Supreme Court of India
Dr. Balbir Singh And Ors. Etc. Etc vs Municipal Corporation, Delhi And ... on 12 December, 1984
Equivalent citations: 1986 AIR 345, 1985 SCR Supl. (3) 812
Author: B Ray
Bench: Ray, B.C. (J)

PETITIONER:
DR. BALBIR SINGH AND ORS. ETC. ETC.

Vs.

RESPONDENT:
MUNICIPAL CORPORATION, DELHI AND ORS

DATE OF JUDGMENT12/12/1984

BENCH:
RAY, B.C. (J)
BENCH:
RAY, B.C. (J)
SEN, A.P. (J)

CITATION:
1986 AIR 345 1985 SCR Supl. (3) 812
1986 SCC (1) 410 1985 SCALE (2)1258

ACT:
Delhi Municipal Corporation Act 1957 and Punjab Municipal Act 1911 Assessment of properly tax-Different categories of properties enumerated Rateable value-How to be determined-Criteria for calculating annual rent not to be higher than standard rent-May be even lower than standard rent.
Delhi Rent Control Act 1958 s 6-Determination of Standard Rent-Principal explained-Sec. 9 prescribes only procedures for fixation of standard rent.

HEADNOTE:
Section 2 sub-section (47) of Delhi Municipal Corporation Act, 1957 defines rateable value to mean the value of any land or building fixed in accordance with the provisions of this Act and the bye-laws made there. under for the purpose of assessment to property taxes. Sub-section (I) of Section 116 lays down that the rateable value of any land or building assessable to property taxes shall be the annual rent at which such land or building may reasonable be expected to be let from year to year, less a sum equal to 10% of such annual rent- Sub-section 3 of sec. 120 provides that the liability of the several owners of any building which is, or purports to be, severally owned in parts or

flats or rooms, for payment of property taxes or any instalment thereof payable during the period of such ownership shall be joint and several.

The appellants and petitioners challenged in the High Court of Delhi the assessments with regard to property tax made by the Municipal Corporation under the Delhi Municipal Corporation Act, 1957 aud the Punjab Municipal Act 1911 in respect of four categories of properties situated in Delhi and New Delhi areas. The Municipal authorities contended that the ratio of the decision in Dewan Daulat Ram v. NDUC [1982] 2 S.C.R. 607 was that whatever be the figure of the standard rent whether determined by the Controller under Section 9 of the Rent Act or arrived at by the assessing authority by applying the principles laid down the Rent Act, must be taken as the measure of rateable value of the building for the purpose of assessability to property tax, irrespective of any other considerations; (2) that where any premises constructed on or after 9th June 1955 have not been let out at any time and have throughout been self occupied, the standard rent of such promises would be determinable under the provisions of sub-section (2) (b) of Section 6 of the Delhi Rent Control Act l958 and

440

any rent which could be agreed upon between the landlord and the tenant if tho premises were let out to a hypothetical tenant would be deemed to be the standard rent of the premises and the formular set out in sub. section (l) (B) (2) (b) of Section 6 would not be applicable for determining the standard rent by reason of non-obstante clause contained in the opening part of sub-section (2) of Section 6; and (3) that since in some of tho cases the plot of land on which the premises stands, cannot be transferred without the previous consent of the Government, it bas no market value and its market price cannot be ascertained and hence the standard rent of tho premises cannot be determined on the principles set out in sub-sections (1) (A) (2) (b) or (1) (B) (2) (b) of Section 6 and consequently, the residuary provision in sub-section (4) of Section 9 would apply and the standard rent would have to be fixed in accordance with the principles laid down in that provision.

On tho question of determination of rateable value for four categories of properties for the purpose of assessability to property tax, the Court,

^

HELD: 1.1 The relevant provisions of Delhi Municipal Corporation Act, 1957 and tho Punjab Municipal Act, 1911 in respect of determination of rateable value for the purpose of assessability to property tax are almost identical as observed by Supreme Court in Diwan Daulat Ram v. N. D.M.C. [1980] 2 S.C.R. 607- and it would therefor be sufficient to refer to the provisions of the Delhi Municipal Corporation Act, 1957 (for short, the Act). [453E]

It would appear from the provisions of ss 114 and 115 and the Act that the general tax is leviable on land and building as a whole and separate portions of large and buildings are not assessable to general tax as distinct and independent units save and except where any portion of the land or building is liable to a higher rate of general tax under the proviso to clause (d) of sub-section (I) of Section 114 or is exempt from the general tax by reason of its being exclusively occupied or used for public worship or for a charitable purpose under sub-section (4) of Section 115 in which case such portion of the land of building is deemed to be a separate property for the purpose of municipal taxation. [451A-B]

1.2. The basic assumption underlying sec. 120 (3) of the Act is that tho building as a whole is to be assessed to the property taxes and not each separate part or flat or room belonging to a separate owner and the liability or the several owners for payment of the amount of property taxes assessed on the building is to be joint and several so that each of them would be liable to pay the whole amount of the property taxes assessed on the building vis-a-vis the Corporation. The amount of property taxes a assessed on the building would, of course, be liable to be divided amongst the-several owners in the proportion of the area comprised in the part or flat or room belonging to each owner, but so far as the Corporation is concerned the liability of the several owners will be joint and several. [452B-C]

1.3. Under the provisions of the Act, criteria for determining rateable value of a building is the annual rent at which such building might reasonable be expected to be let from year to year less certain deductions.

441

The word 'reasonably' in the definition of rateable value in S. 116 (1) is very important. What the owner might reasonably expect to get from a hypothetical tenant, if the building were let from year to year, affords the statutory yardstick for determining the rateable value. Now, what is reasonable is a question of fact and it depends on the facts and circumstances of a given situation. Ordinarily, a bargain between a willing lessor and a willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of reasonableness and in normal circumstances, the actual rent payable by a tenant to the landlord would afford reliable evidence of what the landlord may reasonably expect to get from the hypothetical tenant, unless the rent is inflated or depressed by reason of extraneous considerations such as relationship, expectation of some other benefit. There would ordinarily be a close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from a hypothetical tenant. But in case of a building subject to rent control legislation this approximation may and often does get displaced, because

under rent control legislation the landlord cannot claim to recover from the tenant anything more than the standard rent and his reasonable expectation must, therefore, be limited by the measure of the standard rent lawfully recoverable by him. [452E-H, 453A]

(2) The controversy in Dewan Daulat Ram's case (supra) was not whether the figure of standard rent of a building should be taken as its rateable value even where the rent which the owner reasonably expects to get from a hypothetical tenant is less than the figure of the standard rent but whether the contractual rent receivable by the landlord from the tenant should be taken to be the rateable value even if it be higher than the standard rent determinable under the provisions of the Rent Act. The Court held (i) that even if the standard rent of a building has not been fixed by the Court under Section 9 of the Rent Act, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the provisions of the Rent Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the rent by reason of expiration on the period of limitation prescribed by Section 12 of the Rent Act or the building is self occupied by the owner, and therefore, in either case, the standard rent determinable under the provisions of the rent Act and not the actual rent received by the landlord from the tenant, would constitute the correct measure of the rateable value of the building; (ii) that in each case the assessing authority would have to arrive at its own figure of the standard rent by applying the principles laid down in the Rent Act for determination of the Standard Rent and determine the rateable value of the building on the basis of the actual rent received by the landlord and that the rateable value of the building must be held to be limited by the measure of the standard rent determinable on the principles laid down in the Rent Act, and it would not exceed such measure of the standard rent, (iii) that even if the landlord was lawfully entitled to receive the contractual rent from the tenant, such contractual rent could not be taken to be the rateable value of the building, because the reasonable expectation of the landlord to receive the-contractual rent from hypothetical tenant could not possibly exceed the standard rent determinable in accordance with the provisions laid down in the Rent Act and (iv) that the rateable value of a building cannot exceed the
442
measure of standard rent whether determined by the Controller under Section 9 of the Rent Act or arrived at by the assessing authority by applying the principles laid down in the Rent Act, but it may in a given case be less than the standard rent having- regard to various attendant circumstances and considerations [455C-D; 454C-H; 455A]

3.1. The definition of "standard rent" in S. 2 (k) of

Delhi Rent Control Act, 1958 (for short, the Rent Act) is not an inclusive but an exhaustive definition and it defines the standard rent to mean either the standard rent referred to in Section 6 or the increased standard rent under Section 7. It is significant to Dote that it does not contain any reference to Section 9, sub-section (4). Wherever, therefore any reference is made to standard rent in any provision of the Rent Act, it must mean standard rent as laid down in Section 6 or increased standard rent as provided in Section 7 and nothing more. Section o lays down the principles for determination of standard rent in almost all conceivable classes of causes and Section 7 provides for increase in the standard rent where the landlord has incurred expenditure for any improvement, addition or structural alteration in the premises. [460C-E]

