

Surjit Singh Vs. Pritam Singh

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Court : Himachal Pradesh

Decided On : Dec-12-1974

Judge : R.S. Pathak, C.J.,; D.B. Lal and; C.R. Thakur, JJ.

Acts : [East Punjab Urban Rent Restriction Act, 1949](#) - Section 4 and 4(2)

Appeal No. : Civil Revn. No. 17 of 1969

Appellant : Surjit Singh

Respondent : Pritam Singh

Advocate for Def. : S.S. Ahuja, Adv.

Advocate for Pet/Ap. : K.D. Sud, Adv.

Judgement :

R.S. Pathak, C.J.

1. I regret I am unable to agree entirely with my brother D. B. Lal. The facts have been stated in his judgment and need not be repeated here.

2. The first question is whether the landlord and tenant are bound in a proceeding for the fixation of fair rent under Section 4 of the [East Punjab Urban Rent Restriction Act, 1949](#) (which for convenience I shall call 'the Act') by an earlier order of the Controller determining the fair rent in terms of a compromise between the same parties in respect of the same building.

3. Section 4 of the Act provides for the fixation of the fair rent of a building by the Controller. Sub-section (1) provides that on application by the tenant or the landlord the Controller must fix the fair rent 'after holding such enquiry as the Controller thinks fit'. Sub-section (2) prescribes the scheme to be followed by the Controller. The scheme provides that he should first determine the basic rent. Two considerations are laid down for that purpose; (a) the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the 12 months prior to January 1, 1939, and (b) the rental value of such building if entered in the property tax assessment register of the Municipal, Town or Notified Area Committee or Cantonment Board, as the case may be, relating to the aforesaid period of 12 months. The fair rent is determined by reference to the basic rent, and the basic rent varies according as it is a residential building, a scheduled building or a non-residential building.

4. Now the important thing to note is that it is the fair rent of the building which is being determined. It is not the rent payable on the basis of any agreement between the landlord and the tenant, or by reference to the status, financial capacity or other circumstances particular to the one or the other. For fixing the fair rent, what has to be considered is the building, and not the personality or circumstances of the landlord or tenant. In the absence of any definition in the Act, the expression 'fair rent' must mean what is commonly understood by it. It is the rent which the building can be expected reasonably to fetch. The element of reasonableness is governed by such considerations as the nature and extent of the accommodation, the amenities it affords and its location. So long as the circumstances affecting the building remain the same, the fair rent must remain constant.

5. In the determination of fair rent the Controller is required by Section 4 (1) of the Act to hold an enquiry. It may be such enquiry as he thinks fit. But nonetheless it must be an enquiry, and that postulates that the Controller must apply his own judgment to decide what should be the fair rent. He cannot rest his decision on the bare statement of the parties as to what the fair rent is. Such a statement can at best reflect only the opinion of the parties as to what the fair rent is. If the evidence on the record discloses the material on the basis of which such statement is made,

the Controller may take that material into consideration. But where the record does not disclose the basis on which the landlord and tenant agree upon a certain figure as the fair rent, the Controller cannot adopt, without enquiry, the figure suggested by the parties. If the figure suggested by the parties proceeds upon a compromise between them, the case for relying on it is even weaker. As is well known, a compromise is often influenced by subjective considerations between the parties and does not necessarily reflect the objective truth between them.

6. It is for good reason that Section 4 (1) requires the Controller to enquire into what should be the fair rent and to apply his own mind to the matter. The 'fair rent' of a building is the fair rent for all landlords and tenants of that building. Such a determination must be had upon objective considerations, an objective consideration of all relevant factors which enter into the determination of rent. An agreement between a certain landlord and a certain tenant cannot bind subsequent landlords and tenants, and therefore cannot conclusively determine what is the 'fair rent'.

7. The conclusion must be that the holding of an enquiry by the Controller is a mandatory requirement of Section 4 (1) of the Act, and that an order fixing the fair rent made without such enquiry is not an order contemplated by the statute, it is an order beyond the powers of the Controller and is, therefore, void.

8. In the present case, there was an earlier proceeding under Section 4 of the Act in which the tenant stated that he was satisfied that the agreed rent of Rs. 75 per month was 'the fair rent of the premises in dispute', and the landlord stated that upon the tenant's statement the fair rent may be fixed accordingly. The evidence discloses that the statement was the result of a compromise between the parties. The Controller then made an order fixing the fair rent of the premises at Rs. 75 per month 'in view of the above statement of the parties'. There is nothing on the record to suggest that the order of the Controller is based on any material, besides those statements, to show what the fair rent should be. Our attention has not been drawn to any material on the record of that proceeding which can truly establish the quantum of the fair rent. It is apparent that the Controller did not hold any enquiry when fixing the fair rent. He was content to rely upon the agreed

statements of the parties. His determination of the fair rent, therefore, was no determination at all within the contemplation of Section 4 (1). His order fixing the fair rent is a nullity.

9. Great reliance has been placed by the landlord on *Popatlal Ratansey v. Kalidas Bhavan*, AIR 1958 Bom 1, where a Division Bench of the Bombay High Court, following the view of two learned Single Judges of the same court, held that it was open to the landlord and the tenant to agree to a certain sum as the standard rent of the premises and that a consent decree passed upon such agreement would operate as *res judicata* in a subsequent application by the same tenant for fixing the standard rent and would operate as an estoppel against the tenant. With great respect, the learned Judges do not appear to have given sufficient weight to the consideration that the fixation of the standard rent affects not merely the existing landlord and tenant but future landlords and tenants of the same premises. In *Chapsi Umersi v. Keshavji Damji*, AIR 1921 Bom 224 (2) the Bombay High Court observed that 'the standard rent is to be fixed in relation to premises and not in relation to persons and can, therefore, be only one and not varying as between different individuals'. In England, the view was taken in *King v. York*, 1919 WNKB 59 that 'the Act applied to houses, not to persons. The Act operated in rem not in personam. It stereotyped the rent of a house'. The principle of estoppel by judgment can be legitimately invoked in a case where the decree is within the jurisdiction of the court. If the tribunal is required by the statute to exercise its jurisdiction in a certain manner and in no other for the purpose of deciding the controversy, an agreement between the parties representing a different manner of deciding the dispute cannot be made the basis of the tribunal's decision. Further, if the dispute is one the decision on which can bind persons not parties to the dispute an agreement between the parties cannot supply a basis for the decision. Where legislation is enacted in the general interests of the public, a plea of estoppel will not be sustained. In *Griffiths v. Davies*, (1943) 1 KB 628 the doctrine of estoppel by judgment was not applied against a tenant. The ground taken was that the result would be to compel a court to give a judgment which it was by statute prohibited from giving. One of the Lord Justices observed:--

'The standard rent is a sum which it is possible to fix by a calculation made in accordance with the Acts, and that standard rent cannot be altered by any admission or omission on the part of the tenant.'

