or on grounds specially mentioned. None of the grounds mentioned in section 7 of the Act has been relied upon in support of the suit for possession. Whether the tenancy of Madho Singh respondent is one which is binding on the plaintiff is a matter which is to be determined by appropriate authorities under the Pepsu Tenancy and Agricultural Lands Act, 1955. Section 47 of this Act bars the jurisdiction of civil Courts, to entertain disputes which have to be settled by the authorities mentioned in the Act.

In my view the judgments of the Courts below are correct and there is no scope for interference in this appeal which accordingly fails and is dismissed. As there is no direct authority on the point, I leave the parties to bear their own costs.

B. R. T.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and Mehar Singh, J.

THE BIRLA COTTON SPINNING AND WEAVING MILLS LTD.,—*Petitioner*

versus

HARI CHAND AND OTHERS,—*Respondents.*

Civil Writ No. 342-D of 1961

Jan., 7th. 1964

Delhi Rent Control Act, (LIX of 1958)—Ss. 6(1)(B) and 10—Whether ultra vires *articles 14 and 19 of the Constitution of India.*

Held, that section 6(1)(B) of the Delhi Rent Control Act, 1958, is not *ultra vires* the articles 14 and 19 of the Constitution of India. The division of premises into two classes, viz., premises let before the 2nd of June, 1944, and those let afterwards contained in section 6(1)(B)(1) of the Act is neither arbitrary nor unjustifiable. The reason for

the choice of the date 2nd June, 1944 is obvious as the Delhi Rent Control Ordinance, 1944, was published in the Government of India Gazette Extraordinary on the 3rd June, 1944 and this obviously constitutes a landmark which could reasonably be selected as the relevant date in the Act, of 1958. Since the standard rent in respect of premises let before 2nd June, 1944, must have been already fixed under the provisions of one or other of the earlier enactments from the Delhi Rent Control Ordinance, 1944, onwards, the Act of 1958, in effect is dealing with premises let after 2nd June, 1944. Section 6(1) (B) of the Act actually provides only one method of arriving at a standard rent in respect of premises which have not been let before the 2nd of June, 1944 and which have not already had their rents fixed under the earlier enactments and that is in section 6(1)(B)(2) on the basis of the cost of construction of the premises, and all landlords or tenants, who come to Court in respect of such premises are undoubtedly now on an equal footing. As long as all persons litigating at the same time receive the same treatment at the hands of the law, no infringment of article 14 of the Constitution can be said to be involved where there is a change in the law to the advantage of one party or the other in respect of a particular right

Held, that there is nothing wrong with the principle underlying section 10 of the Act and this section cannot be said to be unconstitutional on the ground that it contains no guiding principles on which an interim rent is to be fixed. The officers who are exercising the powers of Rent Controllers are judicial officers, who are presumed to act judicially, and whose orders are controlled by a higher authority or by the High Court. Indeed any order of a Rent Controller is appealable to the Tribunal under section 38, and a second appeal lies to the High Court on a point of law under section 39.

Application by the petitioner under Section 151 Civil Procedure Code praying that :—

Order be made staying the proceedings pending between the parties in the Tribunal Below or in the alternative it be directed that the petition be fixd for hearing at a very early date.

T. P. S. CHAWLA, ADVOCATE, for the Petitioner.

P. NARAIN, ADDITIONAL CENTRAL GOVERNMENT COUNSEL, for the Respondent.

JUDGMENT

D. FALSHAW, C.J.—The facts in these three petitions filed under Article 226 of the Constitution of by the Birla Cotton Spinning and Weaving Mills Ltd. are as follows:— Falshaw, C.J.

The petitioner company constructed a three-storeyed building in the Subzimandi area near its factory. The construction was apparently completed some time in 1953. The two upper floors contained residential accommodation, presumbly intended for the company's workmen. The ground floor consisted of 10 shops. It seems that the ground floor was ready for occupation before the building was completed and two of the shops were leased in 1952 to Mansa Ram respondent in one of the petitions (Shop No. 7) and to Hari Chand Siri Chand respondents in another petition (Shop No. 4). A third Shop (No. 5) was let to Sita Ram Ahuja respondent in the third petition some time in 1954. The rent of these shops in each case was Rs. 66 per month including taxes.