Section 9, as the definition in sec. 2 (k) clearly suggests and the marginal note definitely indicates does not define what is standard rent but merely lays down the procedure for fixation of standard rent. The Controller is entrusted by sub-sections (1) and (2) of section 9 with the task of fixing the standard rent of and premises having regard to the principles set out in section 6 or the provisions of Section 7 and any other relevant circumstances of the case. The words having regard to ..."the circumstances of the case" undoubtedly leave a certain measure of discretion to the Controller in fixing he standard rent. But this discretion is not such an unfettered and unguided discretion as to enable the Controller to fix any standard rent which he considers reasonable. He is required to fix the standard rent in accordance with- the formula laid down in Section 6 or Section 7 and he cannot ignore that formula by saying that in the circumstances of the case he considers it reasonable to do so. The only discretion given to him is to make adjustments in the result arrived at on the application of the relevant formula, where it is necessary to do so by reason of the fact that the landlord might have made some alteration or improvement in the building or circumstances might have transpired affecting the condition or utility of the building or some such circumstances of similar character The compulsive force of the formula laid down in Section 6 for the determination of standard rent and the provisions of Section 7 for increase in standard rent is not in any way whittled down by sub section (2) of Section 9 but a marginal discretion is given to the Controller to mitigate the rigour of the formulae where the circumstances of the case so require. However, in case if it is not possible to determine the standard rent of any premises on the principles set out in Section 6, then Section 9(4) provides that in such a situation the Controller may fix such rent as would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein and whore there are similar or nearly similar premises in

the locality, having regard also to the standard rent payable in respect of such promises. But the basic condition for the applicability of sub-section (4) of Section 9is that it should not be possible to determine the standard rent on the principles set out in Section 6. But even while
443
fixing such rent, the Controller does not enjoy unfettered discretion to do what he likes and he is bound to take into account the standard rent payable in respect of similar or nearly similar premises in the locality. The standard rent determinable on the principles set out in section 6, therefore again becomes a governing consideration. [460E; G-H; 461A-C, E-F; G]

The Court laid down the following principles for determining rateable value in respect of four categories of properties involved in these appeals and writ petitions. [452D]

(A) Where the properties arc self-occupied i.e. Occupied by the owners:

4. 1. Where the premises are self-occupied and have not been let out to any tenant, it would still be possible to determine the standard rent of the premises on the basis of hypothetical tenancy. The question in such a case would be as to what would be the standard rent of the premises if they were lot out to a tenant. Obviously, in such an eventuality the standard rent would be determinable on the principles set out in sub-section (1) (A) (2) lb) of Section 6 of the Rent Act. The standard rent would be the rent calculated on the basis of 7 1/2 per cent or 8.1/4 per cent per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of commencement of the construction- [462H; 463A]

4. 2. It is difficult to see how the provision enacted in sub-section (2) (b) of Section 6 can be applied for determining the standard rent of the premises when the premises have not been actually let out at any time. Sub-section (2) (b) of Section 6 clearly contemplates a case where there is actual letting out of the premises as distinct from hypothetical letting out, because under this provision, the annual rent agreed upon between the landlord and the tenant at the time of first letting out is deemed to be the rent for a period of five years from the date of such letting out and it is impossible to imagine how the concept of first letting out can fit in with anything except actual letting out and how the period of five years can be computed from the date of any hypothetical letting out. It is only from the date of first actual letting out that the period of five years can begin to run and for this period of five years, the annual rent agreed upon between the landlord and the tenant at the time of first actual letting out would be deemed lo be the standard rent. Sub-section (2) (b) of Section 6 can have no application where there is no actual

letting out and hence in case of premises which are constructed on or after 9th June, 1955 and which have never been let out at any time, the standard rent would be determinable on the principles laid down in sub-section (1) (A) (2) (b) of Section 6. So also in case f premises which have been constructed before 9th June, 1955 but after 2nd June, 1951 the standard rent would, for like reasons, be determinable under the provisions of sub-section (1) (A) (2) (b) of Suction 6 if they have not been actually let out at any time since their construction. But if these two categories of premises have been actually let out at some point of time in the past, then in the case of former category, the annual rent agreed upon between the landlord and the tenant when the premises were first actually let out shall be deemed to be the standard rent for a period of five years from the date of such letting out and in the case
444
of the latter category, the annual rent calculated with reference to the rent at which the premises were actually let for the month of March 1958 or if they were not so let, with reference to the rent at which they were last actually let out shall be deemed to be the standard rent for a period of seven years from the date of completion of the construction of the premises. However, even in the case of these two categories of promises the standard rent after the expiration of the period of five years or seven years as the case may be, would be determinable on the principles set out in sub-section (1) (A) (2) (b) of Section 6. Thus in the case of self-occupied residential premises, the standard rent determinable under the provisions of sub-section (2) (a) or (2) (b) of Section 6 in cases falling within the scope and ambit of those provisions and in other cases, the standard rent determinable under the provisions of Sub-section (1) (A) (2) (b) of Section 9 would constitute the upper limit of the rateable value of the premises Similarly, on an analogous process of reasoning, the standard rent determinable under the provisions of sub-section (2) (a) or (2) (b) of Section 6 in cases falling within the scope and ambit of those provisions and in other cases, the standard rent determinable under the provisions of sub-section (1) (A) (2) (b) of Section 6 would constitute the upper limit of the rateable value so far as self-occupied non-residential premises are concerned. The rateable value of the premises, whether residential or non-residential, cannot exceed the standard rent, but, it may in a given case be less than the standard rent.

[463E-H; 464A-F]

(B) Where the properties are partly self-occupied and partly tenanted:

5.1. It is the premises as a whole which is liable to be assessed to property tax and not different parts of the premises as distinct and separate units. But while assessing the rateable value of the premises on the basis of

the rent which the owner may reasonably expect to get if the premises are let out, it cannot be overlooked that where the premises consist of different parts which are intended to be occupied as distinct and separate units the hypothetical tenancy which would have to be considered would be the hypothetical tenancy of each part as a distinct and separate unit of occupation and the sum total of the rent reasonably expected from a hypothetical tenant in respect of each distinct and separate unit cannot obviously exceed the standard rent of such unit and the assessing authorities would therefore have to determine the standard rent with a view to fixing the upper limit of the rent which can reasonably be expected by the owner on letting out such unit to a hypothetical tenant. [466DF]

5.2. Where the case falls within sub-section (2) (a) or (2) (b) of Section 6, no problem arises, because whether the distinct and separate unit of which the standard rent is to be determined is self-occupied or .enanted makes no difference, for in either case, the standard rent would be governed by one or the other of these two provisions. So also in cases falling outside sub-section (2) (a) and (2) (B) of Section 6, it would make no difference whether the distinct and separate unit of which the standard rent is to be determined is self-occupied or tenanted; for in either case, the standard rent would be determinable under the provisions of sub-section (1) (A) (2) (b) or (1) (B) (2) (b) of Section C. But the question is, how is the formula set out in sub-section (1) (A) (2) (b) or (1) (B) (2) (b) of Section 6 to be applied? Obviously there would be no difficulty in applying the

445

formula, if the premises of which the standard rent is to be determined consist of the entire building. Then the reasonable cost of construction of the building can be taken and it can be aggregated with the market price of the land comprised in the building on the date of commencement of construction of the building and 7 1/2 percent of such aggregate amount would represent the standard rent of the building. But whore the building consists of more than one distinct and separate units and the standard rent to be determined is that of any particular unit, the formula may present some difficulty of application if it is sought to be applied literally in relation to that particular unit alone and by itself, because even if the reason able cost of construction of that particular unit can be ascertained, it would not be possible to determine "the market price of the land comprised in the premises on the date of the commencement of construction" since the entire building and not merely that particular unit would be standing on the land and the land on which the building is standing would be land comprised in the building and it would be irrational and absurd to speak of it as land comprised in that particular unit. The formula can, however, be applied for

determining the standard rent of a particular unit by computing the standard rent of the building in accordance with the formulas and then apportioning the standard rent so computed amongst the different units of occupation comprised in the building on the basis of floor area, taking into consideration differences, if any, on account of the situation and condition of the various units and the amenities provided in such unit. This would be the most rational way in which the market price of the land comprised in the building on the date of commencement of construction can be spread ever amongst the different units of Occupation comprised in the building. The standard rent of each unit would have to be determined on the principles set out above and within the upper limit fixed by the standard rent, the assessing authorities would have to determine the rent which the owner may reasonable expect get if such unit were let out to a hypothetical tenant and in arriving at this determination, the assessing authorities to take into account the same factors which have already been discussed in this judgment while dealing with the question of assessment of self occupied properties. The sum total of the rent which the owner may reasonably expect to Bet from a hypothetical tenant in respect of each distinct and separate unit o' occupation calculated in the manner aforesaid, would represent the reasonably value of the building. This formula for determination of rateable value would apply irrespective of whether any of the distinct and separate units of occupation comprised in the building are self occupied or tenanted.[466G-H; 467A-H; 468A-B]

(C) Where the land on which the property is Constructed is lease hold land with a restriction that the lease-hold interest shall not be transferable without the approval of the lessor:

6.1. Some of these writ petitions and appeals are concerned with eases where premise have been constructed by the owners on land taken on sub-lease from a Cooperative House Building Society which has in its turn taken a lease from the Government. One of the clauses in the sub-lease executed by the Cooperative House Building Society in favour of each of its members provided that the owner who has constructed pre-

446

mises on the plot of land sub-leased to him cannot sell, transfer or assign his lease-hold interest in the plot of land to any one except a member of the Cooperative House Building Society and even so far as sale, transfer or assign to a member of the cooperative House Building Society is concerned, it can not be made except with the previous consent in writing of the Government which the Government may give or refuse in its absolute discretion, and in case the Government choose to give its consent, the Government would be entitled to claim 50% of the unearned increase in the value of the land at the time of such sale, transfer or

assignment and moreover, if-the Government so desires, it would have a pre-emotive right to purchase the plot of land after deducting 50 per cent of the unearned increase in the value of the plot of land. This co-tenant in the sub-lease is clearly a covenant running with the land and even where hale, transfer or assignment of the plot of land has taken place with the previous consent in writing of the Government this covenant would continue to bind the purchaser, transferee or assignee. [469F-H]

Commissioner of Wealth Tax V. P. N Sikand [1977] 2 SCC 798 referred to.

