

FULL BENCH

Before D. Falshaw, C.J., Inder Dev Dua and H. R. Khanna, JJ.

CHANAN SINGH,—Petitioner.

versus

SEWA RAM,—Respondent.

Civil Revision No. 121 of 1963.

East Punjab Urban Rent Restriction Act. (III of 1949)—S. 4 (2) (a)—“In similar circumstances”—Meaning of—Development of the area—Whether denotes change of circumstances.

1965

December, 6th.

Held, that where the character of a locality has radically changed since 1938, as for instance where an area which in 1938 was hardly developed at all and contained only a few scattered dwelling places or shops and now the same area has become fully developed either as a residential, shopping or industrial area or a mixture of these, it could not be held that the rents for the scattered dwellings or shops which existed in 1938 were fixed in similar circumstances to those existing at the relevant period when the fair rent has to be determined by the Court. Where such a change has taken place and a locality formerly only containing a few scattered buildings has now become fully built up, it is hardly likely that the accommodation for which the fair rent has now to be fixed would be either the same or similar to any accommodation which existed in 1938, and in such a case section 4(2) (a) would rarely become applicable. But a general increase in the size and prosperity of the town cannot be taken into account where the locality in question still remains much as it was in 1938, whether it was a predominantly shopping or residential centre. Where such a state of affairs exists, the words ‘in similar circumstances’ have a very limited meaning, namely that where the same or similar accommodation which existed in 1938 still exists and the rent paid for it in 1938 can be established, that rent must be held to be the basic rent except where it can be proved that some special considerations had entered into the fixation of the rent for those premises in 1938, such as that the rent was fixed at a lower than the rate prevailing in the locality because the premises were let to a near relation. The law in this respect may operate harshly on landlords particularly in cases where the shop or house which existed in 1938 has been replaced by a newer building on the same site, but if the harshness in this respect is to be mitigated in respect of newer buildings constructed on the sites of buildings which existed in 1938, it is the Legislature which will have to bring this about and not the Courts.

Held, that the words ‘in similar circumstances’ must certainly govern the word ‘same’ as well as the words ‘similar accommodation’, though ordinarily in such a case only the limited meaning given to the words above will be applicable.

Held, that a radical change in the character of a locality from practically undeveloped to a fully developed locality will constitute a change of circumstances.

Case referred by the Hon'ble Mr. Justice S. B. Kapoor, on 16th March, 1964 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice S. B. Kapoor and the Hon'ble Mr. Justice H. R. Khanna again referred the case on 1st September, 1964 to a Full Bench. The Full Bench consisting of the Hon'ble Chief Justice Mr. D. Falshaw, the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice H. R. Khanna after deciding the question of law referred to them returned the case on 6th December, 1965 to the Single Bench. The Hon'ble Chief Justice Mr. D. Falshaw finally disposed of the case on 28th January, 1966.

Petition under Section 15(5) of Act III of 1949 as amended by Act 29 of 1956 for revision of the order of Shri Kul Bishan, Appellate Authority (District Judge), Gurdaspur, dated 31st July, 1962 modifying that of Shri Harjit Lal, Rent Controller, Batala dated 12th May, 1961, to the extent that the fair rent would be Rs. 22/8 instead of Rs. 27 per mensem of the shop in dispute and leaving the parties to bear their own costs.

H. L. SARIN, SENIOR ADVOCATE WITH MISS ASHA KOHLI, BALRAJ BAHL AND V. P. SUD, ADVOCATES, for the Petitioner.

H. R. AGGARWAL, WITH R. C. DOGRA, ADVOCATE, for the Respondent.

JUDGMENT OF FULL BENCH

Falshaw, C.J.

FALSHAW, C.J.—Three questions have been formulated for reference to the Full Bench—

- (1) What is the import of the words 'in similar circumstances' in clause (a) of sub-section (2) of section 4 of the East Punjab Urban Rent Restriction Act of 1949 ?
- (2) Do the above words 'in similar circumstances' govern the word 'same' in addition to qualifying the words 'similar accommodation' ?
- (3) Does the development of an area denote a change of circumstances for the purpose of the above clause ?