This case was cited before the learned Judges in Popatlal Ratansey, AIR 1958 Bom 1 (supra) and they distinguished it on the ground that the relevant statutory provision in (1943) 1 KB 628 (supra) operated 'notwithstanding any agreement to the contrary'. With great respect, it seems to me that the decision turned on considerations which had no reference to the non obstante clause. I find myself in agreement with the view taken by the Calcutta High Court in *Miss E. Scott v. M/s. Residence Ltd.*, AIR 1956 Cal 606 and by the Punjab High Court in *Niranjan Singh v. Murti Shri Bhagwan Ram*, AIR 1956 Punj 95. To the extent that the view taken in Popatlal Ratansey, AIR 1958 Bom 1 (supra) is at variance with the considerations mentioned above I find myself, with respect, unable to agree with it.

10. An estoppel by judgment arises if the controversy has been finally determined by a competent court. The judgment must be one within its competence. If the decision of the court is a nullity there can be no basis for raising the plea of estoppel. As in my opinion the earlier order of the Controller was made in terms of the statements of the parties and no enquiry at all was held by the Controller as to what should be the fair rent of the building, the earlier order of the Controller fixing the fair rent was not the kind of order contemplated by Section 4 (1). It was an order beyond the jurisdiction of the Controller. The statute required him to make an enquiry and exercise his judgment in the matter. He did not do so when he adopted the figure named by the parties. His order is a nullity. In the circumstances, it was open to the petitioner landlord (sic) (respondent tenant) to ignore the earlier order and apply afresh for fixation of the fair rent. The plea of estoppel by judgment is not available to the respondent tenant (sic) (petitioner landlord). For this reason, I find myself unable to agree with *Shiv Lal v. Shori Lal*, (1962) 64 Pun LR 467 and *Sat Parkash v. Par-kash Chand*, Civil Revn. No. 648 of 1960 decided by G. D. Khosla, C. J. (Punj). The petitioner relied on *Sailendra Narayan Bhanja Dec v. The State of Orissa*, AIR 1956 SC 346 where the Supreme Court has laid down that a plea of estoppel can be founded on a compromise decree. While that is so, the principle in my opinion cannot operate where the

compromise decree itself is a nullity. At the same time, it may be added that in a later case *Pulavarthi Venkata Subba Rao v. Valluri Jagannadha Rao*, AIR 1967 SC 591 the Supreme Court held that a compromise decree could not operate as *res judicata* inasmuch as it did not represent a decision by the court but merely the acceptance by it of something to which the parties had agreed.

11. Learned counsel for the petitioner has drawn our attention to *K. K. Chari v. R. M. Seshadri*, AIR 1973 SC 1311 in support of the proposition that even where there was a compromise order it could fall within the jurisdiction of the Controller. The facts of that case show that the court was satisfied from the material on the record and the conduct of the parties that one of the statutory grounds for eviction of the tenant was made out, that it applied its mind to the facts and circumstances relevant to that ground and then made the order of eviction. The court did not, as in the present case, refrain from exercising its own judgment and determining the point of controversy between the parties. Besides, it is worthy of note that the controversy between the parties in *K. K. Chari (supra)* concerned themselves alone, that is to say, whether the landlord was entitled to an order of eviction against the tenant. It was not a case where the determination of the issue bound subsequent landlords and tenants, as in the case of fixation of the fair rent.

12. Reliance has also been placed on *M/s. Silver Screen Enterprises v. Devki Nandan Nagpal*, 1970 Ren CJ 98 = (AIR 1970 SC 669). In that case the Supreme Court held that if a settlement arrived at outside court required that an appeal pending in court should be dismissed, the court was within its competence in dismissing that appeal. There was no contention in that case that the settlement was inoperative and could not be acted upon.

13. At this stage reference may be made to the view taken by a Division Bench of the Punjab High Court in *Baij Nath v. F. Monga Lal Murari Lal*, (1966) 68 Pun LR 732. The learned Judges did not agree with the view taken by the same court earlier in *Sat Parkash*, Civil Revn. No. 648 of 1960 (Punj.) (*supra*) and *Hindu Rao v. Shori Lal*, ILR (1962) 2 Punj 108 and distinguished the decision in *Popat Lal*, AIR 1958 Bom 1 (*supra*) on the ground that the provisions of the Bombay Act were not on all fours with those of the Punjab Act where the basic rent was required to

be determined first by determining what was the rent of the same or similar premises in the year 1938 and then fixing the fair rent by making additions thereto. Falshaw, C. J. who spoke for the court observed that no attempt whatever had been made to determine the fair rent in the manner prescribed by the statute in the previous proceeding and there was no determination of the fair rent at all since the order of the Controller was based upon the agreement of the tenant. He opined that no question of res judicata could arise where the matter had not been judicially determined. The learned Chief Justice also took the view that no question of estoppel could arise in such a case and said:--

'The Punjab Act..... is intended mainly for the protection of tenants.....the Act protects tenants both from ejection and the liability to pay excessive rent..... a tenant cannot be allowed to accept as the fair rent a rent which is in excess of the fair rent as it would be determined under the provisions of Section 4 of the Act. It is to be borne in mind that the rent is not for the tenant but for the premises and once the fair rent is determined it will remain the fair rent for those who succeed the present incumbent.'

It was further pointed out that an agreement between the parties as to the fair rent would be against the public policy incorporated in the Act which protected tenants against payment of excessive rent and required the fair rent to be determined on enquiry by the Controller. The court held that a compromise arrived at in the previous proceeding for fixation of fair rent would not bar a second application by the tenant. This decision was followed by the Punjab and Haryana High Court in *Raj Kumar Jain v. Girja Shanker*, 1971 Ren CJ 899.

