

Subedar Major the mutation relating to this mortgage shows that it  
 Sadhu Singh was an independent transaction. It is clear from  
 the mutation 17 that it was an independent mortgage.  
 Chanda Singh and others The language used in the mutation relating to pre-  
 vious mortgages is different from the language used  
 in this mutation. In the previous mutations the  
 older mortgages are mentioned but not in Ex. P. 7.  
 Bishan Narain, J. The reasonable inference is that the 1914 document  
 had no connection with the previous mortgages.  
 There was a lapse of about nine years between the  
 mortgages of 1905 and 1914 and it is quite possible  
 that all the mortgages up to 1905 may have been re-  
 deemed earlier and this mortgage was effected not  
 in connection with the previous mortgages but in  
 connection with some other requirements. I, there-  
 fore, see no reason to interfere with this finding of  
 the lower Courts that the 1914 mortgage is indepen-  
 dent of the previous mortgages. That being so the  
 Special Collector, Lahore, had no jurisdiction under  
 the 1938 Act to extinguish this mortgage. It is con-  
 ceded that if the order of the Special Collector does  
 not affect the rights of the parties then the plaintiffs  
 are entitled to a decree for possession under the 1914  
 mortgage. I, therefore, hold that the plaintiffs' suit  
 was rightly decreed by the lower Courts.

The result is that this appeal fails and is dismis-  
 sed with costs.

CIVIL MISCELLANEOUS

Before Falshaw, J.

BHAGAT RAM,—Petitioner

versus

S. SURJIT SINGH, ETC.,—Respondents

Civil Miscellaneous No. 198 of 1956.

*East Punjab Urban Rent Restriction Act (III of 1949) as  
 amended by Punjab Act (XXIX of 1956)—Sections 4  
 and 15—High Court—Power of revision, extent of—Expres-  
 sion "in similar circumstances" in section 4(2)(a)—Mean-  
 ing of.*

1956

Nov., 21st

*Held*, that High Court's power of revision under the Act as now amended is very wide.

*Held*, that the words "in similar circumstances" must be strictly related to the conditions which obtained prior to the 1st January, 1939, in the locality in question, and it is beyond the scope of the powers of the Rent Controller to try to imagine what rent would have been in 1938, if the conditions prevalent ten years later had been in existence at that time.

*Petition under Article 227 of the Constitution of India against the order of Shri Gulal Chand Jain, District Judge, Jullundur, Appellate Authority under the East Punjab Urban Rent Restriction Act, dated the 15th November, 1955, reducing the fair rent of the shop in dispute from Rs. 75 per mensem to Rs. 37-8-0 per mensem.*

S. D. BAHRI, for Petitioner.

H. R. SODHI, for Respondents.

#### ORDER

FALSHAW J.—This petition was filed under Article 227 of the Constitution by Bhagat Ram, the proprietor of a shop situated in Bazar Sheikhan, Jullundur City, challenging the order of the District Judge as appellate authority under the East Punjab Urban Rent Restriction Act reducing the fair rent of the shop in dispute from Rs. 75 per mensem as fixed by the Rent Controller to Rs. 37-8 per mensem. It is, however, to be noted that when the petition was filed in February, 1956, the Act did not contain any provision for revision by the High Court of orders of the appellate authority under the Act, and therefore what were virtually revision petitions were entertained as petitions under Article 227 of the Constitution. The Act has, however, been amended and now, since the 24th of September, 1956, there is a new subsection (5) in section 15, which deals with appeals, and the High Court may now on the application of any aggrieved party or on its own motion call for and examine

Falshaw, J.

Bhagaṭ Ram  
v.  
S. Surjit  
Singh, etc.  
—  
Falshaw, J.

the records relating to any order passed or proceedings taken under the Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit. The High Court thus now possesses wide powers of revision under the Act itself.

The case arose as the result of the filing of an application under section 4 of the Act by Surjit Singh and Piara Singh, the tenants, who are proprietors of a firm styled National Boot House. It may be mentioned that the original shop which stood where the present shop stands in Bazar Sheikhan was burnt down in the riots of 1947, and was rebuilt in 1948. The tenants have been occupying the shop since then and apparently they originally paid Rs. 125 as rent which was later reduced to Rs. 107 and finally to Rs. 90 per mensem, which was being paid at the time when the application was filed for fixing the fair rent. The tenants claimed that fair rent should not be more than Rs. 30 per mensem while the landlord adopted the position that the rent should be restored to Rs. 107, which was even more than was being paid at the time when the application was filed.

The principles that determine the fair rent of premises are contained in section 4 of the Act, which, in subsection 2, first provides for the fixation of the basic rent by 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 of 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 or cantonment board, relating to the same period.

