FULL BENCH

Before A. N. Bhandari, C.J. and Bishan Narain &

S.B. Capoor, JJ.

G. D. SONI,—*Appellant.*

versus

S. N. BHALLA,—*Respondent.*

Second Appeal from Order No. 5-D of 1956.

1959

Mar., 13th

Delhi and Ajmer Merwara Rent Control Act (XIX of 1947)—Section 7-A read with Schedule IV—Whether violate Article 14 of the Constitution—Section 7(2) and para 4 of Schedule IV—Criteria laid down for fixation of standard rent in—Whether different—Differentiation in procedure—Whether has rational relation to the object of the Act—Possibility of Rent Controller acting against the principles of natural justice—Whether renders the provision relating to inquiry in Schedule IV discriminatory.

Held, that the provisions contained in Section 7-A read with Schedule IV of the Delhi and Ajmer Merwara Rent Control Act, 1947 do not violate Article 14 of the Constitution of India and these provisions are valid and constitutional.

Held, that the criterion laid down for the fixation of standard rent for old buildings in section 7(2) and for the new buildings in para 4 of Schedule IV of the Act is substantially the same in scope and is not different and does not violate Article 14 of the Constitution. There is thus no valid reason for coming to the conclusion that the standard rent of old and new buildings of the same type and in the same locality would necessarily be different.

Held, that the differentiation in the procedure adopted in the Act for the fixation of standard rent of old and new buildings cannot be said to have no rational relation to the object sought by the legislature and Schedule IV cannot be held to be violative of Article 14 of the Constitution on this ground.

Held, that the possibility of a Rent Controller acting against the principles of natural justice does not render the provision relating to inquiry in Schedule IV discriminatory.

Second Appeal from the order of Shri Rameshwar Dial III Additional District Judge, Delhi, dated 11th April, 1956, reversing that of Shri A. S. Gill, Sub-Judge Ist Class, Delhi, dated 15th December, 1955, remanding the case to the Labour Court.

R. S. NARULA and P. C. KHANNA, for Appellants.

H. R. KHANNA, for Respondent.

JUDGMENT

Bishan Narain, J.

BISHAN NARAIN, J.—The question that is required to be determined by this Bench is whether or not Section 7-A, read with Schedule IV of the Delhi and Ajmer-Merwara Rent Control Act, 1947, contravenes and violates Article 14 of the Constitution.

The facts which have led to the raising of this question are these. S. N. Bhalla is the owner of the residential premises constructed on plot No. 17A/35, Western Extension Area, Karol Bagh, New Delhi. The construction of these premises was admittedly not completed before the commencement of the 1947 Act on 24th March, 1947, nor were they let to a tenant before that date. S. N. Bhalla let the premises on lease to G. D. Soni who agreed to pay rent at Rs. 175 per mensem excluding house-tax. During the tenancy Soni applied for fixation of standard rent under section 7-A read with Schedule IV of the 1947 Rent Control Act. The Controller fixed the standard rent at Rs. 110 which was ultimately raised by this Court to Rs. 124-8-0 by order dated 3rd May, 1953. After the fixation of this standard rent a Division Bench

of this Court decided *Messrs. British Medical Stores and others* v. *Lala Bhagirath Mal and others* (1). Thereafter when the tenant offered standard rent to the landlord he refused to accept it and insisted that the tenant must pay contractual rent on the ground that the fixation of standard rent under section 7-A was void. The tenant on his part refused to comply with this demand. Thereupon the landlord in March, 1955, filed the present petition out of which these proceedings have arisen for the tenant's eviction on the grounds (1) of non-payment of rent and (2) that the landlord required the premises for his own occupation.

The trial Court dismissed the petition with the findings that the tenant had offered and deposited the standard rent fixed by courts and further that the landlord did not require the premises for his own occupation. On appeal the Additional District Judge affirmed the trial Court's finding that the landlord did not require the premises for his own occupation but remanded the case for fixation of standard rent on the ground that previously the standard rent had been fixed under provisions which had been held to be unconstitutional by the High Court in *Bhagirath Mal's case* (1). Dissatisfied with this remand order the tenant filed this second appeal in this Court.