14. It is urged for the petitioner, relying on *Sailendra Narayan Bhanja Deo*, AIR 1956 SC 346 (supra), that in considering the order of the Controller fixing the fair rent it must be taken that every step required by law in the process of the determination of the fair rent was satisfied. That submission cannot be accepted when it is clear that the essential requirement of Section 4 (1), that is to say, an enquiry by the Controller was wanting when he fixed the fair rent. Reference was made by learned counsel for the petitioner to *Autar Singh v. Sohan Lal*, (1969) 1 Ren CR 648 = (AIR 1970 J & K 26) (FB) where a Full Bench of the Jammu and

Kashmir High Court laid down that an order of the court fixing the fair rent on the basis of an agreement between the parties operated as an estoppel against a subsequent application for fixation of fair rent. The learned Judges proceeded on the consideration that the statutory provision in question did not contain any express prohibition against the fixation of fair rent by consent of the parties and that no question of public interest was involved. The learned Judges relied on Popatlal, AIR 1958 Bom 1 (supra) and also on Daulat Ram Sawhney v. Trilokinath, AIR 1962 All 147. It does not appear that the question whether an order of the Controller fixing the fair rent entirely on the basis of an agreement between the parties is a nullity was raised before the court. The question was also not raised before the Allahabad High Court in Daulat Ram Sawhney (supra) which was a case of rent being agreed to between the landlord and tenant and not for fixation of the fair rent. Under the U. P. (Temporary) Control of Rent and Eviction Act it is open to a tenant to agree to payment of rent in excess of reasonable rent. Our attention was invited to Lachoo Mal v. Radhye Shyam, AIR 1971 SC 2213 where the Supreme Court laid down that it was open to the landlord to waive the benefit of exemption from the U. P. (Temporary) Control of Rent and Eviction Act in respect of constructions made after January 1951. It is important to note that the decision rested on the consideration that the action of the landlord did not involve any question of policy, much less public policy, and therefore the agreement was neither illegal nor unlawful nor did it affect the provisions of any law within the meaning of Section 23 of the Contract Act. As regards Bhagat Ram v. Smt. Lilawati Galib, ILR (1972) 1 Him Pra 345 = (AIR 1972 Him Pra 125) placed before us by the learned counsel for the petitioner that was a case where a learned Single Judge of this court held that it was open to a tenant to waive the benefit conferred by Section 13 of the East Punjab Urban Rent Restriction Act of 1949 and by Section 14 of the Himachal Pradesh Urban Rent Control Act, 1971 and agree to vacate the premises. The case was carried in appeal in Shri Bhagat Ram v. Smt. Lilawati Galib, ILR (1972) 1 Him Pra 85 = (AIR 1973 Him Pra 57) but the point was not considered there. The facts of the case distinguish it from the one before us, for the reason that any decision there between the land-Lord and tenant could not by its nature affect future tenants. Udhoo Dass v. Prem Prakash, AIR 1964 All 1 (FB) was also cited before us. The Allahabad High Court held that a

contract of tenancy in contravention of Section 7 (2) of the U. P. (Temporary) Control of Rent and Eviction Act requiring a landlord to let to any person accommodation which has fallen vacant or is about to fall vacant was not void under Sections 12 and 23 of the Contract Act. The case is clearly distinguishable. It did not raise a question of fixing the fair rent which, as it seems to me, binds future Landlords and tenants in relation to the same premises.

15. Upon the aforesaid considerations I am of the view that the earlier order of the Controller fixing the fair rent in terms of the compromise between the parties is void and the doctrine of estoppel by judgment cannot be invoked against the respondent tenant.

16. It was observed by the Supreme Court in *Kelavarthi Venkata Subba Rao*, AIR 1967 SC 591 (*supra*) that a compromise decree might create an estoppel by conduct. The question then is whether the doctrine of estoppel by conduct can be invoked upon the facts of the present case. The facts show that in the earlier proceeding for fixation of rent the parties agreed that the fair rent was Rs. 75 permonth. As the order of the Controller based upon that agreement is void the matter must in Law be considered to rest at the stage of agreement between the parties. Now that agreement cannot fix the fair rent; it is only an order of the Controller which can do so. Therefore, this is a case where no fair rent can be said in law to have been previously fixed. That being so, no question arises of the respondent tenant being estopped by his conduct from challenging the order fixing the fair rent. It will be noticed that the doctrine of estoppel by conduct has been invoked against a challenge to the order fixing the fair rent.

17. In my opinion, it is open to the Rent Controller to entertain the subsequent application of the respondent tenant and to take proceedings for fixing the fair rent of the premises. The Appellate Authority is right in taking that view.

18. The next point to consider is whether when fixing the fair rent the Controller is bound to follow the procedure and adopt the criteria set out in Clauses (a) and (b) of Sub-section (2) of Section 4 of the Act. It seems to me that he is bound to do so. The statute has imposed a duty on him to fix the fair rent upon enquiry made by him, and how that enquiry is to be made is indicated by Clauses (a) and (b). In all

cases where both clauses can be applied, the Controller has no option but to apply them. Where only Clause (a) or Clause (b) can be applied, it is that clause which must be applied. It is pointed out that there may be cases where neither Clause (a) nor Clause (b) can be applied. In an exceptional case it may be that the building in question is not matched by similar accommodation in the locality, but it will be a very rare case indeed where the building has not been shown in the pro-property tax assessment register of the local body having jurisdiction in the area. In the event that neither Clause (a) nor Clause (b) can be applied, it is open to the Controller to adopt his own basis for fixing the fair rent. So long as that basis is reasonable, no fault can be found with it.

19. Having indicated what the law is in respect of Clauses (a) and (b) of Sub-section (2) of Section 4 of the Act, I think it will be appropriate to send the case back to a learned Single Judge for decision and leave the question to him to decide whether the impugned order of the Appellate Authority is in compliance with the law and whether its finding that Rs. 40 per month represents the fair rent can be sustained.

20-22. Accordingly, I order that the case will now be placed before a learned Single Judge for disposing of it in accordance with law and in the light of the observations set out above.

Chet Ram Thakur, J.