6.2. Merely because the plot of land on which the premises are constructed cannot be sold, transferred or assigned except to a member of Cooperative House Building Society and without the prior consent of the Government, it does not Necessarily mean that those can be no market price for the plot of land. It is not as if there is total prohibition on the sale, transfer or assignment of the plot of land, so that in no conceivable circumstance, it can be sold, transferred or assigned. The plot of land can be sold, transferred or assigned but only to one from amongst a limited class of persons namely, those who are members of the Cooperative House Building Society and subject to the Rules and Regulations, any eligible person can be admitted to the membership of the Cooperative House Building Society. There is also a further restriction, namely that the sale, transfer or assignment can take place only with the prior Consent of the Government. But subject to these restrictions, the sale transfer or assignment can take place. It cannot. therefore be said that the market price of the plot of land cannot be ascertained. [470G-H; 471A-B]

6.3. To determine what would be the market price of the plot of land on the date of commencement of construction of the premises, one must proceed on the hypothesis that the prior consent of the Government has been given and the plot of land is available for sale, transfer or assignment and on that footing, ascertain what price it would fetch on such sale, transfer or assignment. Of course when the class of potential buyer, transferees or assignees is restricted, the market price would tend to be depressed. But even so, it can be ascertained and it would not be correct to say that it is incapable of determination. There is also one other factor which would to depress the market price and that stems from the clause in the sub-lease which provides that on sale, transfer or assignment of the plot of land, the Government shall be entitled to claim 50% of the unearned increment in the value of the plot of land and the Government shall also be entitled to purchase the plot of land at the price releasable

447

in the market after deducting therefrom 50% of the unearned increment. since the leasehold interest of the sub-lease in the plot of land is cut down by this burden or restriction,

the market price of the plot of land cannot be determined as if the leasehold interest were free from this burden or restriction This burden or limitation attaching to the leasehold interest must be taken into account in arriving at the market price of the plot of land, because any member of the Cooperative House Building Society who takes the plot of land by way of sale, transfer or assignment would be bound by this burden or restriction which runs with the land and that would necessarily have the effect of depressing the market price which be would be inclined to pay for the plot of land. This mode of determination of the market price has the sanction of the decision of this Court in N.S.. Sikand's Case (Supra). [471C-H]

In the instant case, therefore, the market price of the plot of land at the date of commencement of construction of the premises was ascertainable on the basis of the formula indicated above notwithstanding the restriction on transferability contained in the sub-lease and the standard rent of the premises constructed on the plot of land was determinable under the pro visions of sub-section (1) (A) (2) (b) or [1) (B) (2) (b) of Section 6. The argument of the Delhi Municipal Corporation that in all such cases resort has to be made to the provisions of sub-section (4) of Section 9 for determination of the standard rent of the premises must be rejected [472C-D]

(D) Where the property has been constructed in stages-

(7) When any adulation is made to the premises at a subsequent stage, three different situations may arise. Firstly, the addition may not be of a distinct and separate unit of occupation but may be merely by way of extension of the existing premises which are self-occupied. In such a case the original premises together with the additional structure would have to be treated as a single unit for the purpose of assessment and its rateable value would have to be determined on the basis of the rent which the owner may reasonably expect to get, if the premises as a whole are lot out, subject to the upper limit of the standard rent determinable under the provisions of sub.section (1) (A) (2) (b) of Section 6. Secondly, the existing promises before be addition might be tenanted and the addition might be to the tenanted premises so that the additional structure also forms part of the same tenancy. Where such is the case, the standard rent of the premises as a whole and within the upper limit fixed by such standard rent the assessing authority would have to determine the rent which the owner may reasonably expect to get if the premises as a whole are let out as a single unit to a hypothetical tenant and in such a case, the actual rent received would be a fair measure of the rent which the owner may reasonably expect to receive from such hypothetical tenant unless it is influenced by extra. commercial considerations. Lastly, the addition may be of a distinct and separate unit of occupation and in such a case, the rateable value of the

premises would have to be determined on the basis of the formula laid down for assessing the rateable value of premises which are partly self-occupied and partly tenanted. The same principles for determining of rateable value would obviously apply in case of subsequent additions to the existing premises. [474C-G]

448

(8) The formula set out in sub-section (1) (A) (2) (b) and (1) (B) (2) (b) of Section 6 cannot be applied for determining the standard rent of an addition, as if that addition was the only structure standing on the land. The assessing authorities cannot determine the standard rent of the add structure by taking the reasonable cost of construction in the additional structure and adding to it the market price the land and applying the statutory percentage of 7 1/2 to the aggregate amount. The market price of the land cannot the added twice over, once while determining the standard rent of the original structure and again while determining the standard rent of the additional structure. Once the addition is made, the formula set out in sub-section (1) (A) (2) (b) and (1) (B) (2) (b) of Section 6 can be applied only in relation to the premises as a whole and where the additional structure consists of a distinct and separate unit of occupation, the standard rent would have to be apportioned in the manner indicated in the earlier part of the judgment. [475A-C]

9. Merely because the owner does not produce satisfactory evidence showing what was the reasonable cost of construction of the promises or the market price of the land at the date of commencement of the construction, it cannot be said that it is not possible to determine the standard rent on the principles set out in sub-section (I) (A) (2) (b) or (1) (B) (2)(b) of Section 6. [473]

10. The Court suggested that 20% self-occupancy rebate which was allowed prior to 1980 but was later discontinued should be resumed and said that self-occupied residential premises should be treated on a more favourable basis than tenanted premises for the purpose of assessability to property tax. [466B-C]

JUDGMENT:

ORIGINAL JURISDICTION: WP. NOs. 483-86, 471 Of 1980 etc (Under Article 32 of the Constitution) S. Rangarajan, S.C. Misra, M.S. Batta, Miss Kailash Mehta, Mrs. M. Quamruddin, B.B. Tawakley, Shrinath Singh, Mohan Pandey, Rajiv Datta, Miss Renu Gupta, K Garg, Mr. S.R. Shrivastava, D.R. Gupta, B.R. Kapoor, B.P Maheshwari, R.B. Dattar, K.B. Rohtagi and A. Subba Rao for the petitioners.

L.N. Sinha, Attorney General of India, P. Maheshwari, R B. Dattar and Miss Sieta Vaidlingam, for

the respondents. S.K. Mehta for Municipal Corporation, Ludhiana. The Judgment of the Court was delivered by BHAGWATI,J . This group of writ petitions and appeals raise interesting questions of law in regard to determination of rateable value of certain categories of properties situate in the Union Territory of Delhi. The questions are of great importance since they affect the liability of a large number of property owners in the Union territory of Delhi to pay property tax under the Delhi Municipal Corporation Act 1957 and the Punjab Municipal Act, 1911. The appeals before us arise out of writ petitions filed in the High Court of Delhi challenging assessments made by the Municipal Corporation while the writ petitions fall broadly into two categories-one category consisting of writ petitions which were originally filed in the High Court of Delhi but were subsequently transferred to this Court, while the other consisting of writ petitions which were filed directly in this Court. We are definitely of the view that the writ petitions filed directly in this Court are not Maintainable under Article 32 of the Constitution since none of them complains of violation of any fundamental right and ordinarily we would have rejected them straight way without going into the merits, but the parties before us agreed that in view of the fact that these writ petitions involve identical questions as the appeals and the other writ petitions transferred to this Court and those questions would in any event have to be determined by us, we should not dismiss these writ petitions on the ground of non-maintainability but should proceed to dispose them of on merits on the assumption that they are maintainable.

We are concerned in these appeals and writ petitions with four different categories of properties namely (1) where the properties are self-occupied, that is, occupied by the owners (ii) where the properties are partly self-occupied and partly tenanted; (iii) where the land on which the property is constructed is leased hold land with a restriction that the lease hold interest shall not be transferable without the approval of the lessor and (iv) where the property has been constructed in stages. The question is as to how the rateable value is to be determined in respect of these four categories of properties. So far as properties situate in the Union Territory of Delhi except New Delhi are concerned. the determination of rateable value for the purpose of assessability to property tax is governed by the Delhi Municipal Corporation Act, 1957 while the determination of rateable value for the purpose of assessability to property tax in respect of properties situate in New Delhi is governed by the Punjab Municipal Act, 1911. The relevant provisions of both these statutes in respect of determination of rateable value for the purpose of assessability to property tax are almost identical as observed by this Court in Dewan Daulat Ram v. New Delhi Municipal Committee and it would therefore be sufficient if we refer to the provisions of the Delhi Municipal Corporation Act, 1957. Whatever we say in regard to determination of rateable value under the provisions of the Delhi Municipal Corpora-

1. [1980] 2 SCR 607 tion Act, 1957 would apply equally in relation to determination rateable value under the provisions of the Punjab Municipal Act 1911.