The reference has arisen out of cross revision petitions filed by a landlord and tenant relating to the fixation of the

fair rent of the premises in dispute under section 4 of the Act. The premises comprise a shop No. 23, which is one of a number of shops collectively styled as the Rajkumar Market, situated on the G.T. Road at Batala, a town in the district of Gurdaspur. The Rajkumar Market was admittedly built in 1951-52. Sub-section (2) of section 4 of the Act reads—

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“In determining the fair rent under this section, the Controller shall first fix a basic rent taking into consideration—

- (a) the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months prior to the 1st January, 1939, and
- (b) the rental value of such building or rented land if entered in property tax assessment register of the municipal, town or notified area committee, cantonment board, as the case may be, relating to the period mentioned in clause (a).”

In the present case clause (b) could not be applied because no property tax was levied in the town of Batala in 1938. It has been found by the Appellate Authority that prior to the year 1939 at the site of the Rajkumar Market there existed the boarding house of a missionary school and there were a few shops in the neighbourhood rented at Rs. 4.00 or so per mensem. It was also found that the town had developed in recent years in general and by the establishment of a number of factories there.

The shop in dispute was let to the present tenant in October, 1956 at a monthly rent of Rs. 34.00 which was reduced to Rs. 25.00 as a result of a compromise on a previous application under section 4 of the Act. However, a further application was filed in November, 1957 and the Rent Controller assessed the basic rent at Rs. 18.00 and the fair rent with the increase permitted under the Act of 50 per cent at Rs. 27.00. The learned Appellate Authority took into account the development of the town and held that a shop which would bring in a rent of Rs. 4.00 or Rs. 5.00 in 1938 would have brought in a rent of Rs. 15.00 if the conditions now prevailing had prevailed in 1938 and

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he therefore added 50 per cent to it and assessed the fair rent at Rs. 22.50.

This order was challenged by both the landlord and tenant and the learned Single Judge who first dealt with the revision petitions felt some difficulty about the meaning of 'in similar circumstances' and referred the cases to a larger Bench, and in turn the learned Judges of the Division Bench have referred it to a still larger Bench for answers to the questions set out above.

The difficulty appears to have arisen because, although there is scarcely any conflict in the decision of this Court on the point that where the same or similar accommodation existed in the same locality in 1938 subsequent developments ought not to be taken into account in fixing the basic rent, this interpretation is not altogether satisfactory in that it appears to interpret the words of clause (a) of sub-section (2) of section 4 as if the words 'in similar circumstances' did not exist, and the learned Judges felt that these words could not be intended to be otiose or redundant. The point of view which has generally been followed in the decisions of this Court has been expressed by myself in the case of *Bhagat Ram v. Surjit Singh etc.*, (1). The property in that case was a shop situated in Bazar Sheikhan, Jullundur City. Apart from the fact that a shop which existed on the site had been burnt down in 1947 and rebuilt in 1948, there had been a change of circumstances in that formerly Bazar Sheikhan was a quarter said to be inhabited by prostitutes whereas at the relevant period the prostitutes had disappeared and it was an ordinary business centre. I dealt with the matter as follows.—

“On the other hand it is contended that the change in the nature of the bazar, namely from being the recognized haunt of prostitutes and on this account likely to be to some extent shunned by respectable inhabitants of the town as a shopping centre, to a thriving and prosperous shopping centre free from any “such handicap, is something quite independent of the inflationary

(1) I.L.R. 1957 Punj. 436.

tendencies against which this part of the Act is intended to protect tenants, and that in the circumstances the words 'in similar circumstances' must be taken as meaning 'if the bazar had been an equally busy shopping centre in the year 1938 :