I agree.

D.B. Lal, J.

This case has been referred to a Full Bench constituting three Judges by a Division Bench of Delhi High Court (Himachal Bench) under its order dated July 20, 1970. Although the learned Judges of the Division Bench have not formulated the points of reference, yet these can easily be deduced from their order. The points of reference are :--

(1) Whether there is anything in Section 4 of the East Punjab Urban, Rent Restriction Act, 1949 which prevents the Rent Controller from fixing fair rent of a premises in terms of a compromise arrived at between the parties in respect of the same premises in a previous proceeding instituted before the Rent Controller; and

(2) Whether the Rent Controller while fixing the basic rent for a premises under Section 4 (2) of the said Act has to take into consideration both the conditions (a) and (b) enumerated therein and only thereafter he can determine the fair rent for the premises.

23. The facts giving rise to the present reference need now be stated. Surjit Singh landlord applied for eviction of Pritam Singh tenant from certain premises located in the building known as Lyndhurst, West Simla. In return Pritam Singh tenant filed an application under Section 4 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred to as the Act) for determination of fair rent. During the course of these proceedings a compromise was arrived at before the Rent Controller. Pritam Singh gave his statement (Ex. R-2) that he was satisfied that the agreed rent of Rs. 75 per month was 'also the fair rent of the premises in dispute.' Accordingly he prayed for the fixation of that rent as the fair rent for the premises. This statement was given on June 3, 1967 and the Rent Controller signed the statement. On the same day Surjit Singh landlord also stated (Ex. R-3) that after hearing the statement of Pritam Singh he was satisfied that the fair rent was Rs. 75 per month and that the same should be fixed in the case. The statement was signed by Surjit Singh landlord and was countersigned by the Rent Controller. Again, on the same day the Rent Controller wrote down the following order (Ex. R-4):--

'In view of the above statements of the parties, I fix the fair rent of the premises in dispute at Rs. 75 p.m. The file be consigned to record room.

Rent Controller.

3-6-67.'

It is also admitted on all hands that the petition for eviction, presumably under Section 13 of the Act, was withdrawn by the landlord Surjit Singh.

24. It appears the parties were again drawn to a conflict subsequently. Pritam Singh again moved an application under Section 4 of the Act for reduction of rent from Rs. 75 per month to Rs. 20 per month and he alleged various grounds for such reduction. Surjit Singh landlord pleaded, *inter alia*, that there was a compromise in the previous application under Section 4 and the rent was already determined which cannot be altered, and the previous order of the Rent Controller was *res judicata* as well as applied as estoppel against the tenant. The plea prevailed before the Rent Controller and the application of the petitioner under Section 4 was dismissed. He came in appeal before the Appellate Authority (District Judge, Simla). The Appellate Authority, however, allowed the appeal and held on the basis of 1966-68 Pun LR 732, that it was for the Rent Controller to have determined the fair rent and any compromise arrived at between the parties was not binding. Since the Rent Controller had not given a finding on the fair rent, the learned Appellate Authority went into that question taking regard to the evidence adduced by the parties. In his opinion Rs. 40 per month was a fair rent for the premises which he determined under Section 4 of the Act. Surjit Singh felt aggrieved of that decision and preferred the present revision before the High Court.

25. A learned Single Judge of Delhi High Court, before whom the revision was set down for hearing, was of the view that a Full Bench decision of Allahabad High Court in AIR 1962 All 147 and also a Full Bench decision of Jammu and Kashmir in AIR 1970 J & K 26 have taken a different view 'in the matter. The learned Judge also referred to Shiv Lal v. Shori Lal, 1962-64 Pun LR 467 which followed a decision of Bombay High Court in AIR 1958 Bom 1 and these decisions also held the same view. According to these decisions, a previous compromise was binding on the tenant and could be enforced by the Rent Controller. Accordingly, the learned Judge preferred to refer the question to a Division Bench.

26. Subsequently the revision petition was listed before a Division Bench of that High Court consisting of Hardayal Hardy and T. V. R. Tatachari, JJ. (as they then

were). In the opinion of the Division Bench there was not much of difference between the provisions of the Bombay Act and the Punjab Act and so, the decision in Popatlal Ratansey, (AIR 1958 Bom 1) (supra) could not be distinguished as was done in Baij Nath (supra). Besides that, the learned Judges also found that in Autar Singh (supra) the case of the Division Bench--Baij Nath, ((1966) 68 Pun LR 732) (supra)--was not considered. With these observations the learned Judges of the Division Bench referred the aforementioned questions to a Full Bench.

27. Before I consider the contentions advanced by the respective parties, I think it necessary to give a peep to the historical background of the rent legislation. In that connection I cannot do better than quote a passage from a Supreme Court decision in Nagindas Ramdas v. Dalpatram Ichharam, (1974) 1 SCC 242 = (AIR 1974 SC 471):--

'The strain of the last World War, Industrial Revolution, the Large scale exodus of the working people to the urban areas and the social and political changes brought in their wake social problems of considerable magnitude and complexity and their concomitant evils. The country was faced with spiralling inflation, soaring cost of living, increasing urban population and scarcity of accommodation. Rack renting and large scale eviction of tenants under the guise of the ordinary law, exacerbated those conditions making the economic life of the community unstable and insecure. To tackle these problems and curb these evils, the Legislatures of the States in India enacted Rent Control Legislations.'

The preamble of all the State legislations have a striking similarity. I am dealing in this case with the [East Punjab Urban Rent Restriction Act, 1949](#) and its preamble reads:--

'An Act to restrict the increase of rent of certain premises situated within the limits of urban areas, and the eviction of tenants therefrom.'

