(1966) 05 CAL CK 0002

Calcutta High Court

Case No: Appeal No. 42 of 1964

Jal Rustomji Modi		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision: May 20, 1966

Acts Referred:

- Aire and Calder Navigation Act, 1889 - Section 47
- Contract Act, 1872 - Section 20, 21, 22, 72
- Harbours, Docks and Piers Clauses Act, 1847 - Section 56
- Town and Country Planning (General Development) Order, 1948 - Article 3
- West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 - Section 45
- West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 1(4), 10, 11, 14, 15

Citation: (1970) 2 ILR (Cal) 173

Hon'ble Judges: Mitter, J; Masud, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Mitter, J.

This is an appeal from a decree dismissing a landlord''s suit for realizing arrears of rent and for other relief﷽s. The question turns on the interpretation of several sections of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950.

2. The facts are as follows: The Governor-General of India in Council entered into an agreement in the year 1943 with one R.K. Modi to take on rent the second and third floors of premises No. 146/7 Lower Chitpur Road, Calcutta, at a rental of Rs. 2,225-8-0 according to the English calendar besides occupier''s share of taxes; The present Plaintiffs are the trustees under a deed of settlement executed by the said-R. K. Modi in January 1946. The rent of the said premises was fixed by the Rent Controller at Rs. 3,427-4-3 per month with effect from December 1, 1948, under the

West Bengal Premises Rent Control (Temporary Provisions) Act, 1948. An appeal by the Dominion of India against the above order before the Chief Judge of the Calcutta Small Cause Court was dismissed. There is no dispute that the tenancy of the Dominion of India vested in the Union of India in 1950. R.K. Modi and, after his decease, the present Plaintiffs went on collecting rent of the premises at Rs. 3,427-2-7 per month along with the occupier''s share of taxes, at Rs. 358 per quarter, upto the end of May 1960. No money was paid by the Defendant from and after June 1, 1960. The present suit was filed on March 21, 1961, for realizing Rs. 23,990-89 P. as rent of the premises for the months of June to. December'' 1960, besides the occupier''s share of taxes for two quarters totaling Rs. 716. The Plaintiffs also claimed -interest by giving notice under the Interest Act of 1839 at 12 per cent per annum from November 1, 1960. According to the plaint, the Defendant wrongfully asserted, for the first time in October 1960, that it was liable to pay rent at a rate much lower than Rs. 3,427-27 P. per month from April 1, 1950, and that it had paid by mistake rent in excess of the rent legally payable and was entitled to adjust against the excess payment the rent for period from June 1960 onwards. The plaint goes on to narrate that the Government of India, Dominion of India, and the Defendant had represented to R.K. Modi and to the Plaintiffs that the rent of the demised portion of the premises was payable at the rate of Rs. 3,427-27 P. per month and the Plaintiffs have incurred expenses and paid income tax, wealth-tax etc. on the basis that they were legally entitled to rent at the said rate. They also claim to have paid Corporation rates and taxes on the basis of rental for the demised premises at Rs. 3,427-27 P. per month and, in the premises, they contend that the Defendant is estopped and precluded from alleging that the rent payable was not Rs. 3,427-27 P. per month.

3. The Defendant filed its written statement on June 19, 1961. It is here admitted that in the year 1943 the Governor-General in Council became a tenant of the second and third floors of the premises mentioned above at a rental of Rs. 10 per 100 sq. ft exclusive of all taxes, and on this basis a sum of Rs. 2,225-50 P: was payable as rent, exclusive of taxes. It was denied that the Defendant became liable to pay rent at Rs. 3,427-27 P. as alleged. The substantial defence is that under the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, the standard rent of the second and third floors of the premises was fixed and /or required to be fixed and/or revised as from April 1, 1950 to November 30, 1951, at the rate of Rs. 2,225-50 P. per month plus an increase of 10 per cent totaling Rs. 2,448-05 P. per month and was enhanced from December 1, 1951, to Rs. 2,815-26 P. per month calculated at Rs. 2,448-05 P. plus a further increase of 15 per cent. It is pleaded in para. 9 of the written statement that by mistake it paid rent to the owners of the premises at Rs. 3,427-27 P. per month up to the end of May 1960 and that its liability was to pay rent at the lower rates just mentioned. This mistake is said to have been discovered for the first time on or about June 5, 1960. In the premises a sum of Rs. 82,009-42 P. had been paid in excess by the Defendant as per

particulars set out in the Schedule to the written statement. According to the Defendant it has no liability to pay rent until the said amount is adjusted and/or appropriated and/or refunded.

4. The suit was heard in 1963 when the following issues were settled:

(1) Was there any agreement as stated in para. 4 of the plaint ? If so, is it valid and binding on the Dominion of India or Defendant ?

(2) Was there any agreement as referred to in para. 7 of the plaint ? If so, was such agreement valid and binding on the Defendant ?

(3) Is the Defendant liable to pay rent at the rate of Rs. 3,427-27 P. per month as alleged in para. 7 of the plaint ?

(4)(a) Did the Defendant pay rent at the rate of Rs. 3,427-27 P. per month upto the end of May 1960 by mistake ?

(b) If so, is the Defendant entitled to set off and/or adjust the payment made in excess against the Plaintiffs'' claim for rent ?

(5)(a) Were any representations made by the Defendant to R.K. Modi or to the Plaintiffs as alleged in para. 14 of the plaint ?

(b) Did the Plaintiffs pay income tax, wealth-tax, corporation tax etc., or otherwise act on the basis of such representations ?

