# Raja Bahadur Motilal Bombay Mills ... vs M/S. Govind Ram Brothers (P) Ltd., ... on 12 March, 1974

## Equivalent citations: 1974 AIR 1708, 1974 SCR (3) 577, AIR 1974 SUPREME COURT 1708, 1974 2 SCC 178, 1974 2 SCJ 264, 1974 SCD 536, 1974 3 SCR 577

## Author: Ranjit Singh Sarkaria

## Bench: Ranjit Singh Sarkaria, V.R. Krishnaiyer

PETITIONER:
RAJA BAHADUR MOTILAL BOMBAY MILLS LTD.AND ANOTHER

Vs.

RESPONDENT:
M/S. GOVIND RAM BROTHERS (P) LTD., ANDANOTHER.

DATE OF JUDGMENT12/03/1974

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
KRISHNAIYER, V.R.

CITATION:
1974 AIR 1708 1974 SCR (3) 577
1974 SCC (2) 178

ACT:
Bombay Rent Hotel and Lodging House Rates Control Act (57 of 1947), s. 11 (1) (e)--Applicability of Principle of apportionment.

HEADNOTE:
On September 1, 1940, the basic date under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the properties in dispute were parts of a larger entity comprised in a single lease. In March 1948, the respondent took a fresh lease of the properties in dispute, Thereafter, the respondent filed applications in the court of Small Causes for fixation of standard rent on the basis of apportionment. The trial court dismissed the applications holding that the premises, on account of structural alterations, had undergone such a change that they could no

longer be identified with the property that existed in September 1940; that the mode of determining the rent by apportionment was not available to the tenant; and that there was no sufficient material for ascertaining the standard ' rent in any other way. This order was set aside in revision and the case was remanded to the trial court. After remand, the trial court held that except with respect to three items of the premises in dispute, which were new Structures, there was no change of identity in the rest of the properties; that the new structures belonged to the respondent who was consequently liable to pay rent only for the land underneath; and on that basis, applying the principle of apportionment, fixed the standard rent. With respect to one item the trial court took into consideration the investment made by the landlord inclusive of the, cost of structures, estimated the value of the land underneath as in 1940, and fixed the standard rent on that basis. In revision it was held that the ownership of the three new structures also vested in the appellant, that he was entitled to get a fair return on that investment also and that the value of the land should be taken as in 1948 and not in 1940, and the standard rent was fixed on that basis. Further revisions to the High Court were dismissed with some arithmetical corrections.

In appeal to this Court,

HELD : The principle of apportionment is applicable to the fixation of standard rent of the premises in dispute and the principle had been rightly invoked and applied. [584 F-G]

(a) One of the primary objects of the Act is to curb exaction of extortionate rent. Section II (1) empowers the Court to fix the standard rent at such amount, as having regard to the provisions of the Act and the circumstances of the case, the Court deems just, If on the basic date the premises were not let out separately but were a part of the subject matter of a larger demise then s. 11(1)(c) comes into operation. If the standard rent of a whole was a specific amount it stands to reason that the standard rent of a part or sub-division of the whole should not ordinarily exceed that amount. Therefore, if in the circumstances of a given case the court feels that for securing the ends of justice and giving effect to the provisions and policy of the Act it is reasonably necessary and feasible to work out the standard rent by apportionment, it can legitimately do so. The language of the Act consistently with its scheme and in built policy is elastic enough to permit the fixation of standard rent on apportionment basis. At the same time, caution and circumspection are necessary in applying the principle to the particular circumstances of a case. For example, if after the material date, the landlord has made investments and improvements in the premises it will be just and reasonable to take that factor also into account and give him a fair return on such investment. Similarly, in apportioning the rent, the Court must also consider other