What clearly emerges from the preamble is that the legislation is for the benefit of tenants so that they are not easily evicted from their tenancy and the rents which they pay are what they have called 'fair rents'. The point at issue is, if a tenant foregoes the benefit entailed to him under the Act, and if without any influence

being brought to bear upon him, enters into a compromise and agrees for a fair rent, is he debarred from reagitating the matter in a subsequent proceeding

28. As to the factual position which has emerged in this case there appears to be no dispute. Pritam Singh tenant in the previous proceeding which was for fixation of rent under Section 4 and also eviction under Section 13 of the Act, was made aware of the pleadings of the landlord. The rent of Rs. 75 per month was justified on such pleadings. After considering the pros and cons of the situation the tenant Pritam Singh gave out categorically that he was satisfied that Rs. 75 per month was the fair rent. The landlord Surjit Singh accordingly agreed, and the Rent Controller 'in view of the statements of the parties' fixed the fair rent at Rs. 75 per month. Could that order of the Rent Controller be considered to be under Section 4 of the Act so that it was binding on Pritam Singh in subsequent proceeding

29. I am concerned with Section 4 and as there is some cogency with Section 13 as the proceedings before the Rent Controller were composite, one for fixation of rent under Section 4 and the other for the eviction under Section 13, I need extract the relevant portions of both these Sections:--

'4. (1) The Controller shall, on application by the tenant or landlord of a building or rented land, fix the fair rent for such building or rented land after holding such inquiry as the Controller thinks fit.

(2) 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) (Provided that, notwithstanding anything contained in Sub-sections (3), (4) and (5), the fair rent for any building in the urban area of Simla shall not exceed the basic

rent).'

'13. (I) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947. as subsequently amended.'

It will be noticed after a comparison of the two Sections that in Section 4 such words as 'except in accordance with the provisions of this section' are not to be found as were incorporated in Section 13. Apart from that in proviso 2 and proviso 3 to Sub-section (3) (iv) of Section 13 there is an embargo placed on the landlord to apply a in for possession of the building or rented land for which a similar petition was entertained and possession was already obtained of another residential building or rented land. Besides this, Section 13 deals with eviction and as such it is more complicated and strict in application. Section 4 merely deals with determination of fair rent, and in a defined situation if the tenant considers upon the pleadings of Parties or upon some evidence adduced which may even consist of admissions made by parties that a particular figure is the fair rent. He can very well allude to that figure and the Rent Controller would be justified to determine the fair rent with reference to that figure. While, in a case of eviction under Section 13, some more evidence is needed and the satisfaction of the Controller has to be more stringent because otherwise the tenant is likely to be thrown on the road without any accommodation. Thus the duty cast on the Controller under Section 13 is more arduous and complicated as compared to the duty cast upon him under Section 4. This has certainly a great relevance to the enquiry which I am supposed to hold for considering the nature of compromise as to fixation of rent arrived at between the parties so that such a compromise is held valid and binding upon them in a subsequent proceeding.

30. I will then come straight to the case law which is available on this subject.

31. The first case is AIR 1958 Bom 1. In that case an application for eviction as well as an application for determination of standard rent were filed. Against the

decision arrived at, two appeals were preferred and there was a compromise between the Parties in the two appeals. The standard rent was enhanced from Rs. 40/- per month to Rs. 91/- per month and the application for eviction was withdrawn by the landlord. Subsequently the tenant failed to pay the rent and a suit was filed for his eviction and also for payment of arrears of rent. In that suit the plea was taken that the compromise was a nullity because the Controller was to formulate his independent opinion as to the fixation of fair rent under the statute. As he acted on the compromise and decided the appeals, he did not perform his duties and the decree was not binding upon the parties. The Division Bench held that the previous compromise was *res iudicata* and also created estoppel by conduct and as such was binding upon the tenant. According to their Lordships, the tenant having once given the Court to understand, to the satisfaction of the Court, that he considered the rent proposed by the landlord during trial or appeal to be a just and reasonable standard rent which was acceptable to him and having invited the Court to decide the question accordingly and incorporate 'the decision in its decree, it would not be open to him to say subsequently, as between the same parties and in respect of the same premises, that the previous decision of the Court would not bind him. Their Lordships noted the fundamental distinction between an agreement which is embodied in a lease and the agreement which is embodied in a consent decree. The latter was a decision of the Court after its own satisfaction as to the payment of standard rent. According to their Lordships, there was nothing in the Act which prevented a tenant from abandoning the dispute, at any stage of a proceeding and agreeing that the rent proposed by the landlord should be decided to be the proper standard rent. Unless a compromise is associated by fraud, coercion or collusion, it would not be against public policy to construe it as constituting estoppel even by judgment. This was the view held by the learned Judges in that case. There was nothing in the Bombay statute and so it is in Section 4 of the Act that a fair and just settlement of rent before the Controller by way of compromise would not be binding on the tenant. There is nothing in the statute to deviate from that principle. The legislature never intended to exclude such a settlement of dispute as to standard rent by an agreement between the parties at any stage of the proceeding. It was also held that the Bombay Act never made it obligatory for the Court to decide the dispute' in each

and every contingency. Similarly there was nothing in the Bombay Act prohibiting the tenant from waiving or abandoning any part of his plea and accepting the standard rent proposed by the landlord. Their Lordships also noted the question regarding public policy and in their opinion there was nothing against public policy in accepting such a solution arrived at between the parties.

32. In 1962-64 Pun LR 467 a learned single Judge of Punjab High Court was considering a case where a petition for fixation of standard rent was moved and was subsequently compromised. A decree followed on the basis of the compromise. Thereafter an appeal was filed in the same decree and the question arose as to whether the compromise was binding between the parties. The learned Judge held that the tenant was not at liberty to reprobate what he had already approbated. It is true that the Act enjoins a Rent Controller to settle a dispute with regard to standard rent between the landlord and the tenant but it cannot be inferred therefrom that the tenant is prevented from abandoning the dispute at any stage of the proceeding and agreeing that the rent proposed by the landlord should be determined as the proper standard rent. The learned Judge also noted a distinction between an agreement embodied in a consent decree and an agreement embodied in a lease. The former has a binding effect as it is arrived at before the Controller who has also something to do with it.

33. In AIR 1962 All 147 which is a Full Bench decision of that Court, it was held that an agreement for fixation of rent before the allotment order under Section 7 (2) of the U. p. Act would nonetheless be binding on the parties. There was ejection decree against the tenant and in execution thereof a compromise was arrived at and rent was fixed between the parties. Subsequent to the agreement, an allotment order was passed under Section 7 of the U. P. Act. The argument was raised that the compromise was invalid because it contravened the provisions of the Act. It was held that the agreement was binding on the parties as there was no prohibition against such agreement for fixation of rent in the Act itself. The aforesaid Full Bench decision of Allahabad High Court was followed in another Full Bench decision of that Court of which the report is AIR 1964 All 1 (FB). A contract of tenancy was entered into in violation of order under Section 7 (2) of the U. P. Act. It was held that the contract of tenancy was valid and was not forbidden by

law. None of the provisions of the Act was defeated because of such an agreement culminating in the contract of tenancy. In this manner the compromise independent of the Act was held valid and binding between the parties.