All these respondents filed petitions in September, 1959 in the Court of the Rent Controller under section 9 of the Delhi Rent Control Act of 1958 for the fixation of the standard rent, alleging that the agreed rent of Rs. 56 per month was excessive. In each case the Rent Controller, after considering the estimates submitted by the parties of the cost of construction of the shops on the basis of which the standard rent is to be fixed under section 9 of the Act, and, taking into consideration the fact that the entire area of the site was included in the estimate submitted by the company

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although the building was a three-storeyed building, fixed the interim rent to be paid pending the final decision under section 10 of the Act at Rs. 35 per month.

In all the cases, which were consolidated in the Court of the Rent Controller, the plea was raised on behalf of the company that the provisions of section 6(1) (B) of the Act by virtue of which the standard rent was to be determined were *ultra vires* of the legislature because they contravened the provisions of Articles 14 and 19 of the Constitution. The Rent Controller by his order dated the 9th of February, 1961 held that as Rent Controller he had no jurisdiction to decide the *vires* of the impugned provisions. The present petitions were filed in this Court in August, 1961 seeking an order from this Court quashing the above mentioned orders of the Rent Controller and the proceedings before him as a whole on the ground that the provisions of section 6, 9 and 10 of the Act contravened the provisions of Articles 14 and 19 of the Constitution.

The portion of section 6 with which we are particularly concerned in these cases is sub-section (I)(B). Sub-section (I) starts with the words:—

> "Subject to the provision of sub-section (2), 'standard rent' in relation to any premises means———"
>
> Clause (B) starts with the words———.
> "in the case of premises other than residential premises———.
>
> (1) where the premises have been let out at any time before the 2nd day of June, 1944, the basic rent of such premises together with ten per cent, of such basic rent:

Provided that where the rent so calculated exceeds twelve hundred rupees per annum, this clause shall have effect as if for the words 'ten per cent' the words 'fifteen per cent' had been substituted;

(2) where the premises have been let out at any time on or after the 2nd day of June, 1944—

(a) in any case where the rent of such premises has been fixed under the Delhi and Ajmer-Merwara Rent Control Act, 1947 (19 of 1947) or the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952)—

(i) if such rent per annum does not exceed twelve hundred rupees, the rent so fixed, or

(ii) if such rent per annum exceeds twelve hundred rupees the rent so fixed together with fifteen per cent of such rent;

(b) in any other case, the rent calculated on the basis of seven and one-half per cent, per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction:

Provided that where the rent so calculated exceeds twelve hundred rupees per annum, this clause shall have effect as if for the fords "seven and one-half per cent", the words "eight and five-eight per cent" had been substituted.

(2) Notwithstanding anything contained in sub-section (1),—

(a) in the case of any premises, whether residential or not, constructed on or after

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the 2nd day of the June, 1951, but before the 9th day of June, 1955, the annual rent calculated with reference to the rent at which the premises were let for the month of March, 1958, or if they were not so let, with reference to the rent at which they were last let out, shall be deemed to be the standard rent for a period of seven years from the date of the completion of the construction of such premises; and

(b) in the case of any premises, whether residential or not, constructed on or after the 9th day of June, 1955, including premises constructed after the commencement of this Act, the annual rent calculated with reference to the rent agreed upon between the landlord and the tenant when such premises were first let out shall be deemed to be the standard rent for a period of five years from the date of such letting out."