relevant circumstances and advantages enjoyed by the tenant of the premises of which the standard rent is in question as compared with the rest
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of the Property in which it is comprised.Further,where after the basic date the premises completely changed their identity, apportionment as a method of determining just standard rent loses its efficacy and may be abandoned altogether.[583E-585C]
Narayanlal Bansilal v. Venkatrao Anant Rai 67 Bom. L.R. 352, Bainbridge v. Congdon (1925) 2 K.B. 261 and Fox v. Bishop of Chester (1824) 2 B & C 635 at 655 referred to.
Dhanrajgirji Naraingirji v. W. G. Ward (1925) 27, Bom. L.R. 877 and Bata Shoe & Co. Ltd. v. Narayan Das Mullick and Ors. not approved.
(b)(1) The findings of the trial court before remand had been set aside in the order of remand, and there is nothing wrong or unfair or untenable in the method adopted by the lower courts after remand which would warrant interference by this Court in exercise of special jurisdiction under Art. 136 of the Constitution. [587D-G]
(ii) The question whether certain property has changed its identity after the basic date is largely one of fact. The factual conclusions arrived at by the revisional court and High Court are not shown to be perverse or manifestly unjust" It was with regard to the unchanged old properties that the High Court and the Revisional Court mainly adopted the method of apportionment. Even so, they allowed the landlord a fair return over the amount invested by him towards the cost of flooring, ceiling and other fixtures. since the rent of the old unchanged premises was fixed mainly on apportionment basis, the courts rightly did not think it necessary to take the value of their sites separately into computation in fixing the standard rent. [588 B-D]
(iii) As regards the new structures the courts below, in capitalising their value did take into account the value of the land and took the market value of the land as in the year 1948. [588B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1186-1188 of 1972.

Appeals by special leave from the Judgment and Order (fated 12/ 13/15th October, 1971 of the Bombay High Court in Special Civil Application Nos. 555, 556 of 1967 and 72 of 1968.

K. S. Cooper, M. K. Shah, P. H. Parekh and Sunanda Bhandare, for the appellants.

B. N. Lokur, Rameshwar Nath, for respondent No. 1. Subodh Markendeya, for Respondent No. 2.

The Judgment of the Court was delivered by SARKARIA, J.-Whether the principle of apportionment is applicable to the fixation of standard rent of a premises- under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, the Act); if so whether on the facts of the case, the principle has been rightly invoked--is the two fold question that falls for decision in these three appeals by special leave directed against the judgment of the High Court of Judicature at Bombay. The material facts are as under

> A big compound, measuring 11,150 sq. yards, at 156 Tardeo Road, Bombay, belonged to Raja Bahadur Moti Lal Mills, Ltd., Bombay, appellant No.1. The Mills were shifted from these premises in the year 1930. In 1932, the whole of this estate including the structures standing on. a part of it, was let out to Sound Studios Ltd. Between the years 1932 and 1940, some part of it was sub-let by Sound Studios to Sheraj Ali, who was the proprietor of M/s. Famous Cine Laboratory and another part to Neon Signs (India) Ltd., and the rest of the estate continued to be with Sound Studios. Thereafter, Sound Studios went out of the picture and the whole estate was let out to National Studios Ltd. on October 23, 1940 at a monthly rent of Rs. 1700/- for a period of two years.
>
> In July 1941, National Studios surrendered their lease and Sheraj Ali became a direct tenant under appellant 1 in respect of the premises in his possession, called for the sake of identification, 983/1 (whole) and 983/2 (Ground floor). On December 1, 1941 and again in November 1942, Sheraj Ali took on rent additional portions of this estate so that his original rent, which was Rs. 400/-, was first increased to Rs. 600/and then to Rs. 700/- and thereafter in November 1942 to Rs. 875/-. By November 1947, Sheraj Ali was paying Rs. 1200/- per month as rent for the premises demised to him including some new structures which had been built.

Sheraj Ali had taken a loan from M/s. Govind Ram Bros. Ltd., Respondent 1 on the security of his Film Studio Equipments. He failed to repay the loan. Thereupon, Respondent 1 instituted a suit for recovery of the amount and obtained a decree from the High Court,. on February 27,1948. As a result of the High Court's decree, the right, title and interest of Sheraj Ali in the mortgaged property were assigned to Respondent 1. Respondent 1, in consequence, took a fresh lease on March 19,1948 from appellant No. 1 of the, properties (called for identification) 983/1 to 983/12, which were in the tenancy of Sheraj Ali', at a contractual rent of Rs. 1228/- p.m. On the same date, Respondent 1 executed another lease in respect of three rooms in the same premises (marked for identification as) 984, in favour of appellant 1, on a monthly rent of Rs. 750/- Respondent 1 failed to pay the contractual rent, regularly, which fell into arrears which were not cleared despite the pressing demands made by the Receiver. On March 13, 1954 the Receiver wrote to Respondent 1 threatening to take legal proceedings for the recovery of the rent. This Receiver, who is now appellant No. 2, had been appointed by the High Court in Suit No. 454 of 1949 instituted by appellant 1 against the Insurance Company On April 14, 1954, two applications were filed in the Court of Small Causes by Respondent 1 for fixation of standard rent in respect of the premises comprised in the said two

