the Rent Controller and the District Judge and make the rules absolute, but parties will bear their own costs throughout.

"Prem Building."

Apart from the objections which have been raised in Civil Revision Nos. 243 and 274 to 292 of 1951 and which I have dealt with in those petitions and which decision will equally apply to these cases, there are other objections which have been raised by the landlord.

The tenants of these buildings were M. R. Dhawan paying Rs. 360 per mensem and Firm Gokal Chand-Madan Chand paying Rs. 350 per mensem and before the latter the tenant was "the Milap" paying the same rent. These were two flats and Gokal Chand was in possession of half a flat. On the 14th June, 1948, both the tenants applied for fixation of standard rent. The rent has been reduced for both these flats to Rs. 96-8-0. The landlord submits that the walls were already there and what has been done is that the roof was rebuilt and reflooring was done and the walls have been plastered. These have been held to be new constructions by the learned District Judge. In my opinion they are nothing more than mere improvements and therefore they are not premises to which section 7-A, even if valid, would be applicable and on this ground also these petitions must be allowed and the rules made absolute, but the parties will bear their own costs throughout.

"Deepak Mahal."

In the building known as "Deepak Mahal", Bhagwati Pictures paying Rs. 350 a month and

Inder Narain, who was paying Rs. 360 a month were the two tenants. Neither of them applied for the fixation of standard rent. On the 2nd of January, 1948, Gokal Chand applied for the fixation of standard rent of eight rooms of the first floor and a shop in the "Jai Hind" buildings. Notice for a summary enquiry was issued by the Controller to the landlord. Objection was taken by the petitioner that on the 31st August, 1948 the Civil Court had fixed the rent of these buildings at Rs. 700, that the construction had been completed before the 24th March, 1947, and therefore the Rent Controller could not take cognizance of this application. The Controller, however, fixed the rent at Rs. 96-8-0 and that also without any notice in regard to the tenancies of Bhagwati Pictures and Inder Narain neither of whom made any application in regard to the second floor and which the landlord said was not a new building and which has been held to be a new building as a result of local enquiries by the Controller. For reasons which I have given in Civil Revision Nos. 243 and 274 to 292 of 1951, I am of the opinion that the Rent Controller had no jurisdiction to fix the standard rent in these cases. Neither any application was made nor any notice given in regard to these premises and the decision in my opinion is contrary to natural justice and must therefore be set aside. I would, therefore, allow these petitions and quash the proceedings and make the rules absolute, but the parties will bear their own costs throughout.

In the result the petitions of Bhagirath Mal, petitioner in Civil Revisions Nos. 267 to 298 of 1951, are allowed and the rules made absolute and Civil Revision No. 243 of 1951 is dismissed and the rule discharged. The parties will bear their own costs throughout.

KHOSLA, J.—I agree.

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