The definitions of the expressions used in the Delhi Municipal Corporation Act, 1957 are to be found in Section 2 of that Act. Sub section (3) of Section 2 defines building to mean "a house, outhouse. stable, latrine, urinal, shed, hut, wall (other than a boundary wall) or any other structure, whether of masonary, bricks, wood, mud, metal or other material but does not include any portable shelter". 'Rateable Value' is defined in Section 2 sub-section (47) to mean "the value of any land or building

fixed in accordance with the provisions of this Act and the bye-laws made thereunder for the purpose of assessment to property taxes". Chapter VIII of the Act deals with the subject of taxation and it comprises Sections 113 to 184. Clause (a) of sub- section (1) of Section 113 provides that the Corporation shall, for the purposes of the Act, levy property taxes. The subject of property taxes is then dealt with in Sections 114 to 135. Section 114 sub-section (1) lays down that property taxes shall be levied on lands and buildings in Delhi and shall consist inter alia of a general tax of not less than 10 and not more than 30 per cent of the rateable value of lands and buildings within the urban areas. There is a proviso to sub-section (1) of Section 114 which says that the Corporation may, when fixing the rate at which the general tax shall be levied during any`year, determine that the rate leviable in respect of lands and buildings or portions of lands and buildings in which a particular class of trade or business is carried on, shall be higher than the rate determined in respect of other lands and buildings or portions of other lands and buildings by an amount not exceeding one half of the rate so fixed Then follows an Explanation which provides that where any portion of a land or building is liable to a higher rate of general tax, such portion shall be deemed to be a separate property for the purpose of municipal taxation. Section 115 sub-section(4) lays down that save as otherwise provided in the Act, the general tax shall be levied in respect of all lands and buildings in Delhi, except lands and buildings or portions of lands and buildings exclusively occupied and used for public worship by a society or body for a charitable purpose and two other categories of lands and buildings. Sub-section (6) of Section 115 provides that where any portion of any land or building is exempt from the general tax by reason of its being exclusively occupied and used for public worship or for a charitable purpose, such portion shall be deemed to be a separate property for the purpose of municipal taxation, It would appear from these provisions that the general A tax is leviable on land and building as a whole and separate portions of lands and buildings are not assessable to general tax as distinct and independent units save and except where any portion of the land or building is liable to a higher rate of general tax under the Proviso to clause (d) of Sub-section (1) of Section 114 or is exempt from the general tax by reason of its being exclusively occupied or used for public worship or for a charitable purpose under subsection(4) of Section 115 in which case such portion of the land or building is deemed to be a separate property for the purpose of municipal taxation. We may point out that apart from the general tax, three other categories of taxes, namely water tax, savenger tax and fire tax are include in the property taxes and they too are leviable as a percentage of the rateable value of lands and buildings. Now how is rateable value to be determined. The answer is provided by Section 116 Sub-section (1) of Section 116 lays down that the rateable value of any land or building assessable to property taxes shall be the annual rent at which such land or building may reasonably be expected to be let from year to year, less a sum equal to 10% of such annual rent. Section 116 Subsection (2) provides that the rateable value of any land which is not built upon but is capable of being built upon and any land on which a building is in process of erection shall be fixed at five per cent of the estimated capital value of such land. Section 120 provides for the incidence of property taxes. Sub-section 1 of that section says that the property taxes shall be primarily leviable, if the land or building is let, upon the lessor, if the land or building is sublet, upon the superior lessor and if the land or building is unlet, upon the person in whom the right to let the same vests. Subsection 2 of Section 120 deals with an exceptional case where any land has been let for a term exceeding one year to a tenant and such tenant has built upon the land and in such case, the sub-section provides that the property taxes shall be primarily leviable upon the tenant. Sub-section 3 of Section 120 is an important provision and we may, therefore, reproduce it

in extenso, "The liability of the several owners of any building which is, or purports to be, severally owned in parts or flats or rooms, for payment of property taxes or any instalment thereof payable during the period of such ownership shall be joint and several." This provision contemplates a case where there are several owners of a building which is or which purports to be severally owned in parts or flats or rooms, so that each part or flat or room in the building is owned by a separate owner and the question arises as to how the property taxes are to be assessed and who is to be held liable to pay the same. The basic assumption underlying this provision is that the building as a whole is to be assessed to the property taxes and not each separate part or flat or room belonging to a separate owner and the liability of the several owners for payment of the amount of property taxes assessed on the building is to be joint and several so that each of there would be liable to pay the whole amount of the property taxes assessed on the building vis-a-vis the Corporation. The amount of the property taxes assessed on the building would, of course, be liable to be divided amongst the several owners in the proportion of the area comprised in the part or flat or room belonging to each owner, but so far as the Corporation is concerned the liability, of the several owners will be joint and several. Then there are certain other provisions relating to the machinery for assessment but with them we are not immediately concerned in these appeals and writ petitions It will thus be seen that under the provisions of the Delhi Municipal Corporation Act 1957, the criteria for determining rate able value of a building is the annual rent at which such building might reasonably be expected to be let from year to year less certain deduction is which are not material for our purpose. The word 'reasonably' in this definition is very important. What the owner might reasonably expect to get from a hepothetical tenant, if the building were let from year to year, affords the statutory oardstick for determining the rateable value Now, what is reasonable is a question of fact and it depends on the facts and circumstances of a given situation. Ordinarily, "a bargain between a willing lessor and a willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of reasonableness" and in normal circumstances, the actual rent payable by a tenant to the landlord would afford reliable evidence of what the landlord may reasonably expect to get from the hypothetical tenant, unless the rent is initiated or depressed by reason of extraneous considerations such as relationship, expectation of some other benefit etc. There would ordinarily be close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from a hypothetical tenant. But in case of a building subject to rent control legislation, this approximation may and often does get displaced, because under rent control legislation the landlord cannot claim to recover from the tenant anything more than the standard rent and his reasonable expectation must, therefore, be limited by a the measure of the standard rent lawfully recoverable by him. There are several decisions where the impact of rent control legislation on the determination of rateable value has been considered by this Court and the latest amongst such decisions is that in Dewan Daulat Ram v. New Delhi Municipal Committee.1 This decision has reviewed all the earlier decisions given by this Court and as of date has spoken the last word on the subject so far as this court is concerned and hence it would be instructive and helpful to refer to it in some detail.

There were three appeals decided by a common judgment in Dewan Dualat Ram's (supra) and the question which arose for determination in these appeals was as to how the rateable value of a building should be determined for levy of property tax where the building is governed by the provisions of the Delhi Rent Control Act, 1958 (hereinafter referred lo as the Rent Act) but the

standard rent has not yet been fixed. One of these appeals related to a case where the building was situate within the jurisdiction of the New Delhi Municipal Committee and was liable to be assessed to property tax under the Punjab Municipal Act, 1911, as is the case in many of the appeals and writ petitions before us, while the other two related to cases where the buildings were situate within the limits of the Corporation of Delhi and were assessable to property tax under the Delhi Municipal Corporation Act, 1957. The property tax under both statutes was levied with reference to the rateable value of the building and, as already pointed out by us earlier, the reteable value was defined in both statutes in the same terms, barring a second proviso which occurred in Section 116 of the Delhi Municipal Corporation Act, 1957 but was absent in Section 3(1)(b) of the Punjab Municipal Act, 1911 and which was admittedly of no con- sequences. The controversy between the parties centered round the question as to what is the true meaning of the expression "the gross annual rent at which such land or building - might reasonably be expected to let from year to year" occurring in the definition in both statutes. The argument put forward by the Municipal Authorities was that since the standard rent of the building was not fixed by the Controller under Section 9 of the Rent Act in any of the cases before the Court and in each of the cases the period of limitation prescribed by Section 12 of the Rent Act for making an application for fixation of the standard rent had expired, the landlord was entitled to continue to receive the actual rent from the tenant without any legal impediment, and hence the rateable value of the building was not

1. [1980] 2 S.C.R. 607 limited to the standard rent determinable in accordance with the principles laid down in the Rent Act but was liable to be assessed by reference to the contractual rent recoverable by the landlord from the tenant. The Municipal authorities urged that if it was not penal for the landlord to receive the contractual rent from the tenant, even if it be higher than the standard rent determinable under the provisions of the Rent Act it would not be incorrect to say that the landlord could reasonably expect to let the building at the contractual rent and the contractual rent could, therefore, be regarded as providing a correct measure for determination of the rateable value of the building. This argument was, however, rejected by the Court and it was held that even if the standard rent of a building has not been fixed by the Court Contract under Section 9 of the Rent Act, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the provisions of the Rent Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the rent by reason of expiration of the period of limitation prescribed by Section 12 of the Rent Act or the building is self occupied by the owner. Therefore, the Court held that in either case, according to the definition of "rateable value" given in both statutes, the standard rent determinable under the provisions of the Rent Act and not the actual rent received by the landlord from the tenant, would constitute the correct measure of the rateable value of the building. The Court pointed out that in each case the assessing authority would have to arrive at its own figure of the standard rent by applying the principles laid down in the Rent Act for determination of the standard Rent and determine the rateable value of the building on the basis of the actual rent received by the landlord and observed that the rateable value of the building must be held to be limited by the measure of the standard rent determinable on the principles laid down in the Rent Act, and it would not exceed such measure of the standard rent, This decision is, therefore, clearly authority for the proposition that the rateable value of a building, whether tenanted or self occupied, is limited by the measure of standard rent arrived at by the assessing authority by applying the principles laid down in the Rent