leases one application, R.A.N. 983/54, relates to properties 983/1 to 983/12, and the other (R.A.N. 984) to premises 984. It was alleged in the applications that since on September, 1, 1940, the entire estate, including the properties in question. had been let out on a monthly rent of Rs. 1700/-, standard rent of the premises it question should be fixed on the basis of apportionment In particular, it was pleaded that fair rent of Rs. 983/1 to 983/12 should be 1/8th of Rs. 1200/- which was later corrected as 1700/-. On the same basis it was alleged in the second application, that fair rent of premises 984 should be Rs. 75/- p. m.

The appellants resisted these applications and averred in R. A. N. 983/54, that several entirely new structures had been built and substantial alterations made in most of these structures between the years 1940 and 1948, as a result whereof the property had lost its identity, and consequently, fair rent could not be fixed on apportionment basis.

On June 11, 1958, Respondent 1 made an application for amendment of the Standard Rent Application (R.A. N. 983154) for adding an alternative ground based on the value of the land and cost of construction so that in the event of the court holding on the preliminary issue in favour of the appellants, the standard rent could be fixed on the basis of the valuation of the land and the construction. This application was disallowed.

On July 30,1958 Respondent 1 made an application for amendment of his R. A. N. 984 of 1954 on lines similar to- that in R. A. N. 983/54. It was also dismissed by an order, dated July 31, 1958.

At the stage of arguments on December 4, 1958, Respondent 1 moved another application for amendment and addition of the plea that they were the owners of the structures in premises 983/10, 983/1] and 983/12. The second amendment was not sought to be made in the other application R. A. N. 98411954 relating to property 984. This prayer was also declined. The trial court (Samson J.) by its judgment dated April 2, 1959, found that the premises in question on account of structural alterations had undergone such a change that they could no longer be identified with the property that existed in September 1940 and that the mode of ,determining rent by apportionment was not available to the tenants. In the result he dismissed the applications, adding "there is no sufficient ,material to ascertain the standard rent in any other way '.

Against those orders, Respondent 1 filed a revision petition under s. 129 (3) of the Act before the Revisional Court of Small Causes, Bombay, which accepted, the same set aside the order of the trial judge, allowed the amendment and remanded both the applications for fixation of fair rent to the trial court.

Against this remand order, dated August 8, 1960, of the Revisional Court, the appellants preferred two Civil Revisions to the High Court of Bombay.

During the pendency of those Revisions, the trial court allowed the amendment and proceeded to decide the entire matter afresh. These facts were brought to the notice of the High Court, which, however, ,dismissed the revision petitions by a judgment dated February 3, 1961 holding that the first Revisional Court had, in fact, remanded the entire matter for trial de novo, after rightly

allowing both the amendments.

After the remand, the trial court by its judgment, dated April 25, 1961 held that except 983/10, 983/11 and 983/12, which were new structures there was no change of identity in the rest of the properties i. e. 983/1 to 983/9; that new structures 983/10, 983/11 and 983/12 belonged to Respondent 1 who was consequently, liable to pay rent only for the land underneath; that the cost of repairs of the properties, 983/8 and 983/9 after they had been destroyed by fire, was mainly borne by Respondent 1, the landlord's contribution being Rs. 8,500/- only. Applying the principle of apportionment, it fixed the standard rent of the properties 983/1 to 983/12 at Rs. 400/- p.m. subject to permitted increases after 1954. Regarding the premises 984(in R.A.N.984/54), the trial court gave are turn on the investment of Rs.40,000/-made by the landlord inclusive of the cost of structure and the value of land underneath at Rs. 30/- per sq. yard (as that of 1940) and fixed the standard rent at Rs. 386/- p. m. subject to permitted increases after 1946.