34. Yet another Full Bench decision of Jammu and Kashmir High Court took a similar view in 1969 Ren CR 648 = (AIR 1970 J & K 26) (FB). In that case the tenant applied for fixation of rent. A compromise took effect between the parties and the order was passed by the Controller in terms of the compromise. Thereafter the tenant filed another application for fixation of rent. A plea was taken that the previous compromise decree was *res judicata* and also created estoppel between the parties. The objection was sustained by the Court. It was held that there was estoppel by conduct as the tenant dissuaded the Controller from following the procedure and there was no prohibition entailed in the Jammu and Kashmir Act prohibiting the parties from arriving at a compromise. It was further observed that the provision of the statute was meant for the benefit of the tenants and when the tenant agrees there is estoppel by conduct. In such a situation no other public interest is involved except that of the tenant. There could definitely be a waiver of that benefit by the tenant. It was not a question of public interest created in a third party so that the tenant could not waive or abandon it. As the tenant refused to prove the conditions set out in the section, the Controller was free to exercise his powers and pass a decree in accordance with the compromise. The following passage of their Lordships will be of great assistance:--

'The section no doubt prescribes a particular mode and sets out a detailed standard for fixing fair rent of a house or shop taking into consideration various factors, for instance, the price of the land included in the house, the date of construction etc. There is, however, no provision which either impliedly or expressly prohibits the parties from fixing a fair rent by agreement, nor do these provisions prevent the Controller from giving effect to such an agreement. In these circumstances it seems to us that the doctrine of estoppel against Statute cannot be called into aid in the instant case.'

35. In 1970 Ren CJ 98 = (AIR 1970 SC 669) the Supreme Court was dealing with a case under Section 13 of the Punjab Act. The landlord applied for eviction of the

tenant. The application was dismissed by the Rent Controller. The landlord appealed against the decision. An application for fixation of fair rent was also pending. In appeal a compromise was effected between the parties and the application for fixation of rent was withdrawn. Thereafter a revision was filed to High Court and the High Court refused to acknowledge the compromise and denied the relief to the tenant. The Supreme Court disagreed with the High Court and held that the appellate Court was not helpless. Under Order 23, Rule 3 of the Civil Procedure Code the appeal itself could be dismissed because it was not entertainable in view of the compromise. It was held that once a dispute is validly settled out of Court, it is open to a party in litigation to move the Court to pass a decree in accordance with the compromise.

36. In, 1971 Ren CR 320 = (AIR1971 SC 2213) the Supreme Court was dealing with the U.P. Act in which a provision existed that buildings constructed after 1951 were exempt from the application of the U. P. Control of Rent and Eviction Act. The landlord renovated a building after 1951 so that the U. P. Act did not apply in the case. Nevertheless a compromise was arrived at between the parties that the Act would apply and the landlord waived his benefit under the Act. In a subsequent dispute between the parties, the landlord filed a suit for a relief under the U. P. Act. The Supreme Court held that the provision was meant for the benefit of the landlord and he could waive that benefit. It was further observed that no question of public policy was involved.

37. In ILR (1972) Him Pra 345 = (AIR 1972 Him Pra 125) I was called upon to decide a case which 'referred to Section 13 of the Punjab Act in which, as a result of compromise, six months' time was granted to vacate the premises. The landlord instituted a regular suit for ejectment which was decreed in the trial Court. The first appellate Judge dismissed the appeal and thereafter the case came to High Court in second appeal. In the second appeal a compromise was effected and six months' period was granted to the tenant to vacate the premises. By that time the new Act of 1971 had come into force and Section 14 of that Act was pleaded as a bar to ejectment. It was held by me that the tenant could contract out of that condition and he was bound to vacate after the expiry of six months. This decision was upheld by a Division Bench of which the report is ILR (1972) Him Pra 85 =

(AIR 1973 Him Pra 57).

38. In 1973 Ren CR 342 = (AIR 1973 SC 1311) the Supreme Court was considering the provisions of the Madras Act. A decree for eviction was passed as a result of compromise arrived at between the parties. The landlord led evidence but he was not cross-examined by the tenant. That apart, the tenant also withdrew his defence. The satisfaction of the Controller could be gathered from the facts already brought on the record. It was held that the satisfaction of the Controller or Court was pre-requisite for the order of eviction. Order 23, Rule 3. Civil Procedure Code, was applied or at any rate its principles were invoked and their Lordships held that the compromise decree was binding between the parties. The following passage will be revealing in that regard :--

'His withdrawal of the defence, after the plaintiff had given evidence and filed exhibits in support of his plea, clearly shows that he accepted as true the claim of the landlord that he requires the premises bona fide for his own occupation. He has accepted the position that the landlord has made out the statutory requirement, entitling him to ask for possession of the premises. It is this unconditional withdrawal of the defence regarding the statutory condition pleaded by the landlord, and the compromise following it, that was accepted by the Court and a decree for eviction passed thereon. Under those circumstances, when the tenant has accepted the plea of the land-lord, in our opinion, it is futile to hold that the Rent Controller must again embark upon an enquiry regarding the requirement of the landlord being bona fide and adjudicate upon the same. Of course, if there is a dispute between the landlord and tenant, the Court must decide the matter and adjudicate upon the plea of the landlord.

Satisfaction of the Court, which is no doubt a pre-requisite for the order of eviction, need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it, before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based.'

What their Lordships stated for an order of eviction is equally applicable for an order of fixation of rent. The satisfaction of the Controller has to be there and the order fixing rent itself may not depict that satisfaction. If there was evidence aliunde that order, and the Controller applied his mind to that evidence, the compromise would be binding.