Act and cannot exceed the figure of the standard rent so arrived at by the assessing authority. Now, in the course of the arguments advanced before us, we found that there was some confusion in regard to the true import of this decision. The municipal authorities contended that the ratio of this division was that whatever be the figure of the standard rent whether determined by the Controller under Section 9 of the Rent act or arrived at by the assessing authority by applying the principles laid down in the Rent 4 Act, must be taken as the measure of rateable value of the building for the purpose of assessability to property tax, irrespective of any other considerations. Even if the owner of the building is able to show by producing satisfactory evidence that having regard to prevailing circumstances such as the nature of the building, its situation or state of repair or economic depression or other similar causes, he cannot reasonably expect to get from a hypothetical tenant even the amount of standard rent determinable on the principles laid down in the Rent Act, the rateable value of the building must still be determined at the figure of the standard rent. So it was argued on behalf of the Municipal authorities, but we do not think that this is a correct interpretation of the decision in Dewan Daulat Ram's case (supra). The controversy in that case was not whether the figure of standard rent of a building should be taken as its rateable value even where the rent which the owner reasonably expects to get from a hypothetical tenant is less than the figure of the standard rent but whether the contractual rent receivable by the landlord from the tenant should be taken to be the rateable value even if it be higher than the standard rent determinable under the provisions of the Rent Act. The Court held that even if the landlord was entitled under the law to recover the contractual rent from the tenant because the standard rent of the building had not yet been fixed and the time for making an application by the tenant for fixation of the standard rent had already expired, such contractual rent could not furnish a measure for determination of the rateable value, because the question had to be judged not with reference to the actual tenant but with reference to a hypothetical tenant and the yardstick provided by the Statute for determination of the rateable value was as to what rent the owner of the building might reasonably expect to get from a hypothetical tenant, if the building were let from year to year and the hypothetical tenant could not be assumed to be willing to pay anything more than the standard rent, because after taking the hypothetical tenancy, he could immediately make an application for fixation of standard rent The Court, therefore., reached the conclusion that even if the landlord was lawfully entitled to receive the contractual rent from the tenant, such contractual rent could not be taken to be the rateable value of the building, because the reasonable expectation of the landlord to receive rent from a hypothetical tenant could not possibly exceed the standard rent determinable in accordance with the provisions laid down in the Rent Act. The standard rent determinable on the principles set out in the Rent Act was laid down by the Court as the upper limit of the rent which the landlord may expect to receive from a hypothetical tenant, if the building were let out to him from year to year. The Court never said that even if the actual rent receivable by the landlord from the tenant or the rent which the owner may reasonably expect to receive from a hypothetical tenant were lower than the standard rent determinable in accordance with the principles laid down in the Rent Act, the standard rent must still be taken to be the rateable value of the building. Such a view would fly in the face of the definition of 'rateable value' in both statutes and could not possibly have been taken by the Court in this case It is significant to note what the Court said in this case, and here we are quoting from the Judgment delivered by the Court, namely, that the rateable value of a building "must be held to be limited by the measure of standard rent determinable on the principles laid down in the Delhi Rent Control Act 1958 and it cannot exceed such' measure of standard rent"

(emphasis supplied). It is thus clear from this decision that the rateable value of a building cannot exceed the measure of standard rent, whether determined by the Controller under Section 9 of the Rent Act or arrived at by the assessing authority by applying the principles laid down in the Rent Act, but it may in a given case be less than the standard rent having regard to various attendant circumstances and considerations. If, for example, the building is not in a proper state of repair or is so situate that it has certain disadvantages from the point of view of easy accessability or means of transport of any other similar cause, the actual rent which the owner may reasonably accept to receive from a hypothetical tenant may be less than the standard rent determinable on the principles laid down in the Rent Act. It is also possible that in case of a building recently constructed, the standard rent determinable according to the principles laid down in the Rent Act may be very high having regard to the fantastic inflation in the value of land and the abnormal rise in the cost of construction in the last few years, but it may not be, and perhaps in many cases would not be, possible for the owner to obtain such high rent from a hypothetical tenant. It is equally possible that the building constructed by the owner may be so large as a single unit that it may a be difficult for the owner to find a tenant who will be prepared to pay the huge amount of rent which the standard rent is bound to be if determined on the principles laid down in the Rent Act and having regard to the extreme smallness of the number of possible tenants of such a building, the rent which the owner may reasonably expect to receive from a hypothetical tenant may be very much less than the standard rent. The test therefore is not what is the standard rent of the building but what is the rent which the owner reasonably expects to receive from a hypothetical tenant and such reasonable expectation can in no event exceed the standard rent of the building determinable in accordance with the principles laid down in the Rent Act, though it may in a given case be lower than such standard rent.

We may now turn to the relevant provisions of the Rent Act which has been since 9th February, 1959 the law in force relating to control of rent of building situate within the jurisdiction Or the Delhi Municipal Corporation and the New Delhi Municipal Committee. Section 2(k) defines 'standard rent' in relation to any premises to mean "the standard rent referred to in Section 6 or where the standard rent has been increased under Section 7, such increased rent". Section 6 lays down different formulae for determination of standard rent in different classes of cases and each formula gives a precise and clear cut method of computation yielding a definite figure of standard rent in respect of building falling within its coverage. We are concerned in these appeals and writ petitions with determination of rateable value of residential premises and we will, therefore, refer only to so much of Section 6 as relates to residential premises. Section 6 sub-section 1(A)(1) lays down the formula for determination of standard rent in case of residential premises where such premises have been let out at any time before 2nd June, 1914, but this provision is not material for our purpose, since the residential buildings with which we-are concerned in these appeals and writ petitions are all buildings constructed after 2nd June, 1944. Subsection 1(A)(1)(a) of Section 6 has also no relevance for our purpose since it deals with the case of residential premises which have been let out at any time on or after 2nd June, 1944 and in respect of which rent has been fixed under the Delhi and Ajmer-Merwara Rent Control Act, 1947 or the Delhi and Ajmer Rent Control Act, 1952, which is not the case in respect of any of the residential buildings forming the subject matter of the present writ petitions and appeals Section 6 sub-section 1(A)(2)(b) is however 'material and we may, therefore set it out in extenso:

Section 6 (1) Subject to provisions of sub-section (2) 'standard rent' in relation to any premises means-

(A) in the case of residential premises-

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

> (b) in any other case, the rent calculated on the basis of seven and one-half per cent, per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction:
>
> Provided that where the rent so calculated exceeds twelve hundred rupees per annum, this clause shall have effect as If for the words "seven and one- half per cent", the words "eight and one-fourth per cent." had been substituted;

Though we are not concerned with non-residential premises we may point out that in respect of non-residential premises which have been let out at any time on or after 2nd June, 1944 and in respect of which rent has not been fixed under the Delhi and Ajmer Merwara Rent Control Act, 1947, or the Delhi and Ajmer Rent Control Act, 1952, standard rent is required to be calculated on the same basis as set out in sub-section (1)(A)(2) (b) of Section 6 with only this difference that instead of the rent being calculated at the rate of 8-114 per cent as laid down in that provision, it is required to be calculated at the rate of 8-518 per cent. Sub-section (2) of Section 6 has also considerable bearing on the controversy between the parties and it may, therefore, be set out in full:

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

> (a) in the case of any premises, whether residential or not, constructed on or after the 2nd day of June, 1951, but before the 9th day of June, 1955, the annual rent calculated with reference to the rent at which the premises were let for the month of March, 1958, or if they were not so let, with reference to the rent at which they were last let out, shall be deemed to be the standard rent for a period of seven years from the date of the completion of the construction of such premises, and
>
> (b) in the case of any premises, whether residential or not, constructed on or after the 9th day of June, 1955, including premises constructed after the commencement of this Act, the annual rent calculated with reference to the rent agreed upon between the landlord and the tenant when such premises were first let out shall be deemed to be the standard rent for a period of A five years from the date of such letting out.

Then follows Section 7 of which only sub-section (1) is material and it runs as follows:

> "7(1) Where a landlord has at any time, before the commencement of this Act with or without the approval of the tenant or after the commencement of this Act with the

> written approval of the tenant or of the Controller, incurred expenditure for any improvement, addition or structural alteration in the premises, not being expenditure on decoration or tenantable repairs necessary or usual for such premises, and the cost of that improvement, addition or alteration has not been taken into account in determining the rent of the premises, the landlord may lawfully increase the standard rent per year by an amount not exceeding seven and one-half per cent, of such cost."

The next section which is material for our purpose is Section 9 and since considerable argument has turned upon the provisions of that Section and particularly sub-section (4) it would be useful to set out the relevant provisions of that section which read follows:

> "9(1) The Controller shall, on an application made to him in this behalf, either by the landlord or by the tenant, in the prescribed manner, fix in respect of any premises-
>
> (i) the standard rent referred to in section 6; or
>
> (ii) the increase, if any, referred to in section 7. (2) In fixing the standard rent of any premises or the lawful increase thereof, the Controller shall fix an amount which appears to him to be reasonable having regard to the provisions of section 6 or section 7 and the circumstances of the case.
>
> (4) Where for any reason it is not possible to determine the standard rent of any premises on the principles set forth under section 6, the Controller may fix such rent as would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein and where there are similar or nearly similar premises in the locality, having regard also to the standard rent payable in respect of such premises."

These are the only material provisions of the Rent Act which are relevant for the determination of the controversy which arises in the present appeals and writ petitions It is clear from the definition of 'standard rent' contained in Section 2 (k) that the standard rent of a building means the standard rent referred to in Section 6 or where the standard rent has been increased under Section 7, such increased rent This definition is not an inclusive but an exhaustive definition and it defines the standard rent to mean either the standard rent referred to in Section 6 or the increased standard rent under Section 7. It is significant to note that it does not contain any reference to Section 9, sub-section (4). Whenever, therefore, any reference is made to standard rent in any provision of the Rent Act, it must mean standard rent as laid down in Section 6 or increased standard rent as provided in Section 7 and nothing more. Section 6 lays down the principles for determination of standard rent in almost all conceivable classes of cases and Section 7 provides for increase in the standard rent where the landlord has incurred expenditure for any improvement, addition or structural alteration in the premises. Section 9, as the definition in Section 2 (k) clearly suggests and the marginal note definitely indicates, does not define what is standard rent but merely lays down the procedure for fixation of standard rent Sub-section (1) of Section 9 provides that the Controller shall, on an application made to him in that behalf, either by the landlord or by the tenant, ill the

prescribed manner, fix in respect of any premises, standard rent referred to in Section 6 or the increase, if any, referred to in Section 7. Sub-section (2) then proceeds to say that in fixing the standard rent of any premises or the lawful increase thereof, the Controller shall fix an amount which appears to him to be reasonable having regard to the provisions of Section 6 or Section 7 and the circumstances of the case. The Controller is thus entrusted by sub-sections (l) and (2) of Section 9 with the task of fixing the standard rent of any premises having regard to the principles set out in Section 6 or the provision of Section 7 and any other relevant circumstances of the case. The words "having regard to...the circumstances of the case" undoubtedly leave a certain measure of discretion to the Controller in fixing the standard rent. But this discretion is not such an unfettered and unguided discretion as to enable the Controller to fix any standard rent which he considers reasonable. He is required to fix the standard rent in accordance with the formula laid A down in Section 6 or Section 7 and he cannot ignore that formula by saying that in the circumstances of the case he considers it reasonable to do so. The only discretion given to him is to make adjustments in the result arrived at on the application of the relevant formula, where it is necessary to do so by reason of the fact that the landlord might have made some alteration or improvement in the building or circumstances might have transpired affecting the condition or utility of the building or some such circumstances of similar character. The compulsive force of the formulae laid down in Section 6 for the determination of standard rent and of the provisions of Section 7 for increase in standard rent is not in any way whittled down by sub-section (2) of Section 9 but a marginal discretion is given to the Controller to mitigate the rigor of the formulae where the circumstances of the case so require.