Aggrieved by these orders of the trial court, appellants and Respondent 2 filed two revision applications under s. 129 (3) to the Revisional Court of Small Causes which by its judgment, dated September 30, 1964, substantially upheld the findings of the trial court, inter alia with the exceptions : (i) that the ownership of the new structures 983/10, 983/11 and 983/12 vested in Appellant 1, who was entitled to get a fair return on that investment; (ii) that the value of the land "married" to the new structures 983/10, 983/11 and 983/12, and 984/54, should be taken at Rs. 50/- per sq. yd., i. e. as of 1948 and not as of 1940 as had been done by the trial court on remand. In the result, the standard rent in R.A.N. 983 was raised to Rs. 981 /- and in R.A.N. 984 to Rs.411/-p.m. To impugn the decision, dated September, 30, 1964, of the Revisional Court, the parties preferred six Special Civil Applications under Art. 226/227 of the Constitution to the High Court. By a common order, a learned single Judge of the High Court dismissed these applications except that he corrected some arithmetical errors and, in consequence, fixed the standard rent of properties 983/1 to 983/12 at Rs. 841.07 and that of premises 984/54 at Rs. 462/11 p. m. It is against this decision dated 12/13th October 1971 of the High Court that these appeals have been filed by special leave.

The first contention of Mr. Cooper, learned Counsel for the appellants is that there is no provision in the Act which requires standard rent to be fixed on apportionment basis; rather, the definition of "premises" in s. 5(8) (b) which speaks of "part of a building let separately," read with clause (i) of s. 5(10) and clause (c) of s. 11 (1) with due emphasis on the article 'the' immediately preceding the, word 'premises' in the said clauses, indicates that the standard rent would be the rent for which the suit premises were first let separately on or, after the basic date i.e. September 1, 1940. If on the basic date-proceeds the argument-the premises in question did not form the subject of a separate, single ,demise but had been let out together with other portions of larger premises, its standard rent could not be determined on the footing of the rent payable for those different portions. Reliance has been placed on Dhanrajgirji Naraingirji v. W. G. Ward;(1) and Bata Shoe Co' Ltd. v. Narayan Das Mullick and Ors.(2) Counsel had further tried to distinguish Capital and Provincial Property Trust Ltd. v. Rice(3) and Bhikaji Ramchandra Paranjpe v. Vishnu Ramchandra Paranjpe(4), referred to in the judgment of the High Court. On the other hand, Mr. Lokur, learned Counsel for Respondent maintains that the principle of apportionment has always been accepted by the Bombay High Court

as an appropriate guide in fixing standard rent under the Act of premises which on the basic date had been let out as part of a larger entity. It is pointed out that in Narayanlal Bansilal v. Venkatrao Anant Rai(5); a Bench of the High Court while considering the question of standard rent in respect of another portion of the very property of the appellant-Mills, had invoked this principle.

Before we deal with the contentions canvassed, it will be proper to make a brief survey of the relevant provisions of the Act:

> The material part of the definition of "premises" in s.5(8) reads:
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> "Premises" means:-
>
> (a) any land not being used for agricultural purposes;
>
> (b) any building or part of a building let separately. . . ."
> (emphasis supplied)
>
> Sub-section (10) of the same Section defines "standard rent", in relation to any premises, to mean-
>
> (a) where the standard rent fixed by the court and the Controller respectively under the Bombay ]tent Restrictions Act, 1939 or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, such standard rent; or
>
> (b) Where the standard rent is not so fixed/subject to the provisions of section 11,
>
> (i) the rent at which the premises were let on the first day of September 1940, or
>
> (ii) where they were not let on the first day of September 1940, the rent at which they were last let before that day, or
>
> (iii) where they were first let after the first day of September 1940, the rent at which they were first let, or
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> (iv) in any of the cases specified in section 11, the rent fixed by the Court;
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> (1) [1925] 27, Bom. L.R. 877. (2) A.I.R. 1953 Cal. 234. (3) [1952] Appeal Cases 142. (4) 56 Bom. L.R. 402. (5) 67 Bom. L. R. 352.

Section 1 1 empowers the Rent Court to fix the standard rent at such amount, as having regard to the provisions of this Act and the circumstances of the case, the court deems just-

(a) where any premises are first let after the first day of September 1940, and the rent at which they are so let is in the opinion of the Court excessive; or

(b) where the Court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in anyone of the cases mentioned in sub- clause (i) to (iii) of clause (4) of sub-section (10) of section 5; or

(c) Where by reason of the premises having been let at one time as a whole or in part and another time in parts or a whole, or for any other reasons, any difficulty arises in giving effect to this part; or

(d) Where any premises have been or are let rent free or at a nominal rent or for some consideration in addition to rent; or

(e) Where there is any dispute between the land-lord and the tenant regarding the amount of standard rent." Clause (c) read with the opening part of s. 11(1) is crucial for our purpose.