The learned counsel for the petitioner has not attempted to argue that the provisions in this, or in any other Act by which rents are restricted, and so the landlord's right to make profit out of his property is controlled, infringe the provisions of Article 19 of the Constitution, and his attack is confined to the alleged infringement of the provisions of Article 14. His basic objection is that in the provisions which I have set out above several methods of arriving at the standard rent of what might be the similar premises are incorporated and this, it is contended, amounts to unequal treatment by law. It is contended that it is unfair and

arbitrary that there should be any distinction between buildings first let before the 2nd of June, 1944 and the premises let after that date, and it is also unfair that there should be any distinction, in the case of premises first let after the 2nd of June, 1944, between those of which the rents had already been fixed under the Acts of 1947 or 1952 and the others since the principles under which the standard rent was to be fixed by the earlier enactments were different from those now in force.

It is pointed out that not only the Acts of 1947 and 1952 are involved but also earlier enactments which contained different provisions, as provided in section 6(1)(B)(1) which refers to the basic rent of the premises let before the 2nd of June, 1944. In section 2(a) basic rents in relation to these premises is defined as meaning the basic rent of such premises as determined in accordance with the provisions of the Second Schedule. The Second Schedule reads—

[His Lordship read the Second Schedule and continued:]

It will be seen that rent control including the fixation of fair or standard rents has been in force at Delhi almost since the outbreak of the Second Great War. Even in 1939 it was found necessary to introduce the New Delhi House Rent Control Order, under the Defence of India Rules, the operation of this Order being confined to the area of new Delhi and Civil Lines in Old Delhi. In 1942 the Punjab Urban Rent Restriction Act of 1941, suitably modified, was applied to the whole area of Delhi and the 'standard rent' was defined as meaning the rent at which the premises were let on the 1st of January, 1939, or if they were not let on that date, the rent at which they were last let. This

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was superseded in due course by the Delhi Rent Control Ordinance of 1944 which held the field until it was superseded by the 1947 Act. By an Amendment Act introduced late in 1947 the fact that Delhi was greatly expanding was given statutory recognition by the introduction of section 7-A making special provisions with regard to newly constructed premises. This made all the provisions of the Fourth Schedule of the Act applicable to the fixation of rents of premises in Delhi the construction of which was not completed before the commencement of the Act.

By the Fourth Schedule a new officer called a Rent Controller was to be appointed to deal with the fixation of rent in respect of newly constructed premises and the standard rent was to be fixed by him after taking all the circumstances of the case into account including any amount paid or to be paid by the tenant by way of premium or any other like sum in addition to rent. The fact that the Rent Controller was intended to take into account the cost of construction was clearly indicated by the authorisation to the Rent Controller contained in clause 7 to require the landlord to produce any book of account, document or other information relating to the newly constructed premises.

The first attack of the learned counsel for the petitioner was directed against the allegedly arbitrary and unjustifiable division of premises into two classes viz., promises let before the 2nd of June, 1944 and those 1st afterwards contained in section 6(1)(B)(1). As a matter of fact it hardly seems to me to be conceivable that now in 1964 any question of fixing the standard rent of premises let before the 2nd of June, 1944 can ever arise, since it is extremely unlikely that the rent of any such premises has not long ago been already fixed under the provisions of one or other of the earlier enactments from the Delhi Rent Control Ordinance of 1944 onwards, and in effect the law of 1958 is dealing

with premises let after the 2nd of June, 1944. As for the choice of the date the 2nd of June, 1944, as the relevant date, it does not mean to me that this is at all an arbitrary selection in any case when a date has to be fixed in any legislation the selection is bound to some extent to be arbitrary, but the reason for the choice of this date in the present case in obvious. I find that in fact the Delhi Rent Control Ordinance of 1944 was published in a Government of India Gazette Extraordinary, on the 3rd of June 1944 and this obviously constitutes a landmark which could reasonably be selected as the relevant date in the Act of 1958. It is, as it were, a fixed point in the history of Rent Restriction Legislation.

The next argument is that by according recognition to the rents fixed under the different provisions of the earlier enactments by the Second Schedule and section 6(1)(B)(2), though with certain permissible additions, the section is in effect providing several different and unusual methods of arriving at the standard rent.