The question, however, may arise as to what is to happen if it is not possible to determine the standard rent of any premises on the principles set forth in Section 6- The machinery set out in sub-sections (I) and (2) of Section 9 would then fail of application, because it would not be possible for the Controller to fix the standard tent having regard to the provisions of Section 6. This contingency is taken care of by sub-section (4) of Section 9 which provides that in such a situation the Controller may fix such rent as would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein and where there are similar or nearly similar premises in the locality, having regard also to the standard rent payable in respect of such premises. But the basic condition for the applicability of sub-section (4) of Section 9 is that it should not be possible to determine the standard rent on the principles set out in Section 6. Where such is the case, the Controller is empowered to fix such rent as would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein- But even while fixing such rent, the Controller does not enjoy unfettered discretion to do what he likes and he is bound to take into account the standard rent payable in respect of similar or nearly similar premises in the locality. The standard rent determinable on the principles set out in Section 6, therefore, again becomes a governing consideration. The legislature obviously did not intend to vest unguided discretion in the Controller to fix such rent as he considers reasonable without any principles or norms to guide him and, therefore, it provided that in fixing reasonable rent, the Controller shall take in to account the standard rent payable in respect of similar or nearly similar premises. The Controller must derive guidance from the standard rent of similar or nearly similar premises in the locality and apart from discharging the function of affording guidance to tile Controller in fixing reasonable rent, this requirement also seeks to ensure that there is no wide disparity between the

reasonable rent of the premises fixed by the Controller and the standard rent of similar or nearly similar premises situate in the locality. The process of reasoning which the Controller would have to follow in fixing reasonable rent would, therefore, be first to ascertain what is the standard rent payable in case of similar or nearly similar premises in the locality and then to consider how far such standard rent in its application to the premises, needs adjustment having regard to the situation, locality and condition of the premises and the amenities provided therein. The reasonable rent so determined would be the standard rent of the premises fixed by the Controller. There may, however, be cases where there are no similar or nearly similar premises in the locality and in such cases guideline to the Controller would not be available and the Controller would have to determine as best as he can what rent would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein. But such cases would by their very nature be extremely rare and even there, the Controller would not be on an uncharted sea: he would have to fix the reasonable rent of the premises taking into account the standard rent of similar or nearly similar premises in the adjoining locality and making necessary adjustments in such standard rent.

Now, let us take up for consideration the first category of premises, in regard to which the question of determination of rate able value arises, namely, where the premises are self-occupied, that is, occupied by the owner. We will first consider the case of residential premises. It is clear from the above discussion that the rateable value of the premises would be the annual rent at which the premises might reasonably be expected to be let to a hypothetical tenant and such reasonable expectation cannot in any event exceed the standard rent of the premises, though in a given situation it may be less than the standard rent. The standard rent of the premises would constitute the upper limit of the annual rent which the owner might reasonably expect to get from a hypothetical tenant if he were to let out the premises. Even where the premises are self-occupied and have not been let out to any tenant, it would still be possible to determine the standard rent of the premises on the basis of hypothetical tenancy. The question in such case would be as to what would be the standard rent of the premises if they were out to a tenant Obviously, in such an eventuality, the standard rent would be determinable on the principles set out in sub- section (1) (a) (2) (b) of Section 6 of the Rent Act. The standard rent would be the rent calculated on the basis of 7 1/2 percent or 8.1/4 per cent per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of commencement of the construction. The Delhi Municipal Corporation, however, contended that where any premises constructed on or after 9th June 1955-and the premises in most of the cases before us are premises constructed subsequent to 9th June 1955 have not been let out at any time and have throughout been self occupied, the standard rent of such premises would be determinable under the provisions of sub-section (2) (b) of Section 6 and any rent which could be agreed upon between the landlord and the tenant if the premises were let out to a hypothetical tenant would be deemed to be the standard rent of the premises and the formula set out in subsection (I)(B)(2) (b) of Section 6 would not be applicable for determining the standard rent by reason of the non-obstant clause contained in the opening part of sub-section (2) of Section 6. This contention, plausible though it may seem, is in our opinion not well- founded. It is difficult to see how the provision enacted in subsection (2) (b) of Section 6 can be applied for determining the standard rent of the premises when the premises have not been actually let out at any time. Sub- section (2) (b) of Section 6 clearly contemplates a case where there is actual letting out of the premises as distinct

from hypothetical letting out, because under this provision the annual rent agreed upon between the landlord and the tenant at the time of first letting out is deemed to be the standard rent for a period of five years from the date of such letting out and it is impossible to imagine how the concept of first letting out can fit in with anything except actual letting out and how the period of five years can be computed from the date of any hypothetical letting out. It is only from the date of first actual letting out that the period of five years can begin to run and for this period of five years the annual rent agreed upon between the landlord and the tenant at the time of first actual letting out would be deemed to be the standard rent. Sub-section (2)

(b) of Section 6 can have no application where there is no actual letting out and hence in case of premises which are constructed on or after 9th June 1955 and which have never been letout at any time, the standard rent would be determinable on the principles laid down in sub-section (1) (A) (2) (b) Section 6. So also in case of premises which have been constructed before 9th June 1955 but after 2nd June 1951 the standard rent would, for like reasons, be determinable under the provisions of sub-section (I)(A) (2) (b) of Section 6 if they have not been actually let out any time since their construction. But if these two categories of premises have been actually let out at some point of time in the past, then in the case of former category, the annual rent agreed upon between the landlord and the tenant when the premises were first actually let out shall be deemed to be the standard rent for a period of five years from the date of such letting out and in the case of the latter category, the annual rent calculated with reference to the rent at which the premises were actually let for the month of March 1958 or if they were not so let, with reference to the rent at which they were last actually let out shall be deemed to be the standard rent for a period of seven years from the date of completion of the construction of the premises. However, even in the case of these two categories of premises, the standard rent after the expiration of the period of five years or seven years as the case may be, would be determinable on the principles set out in sub-section (I) (A) (2) (b) of Section 6. Thus in the case of self-occupied residential premises, the standard rent determinable under the provisions of sub-section (2) (a) or (2) (b) of Section 6 in cases falling within the scope and ambit of those provisions and in other cases, the standard rent determinable under the provisions of sub-section (I) (A) (2)

(b) of Section 6 would constitute the upper limit of the rateable value of the premises. Similarly, on an analogous process of reasoning, the standard rent determinable under the provisions of sub-section (2) (a) or (2) (b) of Section 6 in cases falling within the scope and ambit of those previsions and in other cases, the standard rent determinable under the provisions of sub-section (I)(B) (2)(b) of Section 6 would constitute the upper limit of the rateable value so far as self-occupied non-residential premises are concerned. l`he rateable value of the premises, whether residential or non- residential cannot exceed the standard rent, but, as already pointed out above, it may in a given case be less than the standard rent. The annual rent which the owner of the premises may reasonably expect to get if the premises are let out would depend on the size, situation, locality and condition of the premises and the amenities provided therein and all these and other relevant factors would have to be evaluated in determining the rateable value, keeping in mind the upper limit fixed by the standard rent. If this basic principle is borne in mind, it would avoid wide disparity between the rateable value of similar premises situate in the same locality, where some premises are old premises constructed many years ago when the land prices were not high and the Cost of

construction had not escalated and others are recently constructed premises when the A prices of land have gone up almost 40 to 50 times and the cost of construction has gone up almost 3 to 5 times in the last 20 years. The standard rent of the former category of premises on the principles set out in sub-section (I) (A) (2) (b) or (l) (B) (2) (b) of Section 6 would be comparatively low, while in case of latter category of premises, the standard rent determinable on these principles would be unduly high. If the standard rent were to be the measure of rateable value, there would be huge disparity between the rateable value of old premises and recently constructed premises, though they may be similar and situate in the same or adjoining locality. that would be wholly illogical and irrational. Therefore, what is required to be considered for determining rateable value in case of recently constructed premises is as to what is the rent which the owner might reasonably expect to get if the premises are let out and that is bound to be influenced by the rent which is obtainable for similar premises constructed earlier and situate in the same or adjoining locality and which would necessarily be limited by the standard rent of such premises. The position in regard to the determination of rateable value of self-occupied residential and non-residential premises may thus be stated as follows: The standard rent determinable on the principles set out in sub-section (2) (a) or (2) (b) or (1) (A) (2) (b) or (1) (B) (2) (b) of Section 6 as may be applicable, would fix the upper limit of the rateable value of the premises and within such upper limit, the assessing authorities would have to determine as to what is the rent which the owner may reasonably expect to get if the premises are let to a hypothetical tenant and for the purpose of such determination, the assessing authorities would have to evaluate factors such as size, situation, locality and condition of the premises and the amenities therein provided. The assessing authorities would also have to take into account the rent which the owner of similar premises constructed earlier and situate in the same or adjoining locality, might reasonably expect to receive from a hypothetical tenant and which would necessarily be within the upper limit of the standard rent of such premises, so that there is no wide disparity between the rate of rent per squar foot or square yard which the owner might reasonably expect to get in case of the two premises. Some disparity is bound to be there on account of the size, situation, locality and condition of the premises and the amenities provided therein. Bigger size beyond a certain optimum would depress the rate of rent and so also would less favorable situation or locality or lower quality of construction or unsatisfactory condition of the premises or absence of necessary amenities and similar other factors. But after taking into account these varying factors, the disparity should not be disproportionately large. We may also point out that until 1980 the assessing authorities were giving a self occupancy rebate of 20% in the property tax assessed on self occupied residential premises. We would suggest that, in all fairness, this rebate of 20% may be resumed by the assessing authorities, because there is a vital distinction, from the point of view of the owner, between self-occupied premises and tenanted premises and the right to shelter under a roof being a basic necessity of every human being, residential premises which are self-occupied must be treated on a more favourable basis then tenanted premises, so far as the assessability to property tax is concerned.