One of the primary objects of the Act is to curb exaction of extortionate rents and to stabilise the same at prewar level. In achieving that object, however, it avoids a Procrustean or mechanical approach. While pegging the basic line to September 1, 1940, it significantly subordinates "standard rent" by its very definition in s. 5 (10) (b) to the benignant jurisdiction of the Court under s.11. And the key words of the latter provision, into which the conscience of this anti-rack-renting statute is compressed, are "the circumstances of the case, the Court deems just". These words inhibit a rigid and ossified determination of "standard rent". They leave sufficient "play at the joints", investing the court with a wide discretion in the matter.

According to the scheme of the Act, while "rent" recoverable by the landlord, may owing to permitted increases, fluctuate, the 'standard rent' always remains fixed or stationary.

If on the basic date, the suit premises were not let out separately but were a part of the subject-matter of a larger demise-as in the instant case-difficulty arises in giving effect to the statute. Clause (c) of s. II (1) then comes into operation. To resolve the difficulty this clause and the related provisions are not to be construed in a narrow technical sense which would stultify or defeat their object. It is to be interpreted liberally in a manner which would 'advance the remedy', 'suppress the mischief, and foil 'subtle inventions and evasions' of the Act. Construed in accordance with this socially relevant rule in Hayden's case the meaning of 'the premises' having been let at one time as a whole, spoken of in this clause, can legitimately be deemed to cover' the larger premises which, on the basic date, had been let as a: whole and of which the suit premises was a part let out subsequently. In any event, the amplitude of the phrase "or any other reason"

> in the latter part of the clause, is wide enough to embrace cases of this kind and confers a plenary curative power on the Court.
>
> True, that unlike the English Rent Control Act of 1920 or the later English Acts, the (Bombay) Act does not expressly speak of apportionment. But the language of its relevant provisions construed consistently with the scheme and in built policy of the Act, is elastic enough to permit the fixation of standard rent on apportionment basis. As noticed already, s. II (1) gives a discretion to the Court to fix such amount as

standard rent as it "deems just".

However, in exercising this discretion the Court has to pay due regard to (i) the provisions of the. Act and (ii) the circumstances of the case.

Apportionment or equal distribution of the burden of rent on every portion-is a rule of justice and good sense. If the standard rent of a whole was a specific amount, it stands to reason that the standard rent of a part or sub-division of that whole should not ordinarily exceed that amount. Therefore, if in the circumstances of a given case the Court feels that for securing the ends of justice and giving effect to the provisions and policy of the Act, it is reasonably necessary and feasible to work out the standard rent by apportionment, it can legitimately do so. This principle, however, is applicable where on the basic date, that portion of which the standard rent is to be determined, had not been let separately as on unit, but the whole, of which it is a part, had been let on that date. Apportionment postulates that on account of its having been let on the basic date, the whole had acquired a standard rent which has to be allocated to smaller units subsequently carved out of it.

It is thus clear that the principle of apportionment is not alien to the spirit of the Act, and has indeed been often invoked by the courts in fixing standard rent under this Act. In Narayanlal Bansilal's case (supra), a Division Bench of the Bombay High Court determined standard rent of another part of this very estate of the Mills in accordance with that principle.

However, while conceding that apportionment is not foreign to the scheme, purpose and policy of the Act, we will like to emphasise the need for caution and circumspection in invoking it. It is not to be rigidly and indiscriminately applied as a cast-iron rule of law regardless of time and circumstances or the equities of the case. A doctrinaire approach, not consistent with a just and fair determination, stultifies the whole salutary purpose of justice to both, the landlord and the tenant. If necessary, it can be adjusted, adapted and attuned in the light of the particular circumstances of the case, to satisfy the statutory requirement of fixing the standard rent as at a "just amount. Thus if after the material date, the landlord has made investments and improvements in the promises, it will be just and reasonable to take that factor also into account and to give him a fair return on such investments. Further, in appor- tioning the rant, the Court must consider other relevant circumstances, such as "size, accessibility, aspect, and other 'Physical advantage enjoyed by the tenant of the premises of which the standard rent is in question, as compared with those of the rent of the property in which it is comprised [see Bainbridge v. Contdon(1)]. Where after the basic date, the premises completely change their identity, apportionment as a method of determining just standard rent, loses its efficacy and may be abandoned altogether. We have only illustrated, not exhaustively enumerated the relevant circumstances and their implications.