Actually the section only provides one method of arriving at a standard rent in respect of premises which have not been let before the 2nd of June, 1944 and which have not already had their rents fixed under earlier enactments and that is in section 6(1)(B)(2), on the basis of the cost of construction of the premises, and all landlords or tenants who come to Court in respect of such premises are undoubtedly now on an equal footing. The question resolves itself into one whether the Legislature could reasonably be expected to have ordered the reopening of all the thousands and thousand of cases decided under the earlier enactments, which would certainly involve the setting up of a large number of additional Courts for the purpose, or whether it is a reasonable distinction to accept the rent fixed after litigation under the earlier enactments with

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certain permissible additions which have evidently been introduced to meet the constant trend towards inflation.

One particular aspect of this part of the case which has been stressed by the learned counsel for the petitioner concerns the manner in which the cost of construction of and premises is to be calculated. It is pointed out that in the 1952 Act section 8(4) provided that the standard rent should not exceed 7½ per cent of the reasonable cost of construction of the premises. It further provided in an explanation that the cost of construction in respect of any premises included the market value of the land comprised in the premises at the time of the completion of the construction. In the Act of 1958 the corresponding provisions in section 6(1)(B)(2)(b) which reads—

> "In any other case, the rent calculated on the basis of seven and one-half per cent per annum of the aggregate of the reasonable cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction."

By this, it is argued, an unfair advantage is given to landlords owning premises of which the standard rent was fixed under the 1952 Act as compared with those whose premises are valued under the 1958 Act because the market value of the land might have risen considerably between the commencement of the construction of the premises and the completion of the construction. This alleged advantage appears to me to be more imaginary than real, since in ordinary circumstances the construction of any premises is complete in a matter of months, but in any case the argument appears to be fallacious. The law is in a constant state of flux and old laws are constantly being repealed and replaced by other enactments and it is a matter of luck whether any

particular litigant finds his case decided under a law which particularly favours his interests or affects him adversely. I have never heard it suggested that when there has been a change in the law which would benefit a particular litigant whose case has been decided under an earlier enactment he should be permitted to have his case reopened and decided under the new law, and as long as all persons litigating at the same time receive the same treatment at the hands of the law I do not consider that any infringement of Article 14 of the Constitution is involved where there is a change in the law to the advantage of the party or the other in respect of a particular right. The learned counsel for the petitioner confessed his inability to cite any authority applying Article 14 of the Constitution to a case where one law has been repealed and superseded by other.

At this stage I may mention that there has been a previous case in which part of this legislation was challenged under Article 14 of the Constitution. In *Messrs British Medical Stores and others v. L. Bhagirath Mal and others* (1), G.D. Khosla and J.L. Kapur JJ, held that section 7-A and Schedule 4 of the Act of 1947, relating to the fixation of standard rent for premises the construction of which was not completed when the Act came into force, were unconstitutional as contravening Article 14 of the Constitution. However, the correctness of this decision was doubted by other learned Judges of this Court and the matter was again considered by a *Full Bench* in *G. D. Coni* v. *S. N. Bhalla* (2), and the validity of section 7-A and Schedule 4 was upheld. Both these decisions came before the Supreme Court in judgment dealing with a number of appeals *Roshan Lall Mehra*, v. *Ishar Das*, (3). The

(1) I.L.R. 1955 Punj. 639 : A.I.R. 1955 Punj. 5
(2) I.L.R. 1959 Punj. 1429 : A.I.R. 1959 Punj. 181
(3) A.I.R. 1962 S.C. 646

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result was that the earlier decision was set aside and the decision of the Full Bench upheld. The principle was thus recognised that in the same Act there can be different methods of arriving at standard rent in respect of premises constructed before and after 1947. I can not see any difference in principle between this and the recognition in the Act of 1958 of rents fixed under earlier enactments with modifications, together with the simple formula more or less on the same lines for fixing the rent of premises in respect of which the rent had not been fixed.