We may now turn to consider the second category of premises in regard to which the rateable value is required to be determined. This category comprises premises which are partly self-occupied and partly tenanted. Now, as we have pointed out above, it is the premises as a whole which are liable to be assessed to property tax and not different parts of the premises as distinct and separate units. But while assessing the rateable value of the premises on the basis of the rent which the owner may

reasonably expect to get if the premises are let out, it cannot be over-looked that where the premises consist of different parts which are intended to be occupied as distinct and separate units, the hypothetical tenancy which would have to be considered would be the hypothetical tenancy of each part as a distinct and separate unit of occupation and the sum total of the rent reasonably expected from a hypothetical tenant in respect of each distinct and separate unit would represent the rateable value of the premises. Now obviously the rent which the owner of the premises may reasonably expect to receive in respect of each distinct and separate unit Cannot obviously exceed the standard rent of such unit and the assessing authorities would therefore have to determine the standard rent with a view to fixing the upper limit of the rent which can reasonably be expected by the owner on letting out such unit to a hypothetical tenant. How is this to be done ?

Where the case falls within sub-section (2) (a) or (2)

(b) of Section 6, no problem arises, because whether the distinct and separate unit of which the standard rent is to be determined is self occupied or tenanted makes no difference, for in either case, the standard rent would be governed by one or the other of these two provisions. So also in cases falling outside sub-section (2) (a) and (2)

(b) of Section 6? it would make no difference whether the distinct and separate unit of which the standard rent is to be determined is A self-occupied or ten anted ; for in either case, the standard rent would be determinable under the provisions of sub-section (I) (A) (2) (b) or (1) (B) (2) (b) of Section 6. But the question is, how is the formula set out in sub-section (I) (A) (2) (b) or (1) (B) (2) (b) of Section 6 to be applied ? Obviously there would be no difficulty in applying the formula, if the premises of which the standard rent is to be determined consist of the entire building. Then the reasonable cost of construction of the building can be taken and it can be aggregated with the market price of the land comprised in he building on the date of commencement of construction of the building and 7 1/2 per cent of such aggregate amount would represent the standard rent of the building. But where the building consists of more than one distinct and separate units and the standard rent to be determined is that of any particular unit, the formula may present some difficulty of application if it is sought to be applied literally in relation to that particular unit alone and by itself, because even if the reasonable cost of construction of that particular unit can be ascertained, it would not be possible to determine "the market price 1) of the land comprised in the premises on the date of the commencement of construction" since the entire building and not merely that particular unit would be standing on the land and the land on which the building is standing would be land comprised in the building and it would be irrational and absurd to speak of it as land comprised in that particular unit The formula can, however, be applied for determining the standard rent of a particular unit by computing the standard rent of the building ; in accordance with the formula and then apportioning the standard rent so computed amongst the different units of occupation comprised in the building on the basis of floor area, taking into consideration differences, if any, on account of the situation and condition of the various units and the amenities provided in such units. This would be the most rational way in which the market price of the land comprised in the building on the date of commencement of construction can be spread over amongst the different units of occupation comprised in the building. It would therefore seem that when the rateable value of a building consisting of distinct and separate units of occupation is to be

assessed, the standard rent of each unit would have to be determined on the principles set out above and within the upper limit fixed by the standard rent, the assessing authorities would have to determine the rent which the owner may reasonably expect to get if such unit were let out to a hypothetical tenant and in arriving at this determination, the assessing authorities would have to take into account the same factors which we have already discussed in the preceeding paragraphs of this judgment while dealing with the question of assessment of self-occupied properties. The sum total of the rent which the owner may reasonably expect to get from a hypothetical tenant in respect of each distinct and separate unit of occupation calculated in the manner aforesaid, would represent the rateable value of the building. We may point out that this formula for determination of rateable value would apply, irrespective of whether any of the distinct and separate units of occupation comprised in the building are self-occupied or tenanted. The only difference in case of a distinct and separate unit of occupation which is tenanted would be that, subject to the upper limit of the standard rent, the actual rent received by the owner would furnish a fairly reliable measure of the rent which the owner may reasonably expect to receive from a hypothetical tenant, unless it can be shown that the actual rent 50 received is influenced by extra-commercial considerations.

That takes us to the third category of premises where the land on which the premises are constructed is lease-hold land with a restriction that the leasehold interest shall not be transferable without the approval of the lessor. There are two classes of cases which fall within this category. The first is where premises have been cons- tructed by the owner on land taken on lease directly from the Government and the second is where premises have been constructed by the owners on land taken on sub-lease from a Cooperative House Building Society which has in its turn taken a lease from the Government. The lease in the first class of cases is a lease in perpetuity and so also are the lease and a sub lease in the second class of cases. We are concerned in these writ petitions and appeals with the second class of cases and we shall, therefore, confine our observations to that class. The sub-lease in this class of cases is executed by the Cooperative House Building Society in favour of each of its members in respect of the plot of land sub-leased to him. One of the clauses in the sub-lease, the standard form of which is to be found in clause 6 of the document of sub-lease in Transferred Case No. 75/82, inter alia provides as under:

> (6)(a) The Sub-Lease shall not sell, transfer assign or otherwise part with the possession of the whole or any part of the residential plot in any form or manner, benami or otherwise, to a person who Is not a member of the Lessee.
>
> (b) The Sub-Lessee shall not sell, transfer, assign or Otherwise part with the possession of the whole or any A part of the residential plot to any other member of the Lessee except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute discretion.
>
> Provided that in the event of the consent being given, the Lessor may impose such terms and conditions as he thinks fit and the Lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the residential plot at the time of sale, transfer, assignment, or parting with the possession, the amount to be recovered

> being fifty per cent of the unearned increase and the decision of the Lessor in respect of the value shall be final and binding. D Provided further that the Lessor shall have the pre-emptive right to purchase the property after deducting fifty per cent of the unearned increase as aforesaid.

It is obvious that by reason of this clause in the sub-lease, the owner who has constructed premises on the plot of land sub-leased to him, cannot sell, transfer or assign his lease-hold interest in the plot of land to any except a member of the Cooperative House Building Society and even so far as sale, transfer or assignment to a member of the Cooperative House Building Society is concerned, it cannot be made except with the previous consent in writing of the Government which the Government may give or refuse in its absolute discretion, and in case the Government chooses to give its consent, the Government would be entitled to claim 50% of the unearned increase in the value of the land at the time of such sale, transfer or assignment and moreover, if the Government so desires, it would have a pre- emptive right to purchase the plot of land after deducting 50 per cent of the unearned increase in the value of the plot of land. this covenant in the sub-lease is clearly a covenant running with the land and even where sale, transfer or assignment of the plot of land has taken place with the previous consent in writing of the Government, this covenant would continue to bind the purchaser, transferee or assignee, vide Commissioner of Wealth Tax v. P.N. Sikand(l).

Relying on this clause in the sub-lease, the Delhi Municipal Corporation contended that since the plot of land on which the premises stands, cannot be transferred without the previous consent of the Government, it has no market value and its market price cannot be ascertained and hence the standard rent of the premises cannot be determined on the principles set out in sub-sections (I) (A) (2) (b) or (1) (B) (2) (b) of Section 6 and consequently, the residuary provision in sub-section (4) of Section 9 would apply and the standard rent would have to be fixed in accordance with the principles laid down in that provision. This was in fact the ground on which the assessing authorities rejected the objections filed by several owners of premises contending that the standard rent of their premises should be determined on the principles set out in sub sections (1) (A) (2) (b) or (1) (B) (2) (b) of Section 6. To quote only one of the orders made by the assessing authority in case of petitioner No. 2 in T.C. No. 75/82 it was said in the order rejecting the objections of that petitioner:

> "The property is built upon a 'case hold plot. This being so it is not feasible to determine the market price of land at the time of start of construction because under the terms and conditions of the conveyance deed, the land is not open for sale in the open market. As such I am not in a position to apply S.6 of the Delhi Rent Control Act for fixing the standard rent. I have, therefore, to resort to S. 9 of the Delhi Rent Control Act for fixing the standard rent."