This second appeal came up for hearing before me and I referred it to a larger Bench in view of observations of Falshaw, J., in *Suraj Kumari* v. *Dr. D. C. Chitani* (2). The Division Bench then referred the question to a still larger Bench so that the controversy may be decided authoritatively. The case has now been placed before us for decision.

(1) A.I.R. 1955 Punjab 5
(2) A.I.R. 1956 Punjab 157

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Now the provisions of Article 14 of the Constitution have been discussed and explained by the Supreme Court in a number of cases (*Vide inter alia, Charanjit Lal* v. *Union of India* (1), *Budhan Choudhry* v. *State of Bihar* (2), *A. Thangal Kunju Musaliar* v. *M. Venkatachalam Potti, Authorised Official and Income-tax Officer and another* (3), *Bidi Supply Company* v. *Union of India and others* (4), *Ram Krishna Dalmia* v. *Justice S. R. Tendolkar* (5), and *Mahomed Hanif Qureshi* v. *State of Bihar* (6), The most recent case onthe subject is *In re The Kerala Education Bill, 1957* (*Special Reference No. 1 of 1958*), (7), and in this case the principle laid down in *Mohamed Hanif's case* (6), has been reproduced with approval at follows:—

> "**** It is now well-established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different basis, namely, geographical or according to objects or the occu-

(1) A.I.R. 1951 S.C. 41
(2) A.I.R. 1955 S.C. 191
(3) A.I.R. 1956 S.C. 246
(4) A.I.R. 1956 S.C. 479
(5) A.I.R. 1958 S.C. 538
(6) A.I.R. 1958 S.C. 731
(7) A.I.R. 1958 S.C. 956

pations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The Courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

In view of these decisions all that remains to be done is to examine the impugned provisions in the light of the above principles. For this purpose it is necessary to discuss the provisions of the Delhi and Ajmer Merwara Rent Control Act of 1947, and the legislative history of these provisions so far as it is material for the present purpose.

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The Second World War was declared in August, 1939. At that time New Delhi was exclusively an official city and mostly government servants serving in the Central Government resided there. It was not fully built up. Similarly certain areas lying within the Notified Area Committee of the Civil Station, Delhi, were being developed as building sites. On declaration of the War it was feared that influx of officials, etc., will further make the already acute shortage of house accommodation more acute. Accordingly the Government notified under Rule 81 of the Defence of India Rules the New Delhi House Rent Control Order 1939. It applied only to the New Delhi and the Civil Lines and did not apply to the Delhi Municipal Area. Under this Order a Controller appointed by the Central Government was empowered to hold a summary enquiry and determine the fair rent of residential premises. For this purpose he was given the power to require the landlord to produce any book of account or any document and to inspect the premises. In fixing the fair rent the Controller had to have due regard to the prevailing rates of rent for the same or similar accommodation in similar circumstances during twelve months prior to 1st of September, 1939, and in a case where a house had been constructed after the Control Order came into force then the Controller had to have regard to any general increase in the cost of sites and building construction. This Control Order also restricted the powers of the landlord to evict the tenant but with those provisions we are not concerned in the present case. From 1939 till 1942, no Rent Control Act applied to the Municipal area of Delhi. On 15th October, 1942, the Punjab Urban Rent Restriction Act, 1941, with suitable adaptations was extended to this area. Under this Act a landlord could recover only standard rent from the tenant.