The principles for fixing the fair rent after the basic rent is determined which are applicable to the present case, i.e., to a non-residential building constructed after the 1st of January, 1939, are contained in section 4(5) (ii), which permits an increase not exceeding 50 per cent of the basic rent where the basic rent does not exceed Rs. 50 per mensem or an increase not exceeding 100 per cent where the basic rent exceeds Rs. 50 per mensem.

Bhagat Ram

v.

S. Surjit  
Singh, etc.

                      
Falshaw, J.

In the present case the tenants have produced witnesses who took on lease shops in the same bazar in the vicinity of the shop in dispute in 1938, or 1939 and from their evidence it would appear that shops were being leased at that time in this bazar at Rs. 20 or Rs. 25 per mensem. One of the witnesses Panna Lal had actually taken on lease a shop of similar size, i. e., 16' frontage and 40' depth for Rs. 20 per mensem. He has, however, stated that this shop was in a very bad and dilapidated condition. In these circumstances the Rent Controller considered that a shop in good condition like the shop in dispute would therefore fetch Rs. 30 per mensem in 1938.

It is, however, stated by the Rent Controller to be common ground between the parties that Bazar Sheikhan was not a good business area in those days on account of the fact that it was inhabited by prostitutes and therefore was not used so much as a shopping centre by ordinary respectable people of the town, whereas now it is a busy shopping centre since the disappearance of the disreputable element after the partition. He therefore considered that in similar circumstances the shop in dispute would have been capable of being let at Rs. 50 per mensem even in 1938, and therefore, adding 50 per cent under section 4(5)(ii)(a), he fixed the fair rent at Rs. 75 per mensem.

Bhagat Ram  
v.  
S. Surjit  
Singh, etc.  
—  
Falshaw, J.

Both parties filed appeals and the learned District Judge as appellate authority took the view that the Rent Controller had no right to take into account the changed conditions in the bazar in the post-partition area as compared with 1938. He therefore accepted the statement of one Sat Pal, a witness produced by the tenants who had taken a shop in the bazar on lease at Rs. 25 per mensem in 1939, and, fixing the basic rent at Rs. 25 per mensem fixed the standard rent at Rs. 37-8-0.

It is contended in the present petition on behalf of the landlord that the appellate authority should not have accepted the evidence of Sat Pal as the basis for its decision, since Sat Pal was not relied on by the Rent Controller as his evidence did not give any indication of the size of the shop leased by him as compared with the shop now in dispute. It is also contended that the basis of the decision of the Rent Controller was sound, i.e., he took a shop which was stated to be of the same size and which was leased in 1938 for Rs. 20 per mensem in a dilapidated condition and arrived at the figure of Rs. 30 as suitable for a modern shop in sound condition, and then arrived at the figure of Rs. 50 by taking into account the changed circumstances in the bazar.

The question really hinges on how far the meaning of the words "in similar circumstances" in section 4(2)(a) can be extended. As was rightly contended on behalf of the tenants, the whole object of this part of the Act is to protect tenants from the effect of the inflationary conditions which arose during the later part of the Great War and which have grown worse rather than better since the termination of War, and, it is contended that the words "in similar circumstances" must be related directly to the conditions which prevailed before the 1st of January, 1939, and no subsequent change of conditions ought to be taken into account.

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 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."

Bhagat Ram  
v.  
S. Surjit  
Singh, etc.  
Falshaw, J.

<sup>A</sup> 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 subsection (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 far too speculative and there is no possible material on which the Rent Controller could possibly have come to the conclusion

Bhagat Ram  
v.  
S. Surjit  
Singh, etc.  

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Falshaw, J.

that if Bazar Sheikhan had not been the recognized 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 1st of January, 1939 in the locality in question, and it is quite beyond the scope of the powers of the Rent Controller to try to imagine what rent would have been in 1938 if the conditions prevalent ten years later had been in existence at that time. A

It does, however, seem to me that the appellate authority might well have accepted the figure of Rs. 30 per mensem on which the Rent Controller based his calculation in the first instance, since the figure of Rs. 25 appears to be based simply on the statement of one witness the size of whose shop was not revealed. I therefore accept the revision petition to the extent of holding that the basic rent of the shop in suit is Rs. 30 per mensem and that the fair rent with the addition of 50 per cent permitted by section 4(5) (ii) (a) will be Rs. 45 per mensem. The parties will bear their own costs.

APPELLATE CRIMINAL

*Before Bhandari, C.J., on difference between Falshaw and Kapur, JJ.*

CHHOTAY ALIAS SUKHDEV AND OTHERS,—Convict-  
Appellants  
*versus*

THE STATE,—Respondent  
Criminal Appeal No. 8-D/56.

*Criminal trial—Dying declaration—Value of—Interest-  
ed witness—Testimony of—Whether should be believed.*

1956

Nov., 26th

*Held*, that although the approach of death produces a state of mind in which every motive to falsehood is silenced and although a dying declaration stands on the same footing as the testimony of a witness concerned in a case except as to leading questions, it is necessary that the deceased's