39. In (1974) 1 SCC 242 = (AIR1974 SC 471) their Lordships were considering the Bombay Act in which a suit for ejectment and arrears of rent was filed. The plea taken was of non-payment of rent and bona fide need of the landlord. During the course of the suit a compromise was effected between the parties and a decree followed on the basis of that compromise. The tenant had also filed an application for fixation of standard rent. As a result of compromise the tenant had admitted that he would be liable to pay rent at a certain rate per month. By admitting to pay the arrears of rent and mesne profits at the specified rate, their Lordships held that the tenant had clearly withdrawn or abandoned his application for fixation of standard rent. That admission had certainly a bearing upon the eviction and the tenant could be held to have fallen in arrears so that he could be evicted under the Bombay Act. Their Lordships approved their previous decision in K. K. Chari, (AIR 1973 SC 1311) (supra). Their Lordships no doubt emphasised that even parties cannot by their consent confer jurisdiction on the Rent Court to do something which, according to the legislative mandate, it could not do. Nevertheless, if at the time of passing of the compromise decree there was some material before the Court on the basis of which the Court 'could be prima facie satisfied' about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement itself,

40. In the end, a passing reference may be made to two unreported cases of Punjab High Court Civil Revn. No. 648 of 1960 (Sat Parkash v. Parkash Chand) decided by G. D. Khosla. C. J. on 6-4-1961, and Civil Revn. No. 733 of 1960, (Ram Singh v. Fanna Lal) decided by D. K. Mahajan, J. on 9-10-1961. In the former revision, an application was moved under the Punjab Act for fixation of rent

which was compromised and the rent was fixed. Thereafter another application was moved and the objection was taken that the previous compromise was not binding between the parties. It was held that the compromise order of the Rent Controller was not only *res iudicata* but also created estoppel between the parties. The learned Chief Justice noted the distinction between an agreement embodied in a lease and an agreement resulting in consent decree. A similar view was taken in the latter revision.

41. The learned counsel also relied upon two Supreme Court cases on the principle of estoppel by conduct. These are: AIR 1956 SC 346 and AIR 1967 SC 591. In the first case a suit was filed against the Government claiming title over riverbed. The suit was dismissed and an appeal was filed by the plaintiff, and in that appeal a compromise was effected between the parties. Concessions were given to both the parties. Thereafter another suit was filed by the plaintiff and it was held that there was estoppel which emerged out of the previous compromise decree. The consent decree operated as estoppel by judgment. In the second case it was, however, held that the decree passed on compromise may not be a decision by Court and hence it does not operate as *res iudicata* but nevertheless such a decree creates an estoppel by conduct.

42. Now I shall proceed to take UP the case law on behalf of the tenant-respondent, which was referred to in the case for sustaining the other view. In *Ladha Ram v. Khushi Ram*, 1955-57 Pun LR 188 a learned Judge of Punjab High Court held that a private agreement cannot be permitted to circumvent the provisions of the Punjab Rent Restriction Act, 1949. According to the learned Judge, the previous judgment fixing the fair rent on the basis of the admission by the tenant cannot operate *res iudicata*.

43. In 1966-68 Pun LR 732 the learned Judges were considering a case of fixation of rent under the Punjab Act. The tenant had filed an application for fixation of fair rent. The same was dismissed because an agreement was reached between the parties and the rent was fixed. Thereafter the tenant again applied for fixation of rent which was reduced. Before a revision in the High Court the plea was taken that the previous order as a result of compromise was *res iudicata* or estoppel

between the parties. It was held that there was no determination of fair rent and hence no *res iudicata* could be pleaded. As there was contravention of statute and violation of public policy, the principle of estoppel was not applied. The learned Judges distinguished *Popatlal Ratansey*, (AIR 1958 Born 1) (*supra*) by saying that the provisions of the Bombay Act were not on all fours with the Puniab Act. With respects, the observation may not be strictly correct. As observed in the latest decision of their Lordships of the Supreme Court in *Nagindas Ramdas*, (AIR 1974 SC 471) (*supra*), if there was no material before their Lordships in *Baij Nath*, (1966) 68 Pun LR 732 (*supra*) the decision was correct. However, if some material could be spelled out for the satisfaction of the Rent Controller, with respects, the decision is not correct.

44. In 1971 Ren CJ 899 (*Puai*) a learned single Judge of Punjab High Court while dealing with a case under Section 4 of the Punjab Act, held that, a fair rent fixed by agreement of parties will not be a fair rent fixed by the Court and hence the landlord charging in excess of that rent cannot be prosecuted. That case brings out in bold relief that the controversy before the Court was relating to prosecution of the landlord. The provision being penal was required to be strictly construed and hence that view was taken.

45. In *M/s. Sarvedshak Arya Pratinidhi Sabha v. M/s. Raniit Singh and Sons*, 1974 Ren CR 58 a learned single Judge of Delhi High Court similarly held that in a case for application of ejectment under Delhi Act, the previous compromise between the parties whereby the earlier suit for ejectment was dismissed, was not binding by applying the doctrine of *res iudicata* or estoppel as the previous decision was not made on merits. It was explained that the doctrine of estoppel was not applicable because the necessary ingredients of Section 115 of the Evidence Act were not available. This decision too is not helpful because in the present case the landlord did withdraw his application of eviction as a result of the compromise fixing the fair rent. In that manner he converted his position to his detriment taking regard to the representation made by the tenant whereby the rent was fixed at Rs. 75/- per month.

46. In *Bahadur Singh v. Muni Subrat Dass*, (1969) 2 SCR 432 their Lordships were considering a case of award which was arrived at after arbitration. The landlord was not a Party to the arbitration. The tenants were to be evicted as a result to the award. At the stage of their eviction a plea was raised that the Court had not satisfied the conditions for eviction as laid down in the Delhi and Ajmer Rent Control Act. It was held that unless the Court was satisfied with those conditions for eviction, the tenants could not be evicted. With respects to their Lordships, the landlord was not a party to the award and that was a material distinguishing feature. Apart from that, in view of the subsequent observations of their Lordships of the Supreme Court in *K. K. Chari*. (AIR 1973 SC 1311) (supra) and *Nagindas Ramdas*, (AIR 1974 SC 47D (supra) unless there was some material for the satisfaction of the Court to ask for eviction within the meaning of the statute the order could not be held to be valid. Since in this case such material was not forthcoming, the order of eviction was held to be invalid.