The term "standard rent" was defined as meaning the rent at which the premises were let on 1st January, 1939, and if not so the rent at which they were last let. If the premises were to be let for the first time after 1st January, 1939, then the rent at which they are so let. In cases not governed entirely by this definition the Court was given the power to fix the standard rent (Section 14). In 1944, the then Governor-General promulgated the Delhi Rent Control Ordinance 1944 (No. XXV of 1944), under section 72 of the Government of India Act, 1935. Under this Ordinance the Chief Commissioner could apply it to any area within the Province of Delhi. Whenever this Ordinance was made applicable to any area the Punjab Act ceased to be operative. In this Ordinance also the standard rent was defined substantially in the same terms as in the Punjab Act. In case of dispute Section 7 enable a court to determine standard rent and in so doing it had to have regard to the standard rents of other similar premises in the same locality.

The Central Legislature then enacted the Delhi and Ajmer-Merwara Rent Control Act, 1947 (19 of 1947), repealing the Punjab Act as extended to Delhi and also repealing the Rent Control Act became operative in the entire area of the Delhi province. By section 1(2) the Act was made inapplicable to any premises the construction of which was not completed by 24th March, 1947, and which had not been let to a tenant before the enforcement of the Act. Under section 7 of this Act the Court in case of dispute had to determine the standard rent on the principles set forth in the Second Schedule and also having regard to the standard rents of similar premises in the same locality and other relevant considerations. The Second Schedule laid down that the Court shall determine the basic rent of the premises according

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to rents on dates specified in the Schedule and then shall determine the standard rent by increasing the basic rent by specified percentage. If the premises were let for the first time after 2nd June, 1944, then it was laid down that the basic rent would be the standard rent. Rules framed under the Act laid down that the Courts for this purpose shall follow the provisions of the Civil Procedure Code and the Punjab Courts Act, 1918, as nearly as may be. The order of the Court was subject to appeal and revision according to the valuation specified in the Rules.

Six months later, however, the Governor-General promulgated Ordinance No. XVIII of 1947 to amend the 1947 Act. This Ordinance came into force on 20th September, 1947. Section 1(2) of the 1947 Act was repealed so far as the subsection excluded the applicability of the Act to the newly constructed premises in Delhi. It inserted a new Section 7-A which dealt with standard rent of newly constructed premises. By paragraph 7-A (c) various clauses of 1939 Order were revived. This revival had the effect of the Controller retaining the power of fixation of standard rent of such premises. The Central Legislature then repealed the Ordinance and enacted the Delhi and Ajmer-Merwara Rent Control (Amendment) Act, 1947 (No. 50 of 1947). By this enactment newly constructed buildings were brought within the purview of the Rent Control Act of 1947 by repealing section 1(2) of the Act so far as it affected the Delhi buildings and by introducing section 7-A and Schedule IV to the Act. Section 7-A laid down that standard rent of newly constructed buildings shall be fixed according to the provisions set forth in Schedule IV. Schedule IV lays down that the standard rent of such premises shall be determined by the Rent Controller appointed by the Central

Government and that for this purpose the Rent Controller shall take into consideration all the circumstances of the case. It is the validity of Section 7-A read with Schedule IV that is challenged by the landlord in the present case.

From this comparatively brief survey of the legislative history of rent controls of the premises situated in the province or State of Delhi, it is clear that the standard rent of premises whether newly constructed or otherwise situated within New Delhi and Civil Lines was determined by the Rent Controller appointed by the Central Government from 1939 onwards while the standard rent of all the premises situated within the Municipal limits of Delhi was determined by courts of law. The 1947 Rent Control Act has brought about uniformity in the law relating to Rent Control by laying down that the standard rent of newly constructed premises wherever situated within the State of Delhi shall be fixed by the Rent Controller while of other premises Courts will fix it.

The ground is now clear to determine if the provisions of section 7-A read with Schedule IV of the 1947 Act violate Article 14 of the Constitution in the light of the various decisions of the Supreme Court on the scope of this Article.

It was not argued that the classification of premises as defined in the Rent Control Act, 1947, into premises completed before and after 24th March, 1947, violated Article 14 of the Constitution. The Legislature in its wisdom decided to classify premises in this way and this differentiation cannot be considered to be unreasonable for the purposes of achieving the object sought by the enactment.