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Although I think that the words used might be capable of such an interpretation, I do not consider such an interpretation could possibly have been intended, as it would nullify the effect of this part of the Act. If conditions subsisting in a particular area ten years after the material period are to be taken into consideration, what is the limit to be placed on such conditions, and where is the line to be drawn? Obviously the cost of buildings constructed after 1948 is very much higher than the cost of buildings erected before 1938 and one would have thought that the cost of the building would be very important factor in determining the fair rent. Yet all that is permitted by the law for newly constructed buildings is the increase permissible on the basic rent provided in sub-section (5). Moreover, if changes of this kind were permitted to be taken into consideration there is no reason why the increased prosperity of the town owing to the foundation of new industries "and such matters should not be considered, and obviously all such matters are far from the purview of section 4. Apart from this the introduction of considerations of this kind appears to me to be for too speculative and there is no possible material on which the Rent Controller could possibly have come to the conclusion that if Bazar Sheikhar had not been the recognised haunt of prostitutes in 1938 the rents of shops there would have been substantially different from what they were. In fact nobody can possibly say what the rents would have been. In the circumstances I am of the opinion that the words 'in similar circumstances' must be strictly related to the conditions which obtained prior to the first of January, 1939, in the locality in question, and it is quite beyond the scope of the powers of the Rent.

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Controller to try to imagine what the rent would have been in 1938 if the conditions prevalent 10 years later had been in existence at the time."

This principle was followed by Grover J. and myself in *Sewati Bai v. Lachhi Ram and another*, Civil Revision No. 225 of 1961, decided on the 1st of December, 1961, and *Jaswant Singh v. Jugdish Chand*, Civil Revision No. 553 of 1958, decided by Dulat J. on the 24th of April, 1959. In *Krishan Kumar Sood v. Raj Kumar Mehta*, Civil Revision No. 112 of 1960, decided by my learned brother Dua J. on the 25th of May, 1961, an additional reason was given for rejecting the contention that the words in similar circumstances' have any reference to a subsequent increase in prosperity. The learned Judge observed—

"Shri Nayyar has contended that the expression 'similar circumstances' occurring in section 4(2) of the Punjab Urban Rent Restriction Act also includes the circumstances which have come into being as a consequence of the present prosperity. In other words, it is argued that while considering the prevailing rents in the locality for the same or similar accommodation prior to January, 1939, one must imagine that the relevant period was as prosperous as the present one. I find no justification for placing this construction on section 4(2), for acceding to this contention would obviously mean arriving at almost the present rental value of the premises, and if that is done, then there would hardly be any point in the increase of rent, provided by sub-section (3) of section 4 for determining fair rent. This increase for converting basic rent into fair rent is, in my opinion, intended to take into account the prevailing shortage of accommodation at the present moment of time on account of increased prosperity, I would therefore repel this contention."

It would seem that the only case in which a subsequent change in conditions was taken into account was the case of *Kartar Chand v. Jagat Singh*, Civil Revision No. 151 of 1959, decided by G. D. Khosla, C.J. on the 5th of February, 1960. In that case a plot of 7 *marlas* of land had been taken on lease in the Putlighar area of Amritsar at a monthly rent

of Rs. 40.00 and the tenant applied for fixation of the fair rent and produced evidence showing that land was rented in that locality in 1938-39 at Re. 1.00 or Rs. 2.00 per *marla*. The view was taken that since 1938-39 Putlighar had become an industrial area and in dismissing the tenant's revision petition the learned Chief Justice observed—