This argument which seems to have prevailed with the assessing authorities in rejecting the applicability of Sub- Section (1) (Al (2) (b) or (1) (B) 2 (b) of S. 6 and resorting to the provisions of Sub Section (4) of S. 9 is wholly unfounded. Merely because the plot of land on which the premises are constructed cannot be sold, transferred or assigned except to a member of the Cooperative House Building Society and without the prior consent of the Government, it does not necessarily mean that there can be no market price for the plot of land. It is not as if there is total prohibition on

the sale, transfer or assignment of the plot of land, so that in no conceivable circumstance, it can be sold, transferred or assigned. the plot of land can (1) [1977] 2 S.C.C. 798.

be sold, transferred or assigned but only to one from amongst a limited class of persons, namely, those who are members of the Cooperative House Building Society and subject to the Rules and Regulations, any eligible person can be admitted to the membership of the Cooperative House Building Society. There is also a further restriction, namely that the sale, transfer or assignment can take place only with the prior consent of the Government. But subject to these restrictions, the sale, transfer or assignment can take place. It cannot, therefore, be said that the market price of the plot of land cannot be ascertained. When we have to determine what would be the market price of the plot of land on the date of commencement of construction of the premises, we must proceed on the hypothesis that the prior consent of the Government has been given and the plot of land is available for sale, transfer or assignment and on that footing, ascertain what price it would fetch on such sale, transfer or assignment Of course, when the class of potential buyers, transferees or assignees is restricted, the market price would tend to be depressed. But even so, it can be ascertained and it would not be correct to say that it is incapable of determination. There is also one other factor which would go to depress the market price and that stems from the clause in the sub-lease which provides that on sale, transfer or assignment of the plot of land, the Government shall be entitled to claim 50% of the unearned increment in the value of the plot of land and the Government shall also be entitled to purchase the plot of land at the price realisable in the market after deducting there- from 50% of the unearned increment. Since the lease hold interest of the sub-lease in the plot of land is cut down by this burden or restriction, the market price of the plot of land cannot be determined as if the leasehold interest were free from this burden or restriction. This burden or limitation attaching to the leasehold interest must be taken into account in arriving at the market price of the plot of land, because any member of the Cooperative House Building Society who takes the plot of land by way of sale, transfer or assignment would be bound by this burden or restriction which runs with the land and that would necessarily have the effect of depressing the market price which he would be inclined to pay for the plot of land. We must, therefore, discount the value of this burden or restriction in order to arrive at a proper determination of the market price of the plot of land and the only way in which this can be done is by taking the market price of the plot of land as if it were unaffected by this burden or restriction and deducting from it, 50% of the unearned increase in the value of the plot of land on the basis of the hypothetical sale, as representing the value of such burden or restriction. This mode of determination of the market price has the sanction of the decision of this Court in P.N. Sikand's case (supra). We do not, therefore, think that the assessing authorities were right in taking, the view that because the plot of land could not be sold, transferred or assigned except to a member of the Cooperative House Building Society and without the prior consent of the Government, its market price was unascertainable and hence the standard rent of the premises could not be determined under sub-section (1) (A)(2)(b) or (1)(B)(2)(b) of S. 6 and had to be assessed only under Sub-s. (4) of S. 9. We are firmly of the view that the market price of the plot of land at the date Of commencement of construction of the premises was ascertainable on the basis of the formula we have indicated, notwithstanding the restriction on transferability contained in the sub-lease and the standard rent of the premises constructed on the plot of land was determinable under the provisions of sub-section (1) (A) (2)

(b) or (l) (B) (2) (b) of Section 6. The argument of the Delhi Municipal Corporation that in all such cases resort has to be made to the provisions of sub-section (4) of Section 9 for determination of the standard rent of the premises must be rejected.

We may also in this connection refer to the statement made by the Minister of State for Home Affairs on the floor of the Lok Sabha on 8th April 1981 where the Minister observed:

> "The Municipal Corporation of Delhi has intimated that 494 general objections for the year 1980-81 filed by the assessees for the revision of assessment of their properties in accordance with Supreme Court Judgment were considered by the Corporation. The requests for reassessment on the basis of standard rent under Section 6 of the Rent Control Act, 1958, were considered and not found accept able to the Corporation as the assessees failed to produce documentary evidence as regards the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of commencement of the construction as provided under Section 9 (2)(b) of the Delhi Rent Control Act, 1958. Accordingly, assessments were made as provided under section 5 of the Delhi Rent Control Act, 1958. The details of the proper ties, locality-wise, are given ill the statement attached."

It is indeed strange that the assessing authorities should have declined to assess the rateable value of 494 properties in South Delhi on the basis of standard rent determinable on the principles A laid down in sub-section (1) (A) (2) (b) or (1) (B) (2) (b) of Section 6, merely on the ground that in the opinion of the assessing authorities "the assessees failed to produce the documentary evidence as regards the aggregate amount of reasonable cost of construction and the market price of land comprised in the premises on the date of commencement of the construction." If the assessees failed to produce the documentary evidence to establish the reasonable cost of construction of the premises or the market price of the land comprised in the premises, the assessing authorities could arrive at their own estimate of these two constituent items in the application of the principles set out in sub-section (1) (A) (2) (b) or (1) (B) (2) (b) of Section 6. But on this account, the assessing authorities could not justify resort to sub-section (4) of Section 9. It is only where for any reason it is not possible to determine the standard rent of any premises on the principles set-forth in Section 6 that the standard rent may be fixed under sub-section (4) of Section 9 and merely because the owner does not produce satisfactory evidence showing what was the reasonable cost of construction of the premises or the market price of the laud at the date of commencement of the construction, it cannot be said that it is not possible to determine the standard rent on the principles set out in sub-section (I) (A) (2) (b) or (I) (B) (2) (b) of Section 6 Take for example a case where the owner produces evidence which is found to be incorrect or which does not appear to be satisfactory; Can the assessing authorities in such a case resort to sub-section(4) of Section 9 stating that it is not possible to determine the standard rent on the principles set out in sub-section (I) (A) (2) (b) or (1) (B) (2) (b) of Section 6. The assessing authorities would obviously have to estimate for themselves, on the basis of such material as may be gathered by them, the reasonable cost of construction and the market price of the land and arrive at their own determination of the standard rent. This is an exercise with which the assessing authorities are quite familiar and it is not something unusual for

them or beyond their competence and capability. It may be noted that even while fixing standard rent under sub-section (4) of Section (9), the assessing authorities have to rely on such material as may be available with them and determine the standard rent on the basis of such material by a process estimation.

The fourth category of premises we must deal with is the category where the premises are constructed in stages. The discussion in the preceding paragraph f this Judgment provides an answer to A the question as to how the rateable value of this category of premises is to be determined when the premises at the first stage of construction are to be assessed for rateable value, the assessing authorities would first have to determine the standard rent of the premises under sub-section (2) (a) or 2 (b) or (1) (A) (2) (b) or (I) (B) (2)

(b) of Section 6 as may be applicable and keeping in mind the upper limit fixed by the standard rent and taking into account the various factors discussed above, the assessing authorities would have to determine the rent which the owner of the premises may reasonably expect to g-t if the premises are let out to a hypothetical tenant and such rent would represent the rateable value of the premises When any addition is made to the premises at a subsequent stage, three different situations may arise. Firstly, the addition may not be of a distinct and separate unit of occupation but may be merely by way of extension of the existing premises which are self-occupied In such a case the original premises together with the additional structure would have to be treated as a single unit for the purpose of assessment and its rateable value would have to be determined on the basis of the rent which the owner may reasonably expect to get, if the premises as a whole are let out, subject to the upper limit of the standard rent determinable under the provisions of sub-section (I) (A) (2) (b) of Section 6. Secondly, the existing premises before the addition might be tenanted and the addition might be to the tenanted premises so that the additional structure also form part of the same tenancy. Where such is the case, the standard rent would be liable to increase under Section 7 and such increased rent would be the standard rent of the premises as a whole and within the upper limit fixed by such standard rent, the assessing authorities would have to determine the rent which the owner may reasonably expect to get if the premises as a whole are let out as a single unit to a hypothetical tenant and in such a case, the actual rent received would be a fair measure of the rent which the owner may reasonably expect to receive from such hypothetical tenant unless it is influenced by extra-commercial considerations. Lastly, the addition may be of a distinct and separate unit of occupation and in such a case, the rateable value of the premises would have to b determined on the basis of the formula laid down by us for assessing the rateable value of premises which are partly self-occupied and partly tenanted. The same principles for determining of rateable value would obviously apply in case of subsequent additions to the existing premises. The basic point to be noted in all these cases is-and this is what we have already emphasised earlier-that the formula set out in sub-section (I) (A) (2) (b) and (1) (B) (2) (b) of Section 6 cannot be applied for determining the standard rent of an addition, as if that addition was the only structure standing on the land The assessing authorities cannot determine the standard rent of the additional structure by taking the reasonable cost of construction of the additional structure and adding to it the market price of the land and applying the statutory percentage of 7 1/2 to the aggregate amount. The market price of the land cannot be added twice over, once while determining the standard rent of the original structure and again while determining the standard rent of the additional structure. Once

the addition is made, the formula set out in sub-section (I) (A) (2) (b) and (I) (B) (2) (b) of section 6 can be applied only in relation to the premises as a whole and where the additional structure consists of a distinct and separate unit of eccupation, the standard rent would have to be apportioned in the manner indicated by us in the earlier part of this Judgment.

These are the principles on which the rateable value of different categories of properties is liable to be assessed under the Delhi Municipal Corporation Act 1957. The same principles would a fortiorari apply also in relation to assessment of rateable value under the Punjab Municipal Act, 1911. Since there are a number of writ petitions and appeals before us and they involve different fact situations we do not think it would be convenient to dispose them of finally by one single Judgment We would therefore direct that these writ petitions and appeals shall be placed on Board on some convenient date so that they can be disposed of in the light of the principles laid down in this Judgment. M L.A.