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

The first contention is supported by the observations made in *Bhagirath Mal's case* (1), With great respect to the learned judges constituting the Bench, I find it impossible to hold that the basis for fixing the standard rent of the two types of premises violates Article 14 of the Constitution. Section 7 says that the standard rent shall be determined in accordance with the principles set forth in the Second Schedule. The Second Schedule fixes basic rent as determined under the Control Order of 1939, or under the 1944 Ordinance and in other cases the contractual rent on 1st November, 1939, or if not let on that day then on the date first let after 1st of November, 1939. The standard rent thus fixed is to be increased by certain percentage specified in the Schedule. If the premises were let after 2nd June, 1944, then the basic rent and the standard rent were to be the same. Obviously this principle for fixation of standard rent could

(1) A.I.R. 1955 Punjab 5

not possibly have any application to premises constructed and let after 24th March, 1947. Section 7 then proceeds to lay down that if for any reason it is not possible to determine the standard rent of any premises set forth in the Second Schedule then the courts shall determine it having "regard to the standard rent of similar premises in the same locality and other relevant considerations". Para 4 of Schedule IV lays down :

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

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

Now the Rent Controller is enjoined by para 4 to take into consideration all the circumstances of the case when fixing standard rent. It is not

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understood how a Rent Controller can omit to consider the standard rent of similar premises in the same locality. This is obviously a relevant consideration though para 4 does not specifically mention it. It is true that this criteria has been specifically mentioned in section 7(2) of the Act and has not been so mentioned in section 7-A but this circumstance cannot lead to the inference that it is open to the Rent Controller to ignore it. The words of para 4 are in fact as wide in effect as the words used in section 7(2) of the Act. In this context it must not be forgotten that if such a mistake is made by the Rent Controller then the aggrieved party (may he be the landlord or the tenant) can appeal to the District Judge whose powers are co-extensive with those of the Rent Controller and who can set right any mistake made by the Rent Controller. I am, therefore, of the opinion that the criterion laid down for fixation of standard rent in section 7(2) and para 4 is substantially the same in scope and is not different.

It is true that the Rent Controller in fixing standard rent must take into consideration any amout paid to the landlord in addition to rent but I am unable to see how this circumstance adversely affects a landlord. Section 7(2) does not mention this circumstance but it appears to me that it is open to a court to take this circumstance into consideration when fixing standard rent for old buildings if it considers such a payment relevant for the purpose.

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

provision. The reason for this provision is intelligible. It is well-known that rents in Delhi prior to 1st November, 1939, were very low and in some cases uneconomic. Therefore, the legislature decided that in such cases a landlord should be in a position to get standard rent fixed at a rate higher than fixed by agreement of the parties in 1939 or earlier. No such consideration arises in the case of buildings constructed or completed after 1947. In 1947, there existed an acute shortage of accommodation in Delhi and the landlords were in a position to dictate terms and, therefore, presumably the rents fixed between the parties were not so low as to require increase. It is for this reason that it was considered unnecessary to provide for increase of rent in Schedule IV. I am, therefore, of the opinion that it is not possible on these grounds to hold that section 7-A and Schedule IV are unconstitutional.

The learned counsel then brought to our notice two other matters in which the newly constructed buildings have been treated differently from the old buildings. He pointed out that under para 10(d) of Schedule IV the standard rent fixed by Rent Controller must necessarily be retrospective in effect while under section 7(5) the Courts can fix the date from which the payment of standard rent would become effective. He further pointed out that under section 4(2) a landlord on making improvements can increase the standard rent by an amount not exceeding $6\frac{1}{4}$ per cent of the cost of improvement while under para 6 of the Schedule IV the Rent Controller can increase the standard rent in such circumstances to an amount not exceeding $7\frac{1}{2}$ per cent of the cost of improvement. These are, however, no grounds for holding the impugned provisions to be unconstitutional. The Delhi and Ajmer-Merwara Rent Control Act,

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1947, came into force on 24th March, 1947, originally for two years only and section 7-A with Schedule IV were introduced in September, 1947. Therefore, the standard rent for new buildings could well be fixed from the beginning of the lease. The old buildings were let long before 1947 and, therefore, it was considered advisable to leave it to courts to fix the date from which the payment of standard rent would become effective. This is a rational difference. So is the matter of difference of return on the cost of improvements. There is no reason for equating the return on cost of improvements of old buildings with the return on the cost of improvements of new buildings. This is a matter for the legislature to consider and this possible slight difference in returns cannot be said to be discriminatory and violative of Article 14 of the Constitution.