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“Section 3, sub-section (2) clause (a) of the Act provides that in determining the fair rent the Controller should take into consideration the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months prior to the 1st of January, 1939. There can be no doubt at all that the rents which were being paid in 1938 at the rate of Re. 1.00 or Rs. 2.00 per *marla* were not fixed in similar circumstances. At that time Putlighar was a wholly undeveloped area whereas now it has become an industrial area. That being so the learned Appellate Authority was right in interpreting section 4(2) (a) to mean that where circumstances change in the manner they have changed in the present case, the rents prevailing in 1938 are not a correct basis for determining fair rent. It seems to me that Rs. 40.00 per month is not an excessive figure for this area and therefore the Appellate Authority was right in dismissing the petitioner's application.” I do not think

there can be any quarrel with the decision of the learned Chief Justice in that case. As was felt by the learned Judges who referred the case the words ‘in similar circumstances’ must have some meaning, and I should have no hesitation in holding that where the character of a locality has radically changed since 1938, as for instance where an area which in 1938 was hardly developed at all and contained only a few scattered dwelling places or shops and now the same area has become fully developed either as a residential, shopping or industrial area or a mixture of these, it could not be held that the rents for the scattered dwellings or shops which existed in 1938 were fixed in similar circumstances to those existing at the relevant period when the fair rent has to be determined by the Court. It seems to me, however, that where such a change has taken place and a locality formerly only containing a few

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scattered buildings has now become fully built up, it is hardly likely that the accommodation for which the fair rent has now to be fixed would be either the same or similar to any accommodation which existed in 1938, and in such a case section 4(2) (a) would rarely become applicable. I should certainly not be prepared to extend the meaning in this context further than the above, and to hold that a general increase in the size and prosperity of the town could be taken into account where the locality in question still remains much as it was in 1938, whether it was a predominantly shopping or residential centre. Where such a state of affairs exists in my opinion the words 'in similar circumstances' have a very limited meaning, namely that where the same or similar accommodation which existed in 1938 still exists and the rent paid for it in 1938 can be established, that rent must be held to be the basic rent except where it can be proved that some special considerations had entered into the fixation of the rent for those premises in 1938, such as that the rent was fixed at a lower than the rate prevailing in the locality because the premises were let to a near relation. The law in this respect may operate harshly on landlords particularly in cases where the shop or house which existed in 1938 has been replaced by a newer building on the same site, but if the harshness in this respect is to be mitigated in respect of newer buildings constructed on the sites of buildings which existed in 1938, it is the Legislature which will have to bring this about and not the Courts.

This is my answer to the first of the questions referred to us, and I do not think that the second and third questions present any difficulty. The words 'in similar circumstances' must certainly govern the word 'same' as well as the words 'similar accommodation', though ordinarily in such a case only the limited meaning which I have given to the words above will be applicable. The third question already seems to have been answered in that I have expressed the opinion that a radical change in the character of a locality from a practically undeveloped to a fully developed locality will constitute a change of circumstances. The revision petitions may now be decided by the learned Single Judge in the light of the above answers.

Dua, J.

DUA, J.—I have read the lucid judgment of my Lord the Chief Justice and I fully agree with the approach to the

problem and the reasoning adopted therein. I, however, feel that radical improvements in regard to civic amenities in the locality since 1938 may also appropriately be considered to connote dissimilarity of circumstances which would exclude the applicability of section 4(2) (a) of the East Punjab Urban Rent Restriction Act, 1949. Such radical improvements may relate to drainage and sanitary system, supply of electricity, and amenities like educational institutions, hospitals and postal facilities etc., in the locality.

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Dua, J.

The expression "similar circumstances" used in section 4(2) (a) in the context seems to be of a somewhat flexible import and has to be interpreted in the background of the purpose and object of the socio-economic legislative measure in which it occurs, of course, keeping in view its legislative history as well. It was indeed in view of this legislative history that in my unreported decision in *Krishan Kumar Sood v. Raj Kumar Mehta* (Civil Revision No. 112 of 1960) I felt that the expression "similar circumstances" in its context could not have been intended to convey the idea that the entire over-all present setting of the premises in question in the wake of general progress and prosperity should be imagined to have existed during 1938 for the purpose of determining the basic rent. At the same time it is inconceivable that this expression was intended to be absolutely redundant or purposeless. The legislative draftsman is ordinarily not imputed the intention of using otiose or wholly meaningless expression. We have, therefore, to discover the scope and effect of this expression as intended by the legislature. The two extreme contentions seem to me to be untenable and must be ruled out. The question is where to draw the line.