47. Similarly in *Kaushalya Devi v. K. L. Bansal*, (1969) 2 SCR 1048 = (AIR 1970 SC 838) their Lordships held that the decree of eviction under the Delhi and Aimer Rent Control Act, 1952 based on a compromise decree was a nullity as the compromise 'did not indicate that any of the statutory grounds mentioned in Section 13 of the Act existed' With respects to their Lordships, the distinguishing feature was that some material grounds should have existed on the record for the satisfaction of the Controller that the prescribed conditions were amenable to the landlord before he (tenant ?) could be evicted from the premises.

48. In *Ferozi Lal Jain v. Man Mal*, (1970) 3 SCC 181 = (AIR 1970 SC 794) their Lordships were considering a case where a suit for ejectment under the Delhi and Aimer Rent Control Act was compromised between the parties. In a subsequent proceeding enforcing the corn-promise, it was held that the decree was not executable as it offended Section 13 of that Act. The jurisdiction of the Court depended upon its satisfaction that one or more grounds mentioned in Section 13 were proved. With respects to their Lordships, the facts of the present case are more in conformity with *K. K. Chari*, (AIR 1973 SC 1311) (supra) and *Nagindaa Ramdas*, (AIR 1974 SC 471) (supra) and I am fortified with the ratio of these two cases.

49. A Division Bench of this Court in *Bansi Ram v. Kanshi Ram*. (Civil Revn. No. 53 of 1972, decided on June 19. 1974)(reported in AIR 1975 Him Pra 151 held that until the Court can be stated to have applied its mind for any of the conditions prescribed in Section 13 of the Act for eviction, the order made by the Court would be a nullity even though it was based on a compromise. Their Lordships were considering a case where eviction was sought on the basis of a compromise arrived at in a previous application for eviction in which time was granted to the tenant to vacate premises. It was found as a fact that at no stage the Rent Controller applied his mind to the question whether the grounds alleged by the landlord were satisfied. Before anything could be done the parties entered into a compromise. The terms of the compromise did not indicate that the tenant accepted as valid any of the grounds set out by the landlord. In those circumstances, relying on *Bahadur Singh* ((1969) 2 SCR 432) (supra): *Smt. Kaushalva Devi*, (AIR 1970 SC 838) (supra) and *Ferozi Lal Jain*, (AIR 1970 SC 794) (supra), their Lordships held that the compromise order was a nullity. With respects, the facts arising out of that case were different than the facts of the present case in which specific statements were given by both the landlord and the tenant, and the Controller also applied his mind because he considered those statements and since both the parties agreed that within the meaning of Section 4 of the Act Rs. 75/- per month was the fair rent, the order was made fixing that rent as fair rent. A resume' of the abovenoted case law, in my opinion, leads to certain well defined inferences. Before a fair rent can be fixed under Section 4 of the Act. the Controller has to satisfy conditions (a) and (b) of Sub-section (2) of that Section and there should be material before him to that effect. If specific pleadings are raised which are denied by the other party and instead of leading evidence a compromise is arrived at results in pointed statements by the tenant and the landlord signifying thereby that the tenant was satisfied with the pleading and in his opinion the fair rent was at a specified sum of money, the statement can be taken regard of by the Controller in fixing fair rent. It is not necessary that the satisfaction of the Controller should be so specified in the order itself. The requirements can easily be waived or abandoned by the tenant. His admission is binding on him as it is a judicial admission which is made before the Rent Controller and the order emerges out of it. There would be estoppel by conduct if

not res iudicata between the parties. There is nothing in the Act which might stand in the way of the tenant from waiving or abandoning any part of his plea. At any rate, the compromise should be within the scope of the section and no fraud or deceit or undue pressure should be there to besmear the conduct of any party. In other words the landlord should not have taken undue advantage of his position in arriving at the compromise. In my opinion, no such Plea can be sustained in the facts of the present case. As to public policy, the only ground pertinent is that the interest of the tenant has to be safeguarded. If the situation is well understood by the tenant and he waives or abandons his plea and indirectly admits what the landlord has stated for fair rent, the figure arrived at after compromise may be accepted by the Rent Controller.

50. It is not necessary in this case to consider the implication as to whether the rent is fixed qua the premises or qua the tenant. In the instant case, the tenant is the same and so are the premises. In my opinion, there would be an estoppel by conduct and the order of the Rent Controller is enforceable between the parties.

51. The other question with which this Bench is faced is relating to Clauses (a) and (b) of Sub-section (2) of Section 4 of the Act. As the language of this Section indicates, both these conditions have to be satisfied before the Rent Controller. In that connection, two cases were brought to our notice (both unreported): *M/s-R. S. Lehnul Mal Thakur Das v. Harish Chandra*, (Civil Revision No. 272 of 1952, decided by Bhandari, J. on 24-3-1954) (Punjab) and *M/s. Ram Loke Vishwanath v. Smt. Asha Bibi*, (Civil Revision No. 22 of 1967, decided by Hardaval Hardy (then J.) on 12-6-1967) (Delhi). In both the cases it was held that the conditions (a) and (b) are required to be satisfied before a decision is made for the fixation of fair rent under Section 4 of the Act.

52. In this connection, however, it may be noticed that if either of the two conditions cannot be physically satisfied because of the absence of any similar accommodation in the locality, or because of the absence of any entry in the property tax assessment register of the municipal, town or notified area committee or cantonment board, the case would be different. What is not physically possible to achieve cannot be enforced by the Court. The Question in the present case

seems to be purely academic and hence it may not be necessary to discuss it any further.

53. I would, therefore, answer question No. 1 in the affirmative and similarly question No. 2 also in the affirmative. The answer is, of course, confined to the facts and circumstances emanating in this case. The revision petition shall now be listed before a learned single Judge for decision according to law.

BY THE COURT

54. As in the opinion of the majority it is open to the Rent Controller to entertain the subsequent application of the respondent-tenant and to take proceedings for fixing the fair rent of the premises, we send the case back to a learned Single Judge for decision thereof leaving it to him to decide whether the impugned order of the appellate authority is in compliance with the law and whether its finding that Rs. 40/- per month represented the fair rent can be sustained. The case will now be placed before a learned Single Judge for disposing of in accordance with law and in the light of the observations contained in the majority judgment.

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