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

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

fix the standard rent. For this purpose he can require the landlord to produce any book of account, document or give other information relating to the premises [Para 7(a)]. He can also inspect the premises after due notice or authorise any officer subordinate to him to do so [Para 7(b) and (c)]. The Rent Controller then must state his reasons in writing in fixing the standard rent (Para 3). His decision is subject to appeal to the District Judge (Para 11). As noticed by the Division Bench in *Bhagirath Mal's case* (1), Lord Esher, M.R. in *Baroness Wenlock* v. *River Dee Co.* (2), observed:—

> "The reference under section 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."

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

(1) A.I.R. 1955 Punjab 5
(2) (1887) 19 Q.B.D. 155

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officer. The Central Government appoints a Rent Controller. It is not to be assumed that such an officer would not hold a proper enquiry into the dispute. As observed by the Supreme Court in *A. Thangal Kunju Musaliar* v. *M. Venkatchalam Potti, etc.*, (1), "it is to be presumed unless the contrary is shown that the administration of a particular law would be done not within an evil eye and unequal hand". In any case the possibility of a Rent Controlled acting against the principles of natural justice would not rended the provision relating to inquiry in Schedule IV discriminatory.

In this context it must not be forgotten that considering the recent rise in prices of land, building material and labour costs in Delhi the standard rent should be correlated to these costs. In the circumstances the legislature in its wisdom has thought fit that the enquiry into standard rent of new buildings should continue to remain with the Rent Controllers who can expeditiously decide the matter. In this context it can be reasonably expected that the Central Government will appoint only those persons as Rent Controllers who can use their own knowledge and experience to calculate these costs. In these circumstances it cannot be said that the differentiation in the procedure adopted in the statute has no rational relation to the object sought by the legislature.

For all these reasons with great respect to the decision of the Division Bench in *Bhagirath Mal's case* (2), I am of the opinion that Schedule IV cannot be held to be violate of Article 14 of the Constitution on this ground also.

The result is that in my opinion the provisions contained in Section 7-A read with Schedule IV

(1) A.I.R. 1956 S.C. 246
(2) A.I.R. 1955 Punjab 5

of the Delhi and Ajmer-Merwara Rent Control Act, 1947, do not violate Article 14 of the Constitution of India and these provisions are valid and constitutional.

The case now must be sent to the Single Judge for decision on the other points involved in the case.

CAPOOR, J.—I agree.

BHANDARI, C.J.—I agree.

B.R.T.

FULL BENCH

Before G. D. Khosla, S. S. Dulat and A. N. Grover, JJ.

GENERAL S. SHIVDEV SINGH AND ANOTHER,—*Petitioners.*

versus

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

Civil Writ No. 1071 of 1957.

1959

Mar 17th

East Punjab Holdings (Consolidatiin and Prevention of Fragmentation) Act (L of 1948)—Sections 41 and 42—Delegation of powers of the State Government to the Additional Director of Consolidation retrospectively—Whether valid—Principle of ratification—Whether applicable—Act of delegation—Whether executive—Power to enact laws with retrospective effect—In whom vests—Retrospective effect—When to be ascribed—Notification delegating powers under section 42—Whether a rule or regulation—"Rule" and "Order"—Distinction between—Punjab General Clauses Act (I of 1898)—Section 19—Scope of—Power to give retrospective effect to a notification—Whether included in the general power.

Held, that there is no distinct provision in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 conferring powers on the State Government to