Rent legislation may have a long history in other countries, and in some parts of this Republic also, it has perhaps a longer history than in Punjab. We in the United Punjab had our first legislative measure on rent restriction in 1941 in the form of the Punjab Act X of 1941. The Second World War, it may be remembered, started in 1939, though thick clouds of conflict had been in the horizon for more than a year prior. In January, 1941 in order to raise additional revenue by levying tax on urban immovable property, the Punjab Immovable Property Tax Act (XVII of 1940) was brought on the statute book. Fearing that landlords might successfully pass on the extra burden imposed

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by this Act to their tenants because of growing shortage of accommodation in urban areas, Punjab Act X of 1941 was enacted, perhaps somewhat hurriedly. Its object and purpose was clearly to ensure that rent was not increased by landlords on account of imposition of tax on buildings and lands. Standard rent was defined in relation to any premises as the rent on which the premises were let on 1st January, 1939; if they were not so let, then the rent on which they were last let before that date; and in case they were never let before 1st January, 1939, then the rent on which they were first let. In certain other circumstances covered by section 14 of that Act, the rent fixed by the Court was treated as standard rent. Presumably, as a result of experience gained by actual working of this enactment, some modifications were considered necessary, and in 1947, this Act was replaced by the Punjab Urban Rent Restriction Act VI of 1947. It is in this new Act of 1947 that the expression "similar circumstances" which we are called upon to construe first occurred in section 4, thereof. This Act was also repealed in 1949 to be replaced by the present East Punjab Act III of 1949. The broad scheme of the current statute, so far as relevant for our purpose, is the same as that of Act VI of 1947. It is noteworthy that in this Act, a distinction has been drawn between the buildings constructed before 1st January, 1939 and those constructed after that date for the purpose of determining the basic rent. In order to fix fair rent, higher increase of basic rent is permissible in case of buildings constructed after 1st January, 1939. This is presumably inspired by the fact that cost of construction of buildings was considered to have started rising after January, 1939. But this Act too, I cannot help observing, has not been framed with scientific accuracy of language, with the result that it presents difficulties of interpretation to the Courts which have to construe the enactment so as to produce a workable and just system reasonably consistent with the statutory language construed in the background of its object and purpose. The object and purpose of this beneficial socio-economic legislation is apparently to protect tenants against unreasonable increase of rent and arbitrary and oppressive evictions in other words, to ensure the tenant personal security of his tenancy relating to his house and business at reasonable rent. It is, however, not intended to unreasonably penalise the landlords; on the other hand, it is intended merely to curb their coercive power to extract exorbi-

tant rent from helpless tenants on threat of eviction. Requirements of accommodation for residence and business is one of those essential needs of life, that, during its shortage, control, thereof clearly gives rise to power of true and just coercion. It, of course, does override certain contractual relationships, but the purpose of this enactment is apparently to relieve the tenants who may presumably be forced or coerced into agreements to pay exorbitant rent as a result of shortage of accommodation. This Court has, therefore, to strive to construe the expression "similar circumstances" in this background so that the purpose of ensuring to the tenant the security of tenancy at reasonable rent is achieved without penalising or being harsh to the landlord more than what is intended by the Legislature. The Courts must endeavour to place on this expression a reasonable interpretation bringing to its consideration a certain amount of common sense provided of course, the statutory language and scheme admits such interpretation.

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Dua, J.