At this stage, we may notice the decisions in Danrajgirji v. W.C. Ward (supra) and Bata Shoe and Co. v. Narayan Dass (supra) relied upon by Mr. Cooper.

In the first, a learned single Judge of the Bombay High Court was considering ss. 2(1)(a) and 13(1)(a) of the Bombay Rent (War Restriction Act II of 1918), which were, to an extent, similar to sections 5(8)(b) and (10) and 11(1)(c) of the 1947-Act. There, the Port Trust had in March 24,1915,

leased the building known as Watson's Annexe to one Dr. Billimoria at a rental of Rs. 2,850, besides ground rent and taxes. Dr. Billimoria sublet the premises in different flats to different tenants. The premises in the occupation of the defendant were sublet to him at a rental of Rs. 75/- in September, 1915, i.e. before September 1, 1916 which was the basic date under the 1918-Act. The tenancy of Dr. Billimoria was terminated by a consent decree on July 31, 1923 and thereafter, the defendant held directly under the plaintiff. The question arose as to whether standard rental of the flat should be calculated on the basis of the actual rent of Rs. 75/-, on the basis of the subletting or whether it should be determined by apportionment of the rent which Dr. Billimoria was paying to the Port Trust on the basis of the first letting. Pratt J answered this question thus:

> "The Rent Act itself in the definition of the premises refers to a part of the building separately let as premises of which the standard rent has to be determined and such standard rent must be determined with reference to those premises in the manner spe- cified by s 2(1)(a) of the Act. The standard rent, therefore, must be ascertained on the admitted basic rent of Rs. 75./..... Again, if the head-lease instead of being as here the lease of one building consisting of flats had been a lease of a large number of buildings constituting a large estate, it would be almost impossible to make a correct apportionment of the rent. I do not think it was the intention of the Rent Act that landlords and tenants should be driven to do a difficult and expensive process of valuation. and calculation before their rent could be ascertained."

(1) [1925] 2 K. B. 261.

M45Sup.CI/75 We see force in the argument as also textual and pragmatic support. But these considerations do not preclude the Court from importing the flexible factors of fairness suggested by the circumstances of the case. Indeed, s. 11, as explained earlier, obliges the Court to do it. Moreover, the interpretation of "premises" adopted by the learned judge was a little too literal, narrow and divorced from the purpose and content of the provisions relating to fixation of standard rent. Nor was it in accord with the scheme and object of the 1918-Act. The court's jurisdiction to consider, as a strong circumstance, proper apportionment of rent is not taken away, in our view.

It may be noted that just like the opening clause of s. 5 of the 1947Act, which defines "premises" "standard rent" etc., the corresponding s. 2(1) of the 1918-Act, also, started with the qualifying words "In this Act, unless there is anything repugnant in the subject or context". While applying these definitions to particular cases and provisions of the Acts, these words should not be lost sight of. The argument in favour of adopting the restricted interpretation, ignores this rider to the definitions, provided by the Legislature in these statutes. We do not intend to over-burden this judgment with a discussion the decision in Bata Shoe & Co's case (supra). Suffice it to say that is a decision under the West Bengal Premises Rent Control Act (17 of 1950) which stands on its own facts. It cannot be accepted as laying down a rule of universal application. It is vulnerable, more or less on the same grounds, on which the decision in Dhanrajgirji's case can be assailed.

We reject the narrow interpretation of the relevant provisions of Ss. 2 and II, canvassed for by the appellants, for two reasons: Firstly, it will leave the door wide open for evasion of this statute by

what Abbot C. J. in Fox v. Bishop of Chester(1)-called "shift or contrivance" All that a greedy landlord, need do to squeeze out more rent would be to divide his premises into several parts and let them out separately on exorbitant rents. Such an evasion may amount to a fraud upon the statute. Secondly, such a construction so manifestly subversive of one of the primary objects of the Act would be wholly beyond the intendment of the Legislature.