The next objection raised on behalf of the petitioner was to those parts of section 6 by which a different increase of standard rent is permitted in respect of premises of which the rent was fixed under the Acts of 1947 or 1952. The rent so fixed remains the standard rent if it is not in excess of Rs. 1,200 per annum, i.e., Rs. 1.00 per month, while if the rent is in excess of that figure an increase of 15 per cent is permitted. Again in respect of premises the rent of which is to be fixed under the new Act the rent is to be calculated at the rate of 7½ per cent of the cost of construction where the rent so calculated does not exceed Rs. 100 per month, but on the basis of 8-5/8 per cent where the rent so arrived at exceeds that amount. It is contended that there is no justification for treating landlords who own what might be called cheaper premises on a different footing from landlords who own more costly premises. These petitions were argued from the landlords' point of view, but it might also be urged that there is justification for treating tenants of more expensive premises differently from tenants of less expensive premises. The authority cited in support of this argument is *Karimbil Kunhikoman* v. *State of Kerala* (4). In that case the validity of some parts of the Kerala Agrarian Relations Act, IV of 1961, was challenged. This was an

(4) A.I.R. 1962 S.C. 723

Act similar in object to those introduced in many other States for the purpose of fixing a ceiling on land holdings and giving the land held to be excess in any landowner's holding to landless persons or persons with holdings below the ceiling. One of the provisions of the Act which was held to violate the provisions of Article 14 of the Constitution related to the payment of compensation to the landowners whose land was taken away in this manner. The Act contained provisions for arriving at the amount of compensation to be paid to the deprived landowners and in Schedule 2 it was provided how much of the compensation so calculated was to be actually paid. It was provided that the first Rs. 15,000 of compensation would be paid in full and thereafter there would be a reduction of 5 per cent in each slab of Rs. 10,000 until a figure of more than Rs. 1,45,000 was reached. Thereafter the compensation was reduced by 70 per cent with the result that landowners deprived of huge areas of land would only get 30 per cent of the compensation due to them as calculated under the relevant provisions of the Act. The matter was dealt with in the following passage in paragraph 27 of the judgment:—

> "This difference in cut is being justified on behalf of the State on the same principle on which (for example) the slab system exists for purposes of income-tax. We are however of opinion that there is no comparison between the slab system of income-tax and the present cuts. Taxation is a compulsory levy from each individual for the purposes of the maintenance of the State. We may therefore reasonably expect that a rich man may be required to make a contribution which may be higher than what may be proportionately due from his income for that purpose as compared to a

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poor man. This principle cannot be applied in a case where a person is deprived of his property under the power of eminent domain for which he is entitled to compensation. There is no reason why when two persons are deprived of their property, one richer than the other, they should be paid at different, rates when the property of which they are deprived is of the same kind and differs only in extent. No such principle can be applied in a case where compensation is being granted to a person for deprivation of his property".

I doubt, however, whether the principle laid down in this decision can be extended beyond its scope, and obviously it is inequitable that when a citizen is deprived of his land he should be treated in the matter of compensation on the same footing whether the area from which he has been expropriated is large or small. I may point out, however, that the principle which obtains in the matter of income-tax has been used in other fields than such taxation, namely in respect of compensation paid or given in some other form to displaced persons from Pakistan in respect of property which they had perforce to abandon in 1947. The claims of all such persons in respect of land and other immovable property were verified under the appropriate legislation after they had come to India, and it was obvious almost from the outset that all of them could not be fully compensated either in land, other forms of immovable property or cash, but although some of the displaced persons who had lost most may have regretted, or even resented, the fact that their claims for compensation could not be met in full. I don't think that anybody could deny the equity of giving the largest proportion of the compensation due to those who had lost the least valuable property and the lowest proportion to those who had lost most.