Better amenities in civil life, as we in modern times know it, are inseparable from urban life and it is the advantages of city life which have brought along with them the corresponding disadvantages manifested by consequent shortage of accommodation which has given a handle to the owners of urban property to charge exorbitant rents. It is primarily to control and curb this common human temptation that rent legislation has been enacted. After independence, India has made rapid progress in the industrial fields, with the result that shortage of accommodation in commercial and industrial places, which are usually urban areas, has increased several fold. This prosperity has also raised cost of construction. In order, therefore, to construe the expression "similar circumstances" with an eye to promote the object and purpose of the Act and to remedy the mischief created by shortage of accommodation in urban areas, the Court has, consistently with the purpose of affording the required protection to the tenants, to see that capitalists, or, those with money, are not unduly discouraged from further construction of buildings. This aspect was noticed by a Bench of this Court in *Balkishan v. Subash Chand etc.* (2). Keeping in view this consideration

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which is of no small importance in this revolutionary change of circumstances, I am wholly disinclined to hold that the Legislature could have intended by using the expression "similar circumstances" not to have visualised the improvements of civic amenities in a given locality. I am fully conscious of the fact that the Legislature has amended the the enactment more than once and it may with some cogency be argued that if the rate of increase on the basic rent of 1938 was considered inadequate on account of industrial progress and general prosperity, then the necessary amendment in this respect could also have been made and the Legislature having not thought fit to do so, it is not for this Court to usurp the function of the Legislature in the guise of interpretation. This consideration, whatever its cogency in other circumstances or settings, is of little persuasive force in the case in hand, and mere indifference or lapse on the part of the Legislature in this respect will not prevent this Court from placing on this expression, what it considers, a fair, just and reasonable construction, best designed to effectuate the legislative purpose. And then it may also be open to the counter-argument that such an amendment has not been made because the expression "similar circumstances" is flexible enough to give fair and reasonable judicial discretion to the Controller in each case to take into account the change in the amenities and other relevant circumstances in the locality which the true dictates of justice may suggest. There being no fixed, rigid or certain, meaning uniformly assignable to the expression "similar circumstances", it would seem to me to be open to this Court to come to a realistic solution of the problem, which, in my opinion, is not prohibited by any canon of construction. To accede to the respondent's extreme contention would seem to me to lead to somewhat startling consequences which may well clothe the statutory instrument before us with an unreasonably harsh and oppressive character, which, in the absence of clearest expression, I would be slow to impute to the Legislature.

In view of the fore-going discussion, while generally agreeing with my learned Chief Justice I should not extend the expression "similar circumstances" to a situation where the locality in question has undergone drastic change in the matter of civic amenities like drainage, sanitation, supply of electricity, educational institutions, hospitals and post-office etc.

KHANNA, J.—I agree with the answers proposed by my Lord the Chief Justice along with the rider added by my learned brother Dua J.

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FALSHAW, C.J.—I have read the judgment of my learned brother Dua J. with which I find myself generally in agreement. Indeed I do not think there is any essential difference between the views he has expressed and what I myself was trying to say.

B.R.T.

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Before Mehar Singh, S. B. Kapoor and Prem Chand Pandit, JJ.

RAMJI LAL, AND ANOTHER,—Petitioners,

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 1523 of 1962.

Punjab Pre-emption Act (I of 1913)—S. 4—Pre-emptor—Whether to retain superior right of pre-emption till the decision of the appeal by the vendee against the decree passed in favour of the pre-emptor—S. 8—Notification under—Whether mala fide—How to be determined.

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Held, that a pre-emptor must have his qualification to pre-empt on the date of the sale, on the date of the institution of the suit and on the date of the decree of the trial Court. He must maintain his qualification to pre-empt to the date of the decree of the first Court only, whether that decree is one dismissing the suit or decreeing it, and his loss of qualification, whether by his own act or by an act beyond his control such as the improvement of his status by the vendee so as to equal or better the status of the pre-emptor, after the date of that decree, does not affect the fate of his claim in such a suit. When a pre-emptor establishes his preferential right to pre-empt a sale to the date of the adjudication by the trial Court, his right to get the property in preference to the vendee effectively comes into existence then, and so it becomes a vested right, which obviously can only be taken away from him by retrospective legislation.

Held, that while issuing a notification under section 8 of the Punjab Pre-emption Act, 1913, exempting a particular sale from the right of pre-emption, the Government has to act through human agencies and on the reports of various officers. In order to determine whether a particular action of the Government is *mala*