For reasons aforesaid we would negative the first contention of Mr. Cooper, as an inflexible proposition and answer the first part of the question posed in the affirmative to the extent indicated. it takes us to the second part of that question namely whether the principle of apportionment was correctly applied to the fact, of the case ? Mr. Cooper contends that the first trial court (Samson J.) had rightly found that the premises in question on account of extensive alterations and constructions undergone a complete change after the basic date, and therefore standard rent could not be determined by apporoining the rent of the whole among the parts. It is maintained that (1) (824) 2 B & C 635 at 655.

this finding of Samson J. was wrongly set aside by the High Court and must be deemed to be still holding the field. Objection is also taken to the amendments allowed by the trial court on remand. In the alternative, it is argued that even the courts below found that properties 983/10, 983/11, 983/12 and 984/54 were admittedly new structures and extensive repairs and replacements had been made in the remaining suit premises which had been destroyed or severely damaged by fire in 1948-49. On account of these substantial alterations and reconstructions the premises in question had lost their identity and consequently, the principle of appointment was not applicable.

The first part of the contention based on the judgment of Samson J. is groundless. The judgment of the first trial court was set aside in toto by the Revisional Court, and further by the High Court and the case was remanded for de novo trial to the trial court which thereafter, decided the case afresh after allowing the applicant to amend his R.A. N.S. It is too late in the day any way to argue on the assumption that the findings still survive. The question whether a certain property has changed its identity after the basic date is largely one of fact. The courts below have found that excepting properties 983/10, 983/11,983/12 and 984/54 which were admittedly new structures contracted near about 1948, the rest of the properties, namely 983/1 to 983/9 had not lost their identity. The courts therefore, worked out the economic rent of these new structures by capitalising their value and gave the landlord a fair return on Ms investments and fixed their standard rent mainly on that basis. It was with regard to the unchanged old properties 983/1 to 983/9 that the High Court and the Revisional Court mainly adopted the method of appointment. Even so, it allowed the landlord fair return over Rs. 14,448/- being the cost of flooring, ceiling and other fixtures fixed to property 983/6. Now it is not disputed that on the basic date (September 1, 1940), these properties in question were parts of a larger entity comprised in a single lease or tenancy in favour of Sound Studios at a monthly rent of Rs. 1700/-. The courts below have therefore taken into account this basic circumstance along with the other relevant facts of the case. We do not find anything so wrong or unfair or untenable in the method adopted by them which would warrant an interference by this Court in the exercise of its special jurisdiction under Art. 136 of the Constitution. Not that apportionment must be applied in all cases as a rule of law but that, if applied along with other considerations dictated by a sense of justice and fairplay, cannot be condemned by this Court as,

illegal. We therefore, overrule this contention, also. Lastly, it is contended that the courts below have seriously erred in evaluating the land under the suit properties at Rs. 30/- per sq. yd. on the basis of an instance (Ex. R 6) of the year 1942, while they should have taken into account the value of the land as in the year 1948. it is added that some photostat co-pies of sale-deeds pertaining to the relevant year were produced by Mr. Deweja, architect examined by the Landlord, and the Revisional Court wrongly rejected them As unproved. it is maintained that in 1948, the market value of the site underneath the structures was Rs. 120/- per sq. yd. in support of his contention that the value of the land at the date of the letting is the appropriate value to be taken into account, Counsel has cited Bukmanibai Khunji Cooverji v. Shivnarayan Ram Ashre. (1).

We are unable to accept this contention also. The courts below in capitalising the structures, 983/10 to 983/12 and 984/54 did take into account the value of the land married to those properties at the rate of Rs. 50/- per sq. yd; which, according to their estimate, after adding Rs. 30/- per sq. yd for escalation, would be the market value of that land in the year 1948. Since the rent of the old unchanged properties 983/1 to 983/9 was fixed mainly on apportionment basis, the courts did not think it necessary to take the value of their sites separately into computation in fixing the standard rent. Moreover, there was no evidence on the record to show that the value of the land in question, in the year 1948 was Rs. 120/- per sq. yd. We, therefore, do not think it necessary to examine Cooverji's case cited by the Counsel. We however, do not rule out the propriety of paying regard to escalations in land value as put forward by Mr. Cooper, but do hold that this Court will be loath to re- investigate factual conclusions not shown to be perverse or manifestly unjust. Such is not the case here. For all the foregoing reasons, we would answer the question posed for decision.in the affirmative and dismiss these appeals with one set of costs.

V.P.S. Appeals dismissed (1)(1966)67 Bom. L.R. 692.