However, the question in the present case is whether a larger increase in the case of more expensive premises, or a slightly larger standard rent in the case of premises of which the rent is being fixed for the first time under the Act, is reasonable in the sense that it bears any relation to the objects of the Act as contained in the opening words of the preamble "to provide for the control of rents and evictions". Control of rents and evictions is only made necessary at all because the demand for accommodation exceeds the supply. It is, therefore, legitimate for the Act to encourage new construction. One of the obvious objects of section 6 itself is to encourage new construction to meet the needs of the expanding population of Delhi, the shortage of residential and other accommodation in Delhi being notorious. This need was recognised in the earlier Act of 1952 in section 39, which provided that. "All premises the construction of which is completed after the 1st, day of June, 1951, but before the expiry of three years from the commencement of this Act shall be exempt from the operation of all the provisions of this Act for a period of seven years from the date of such completion." The Act of 1958 in section 6(2) provides that "notwithstanding anything contained in sub-section (I), (a) in the case of any premises, whether residential or not, constructed on or after the 2nd day of June, 1951, but before the 9th day of June, 1955, the annual rent calculated with refence to the rent at which the premises were let for the month of March, 1958, or if they were not so let, with reference to the rent at which they were last let out, shall be deemed to be the standard rent for a period of seven years from the date of the completion of the construction of such premises; and (b) in the case of any premises, whether residential or not, constructed on or after the 9th day of June, 1955, including premises; constructed after the Act, the annual rent calculated with reference to the rent agreed upon between

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the landlord and the tenant when such premises were first let out shall be deemed to be the standard rent for a period of five years from the date of such letting out." This means that landlords who have constructed new premises since the date fixed in section 39 of the Act of 1952 can enjoy what might be termed a free market in respect of their premises for a period of years, which was originally fixed at seven, but now, in the case of premises built since the Act of 1958 came into force, and to be built in future, is limited to five years. Sub-section (2) is one which has not been used by the learned counsel for the petitioner in this case as an argument regarding discrimination, and indeed it is obvious that every possible encouragement is a legitimate and laudable purpose of the Act, it must also be legitimate and laudable to encourage people to build what might be called bigger and better premises. Such being the case, it does not seem to me unreasonable to permit a larger increase of rents already fixed in respect of such premises or to base the standard rent being fixed under the present Act at a slightly higher percentage of the cost of construction in the case of such buildings. For these reasons I am of the opinion that there is nothing in section 6 of the Act which contravenes the provisions of Article 14 of the Constitution.

An attack was also made on the provisions of section 10 for the fixation of interim rent pending the decision of a petition for the fixation of standard rent. The words used are:—

> "If an application for fixing the standard rent or for determining the lawful increase of such rent is made under section 9, the Controller shall as expeditiously as possible, make an order specifying the amount of the rent or the lawful increase to be paid by the tenant to the landlord pending final decision on

the application and shall appoint the date from which the rent or lawful increase so specified shall be deemed to have effect."

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I can see nothing wrong with the principle underlying this section, but it is objected that it contains no guiding principles on which an interim rent is to be fixed. It is, however, to be borne in mind that the officers who are exercising the powers of Rent Controllers are judicial officers, who are presumed to act judicially, and whose orders are controlled by a higher authority and by this Court. Indeed any order of a Rent Controller is appealable to the Tribunal under section 38, and a second appeal lies to the High Court on a point of law under section 39. For these reasons I am of the opinion that there is no force in these petitions which I would accordingly dismiss with costs. Counsel's fee Rs. 100 in each case.

MEHAR, SINGH, *J.*—I agree.

Mehar Singh, J.

B.R.T.

APPELLATE CIVIL

Before A. N. Grover, J.

BALWANT SINGH,—*Appellant.*

versus

SANT RAM SHARMA,—*Respondent.*

S.A.O. No. 2-D of 1961

1964

Jan., 9th.

Delhi Rent Control Act (LIX of 1958)—S. 38—Order made by Rent Controller as to whether relationship of landlord and tenant existed between the parties on preliminary issue—Whether appealable.

Held, that when a question arises in proceedings before the Rent Controller under the Delhi Rent Control Act, 1958, whether relationship of landlord and tenant