(6) Are the Plaintiffs entitled to claim Rs. 38,946-25 P. as damages and/or mesne profits from the Defendant as claimed in para. 13 of the plaint ?

(7) Is the Defendant estopped from alleging that rent was not payable at the rate of Rs. 3,427-27 P. per month on grounds alleged in para. 14 of the plaint ?

(8) Is the Defendant barred by res judicata, or principles analogous thereto, from contending that rent was or is payable at the rate, of Rs. 3,427-27 P. per month ?

(9) Are the Plaintiffs entitled to claim interest at the rate of 12 per cent per annum or at all ?

(10) To what relief, if any, are the Plaintiffs entitled?

5. Three witnesses were examined on behalf of the Plaintiff and four on behalf of the Defendant. It will hardly be necessary to refer to the oral evidence on the Plaintiff''s side. The first witness on behalf of the Defendant was one Pran Nath Khanna who was working as Deputy Director of Estates and Under-Secretary to the Government of India in the Ministry of Works, Housing and Supply from and after February 7, 1962. Prior to that date he was working as an Estates Manager in Calcutta. According to this witness, sometime in May 1959 the accountant Arjun Singh for the first time discovered that rent for the demised premises was being paid at a rate higher than what was permissible under, the law. The Government of

India was a tenant in respect of another portion of the same building and according to the witness steps were taken under the Act of 1950 for reduction of rent in respect of this portion, but through mistake nothing was done with regard to the two floors covered by this suit. According to him, this was because he and the others concerned had not made themselves familiar with the West Bengal Premises Rent Control Act. Arjun Singh was also examined in this case. He was employed as a Divisional Accountant in the office of the Estates Manager, Calcutta, from October 1958 to June 1960, and it was he who discovered the mistake.

6. The two main questions which arise for consideration in this case ate (i) whether with the coming into force of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, hereinafter referred to as ''the Act'', the rent of the premises became automatically reduced, from Rs. 3,427-27 P. to the standard jest in terms of the Act and (ii) whether the amount paid in excess of the standard rent became adjustable against the rent of the premises from June 1960. In order to decide this it is necessary to take into account several sections of the Act and to gather there from the intention of the Legislature.

7. The preamble to the Act shows that it was passed in order to make better provision for the control of rents of premises in Calcutta and in certain other areas in West Bengal. u/s 1(4), the Act was in the first instance to be in force, upto March 31, 1953, provided that the expiration of the Act was not to render recoverable any sum which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance of the Act was recoverable by him thereunder. ''Standard rent'' is defined in Section 2(10). It means (a) the standard rent determined in accordance with the provisions of Sch. A, (b) where the rent has been fixed u/s 9, the rent so fixed; or at which it would have been fixed if application were made under the said section.

8. u/s 3(1)

Subject to the provisions of this Act; any amount in excess of the standard rent of any premises shall be irrecoverable notwithstanding any agreement to the contrary.

Section 4 of the Act cuts down the right of the landlord very substantially from those envisaged by the Transfer of Property Act. It forbids a landlord from claiming, receiving or even inviting offers or asking for the payment of any premium, selomi, fine or any other like imposition in addition to the rent in consideration of the grant, renewal or continuance of the tenancy of any premises. It also restricts the landlord from claiming or receiving any sum exceeding one month''s rent of such premises as rent in advance except with the previous written consent of the Controller. Section 6 imposes restrictions on the landlord as regards sale of any furniture in any premises let to a tenant. Section 7 provides for the refund of rent, premium, selami etc. not recoverable under the Act. It reads:

(1) where any sum has been paid or deposited on or after the date of the commencement of this Act in respect of the occupation of any premises

(a) on account of rent, being a sum which is by reason of the provisions of the Act irrecoverable, or (b) as premium, selami, fine or other like imposition in addition to the rent or as rent in advance, the claiming or the receiving of which is prohibited under the Act, or (c) on account of price or hire of any furniture in such premises without the permit of the Controller u/s 6, the Controller may, on application made to him in this behalf, at any time within a period of six months from the date of such payment or deposit by the tenant by whom such payment or deposit was made, order the landlord by whom such payment was received or to whose credit such deposit was made, to refund such sum to such tenant or, at the option of such tenant, order the adjustment of any sum so paid or deposited in any other manner. Sub-section (2) of Section 7 lays down the procedure for enforcing the order of refund.

9. u/s 8 the Controller is given the power to fix the rent of furnished premises on application of the tenant within six months of the beginning of the tenancy if he is of the view that the portion of the rent attributable to the use of the furniture was unduly high. The fixation of the rent under this Act is to be deemed to be the standard rent fixed u/s 9.

10. Section 9 enables the Controller to fix the standard rent either on the application of the landlord or the tenant and provides:

(1) In any of the following cases, the Controller shall on application by any landlord or tenant, fix the standard rent as set forth hereunder:

(a) Whether the provisions of Schedule A apply and there is no cause for the alteration of the rate of standard rent as determined according to the Schedule for any of the reasons mentioned in the following clauses, in accordance with the provisions of Schedule A.

(b) Where during the currency of a standard rent payable for any premises there has been an increase in the municipal taxes, rates or cusses in respect of the premises, by adding to it the amount of such increase as is payable by the landlord by agreement with the tenant over and above what is payable by the landlord himself under the local municipal law.

(c) Where during the currency of a standard rent payable for any premises the landlord has made some addition, alteration or improvement in the premises, not, being tenantable repairs necessary or usual for such premises, by adding to such standard rent payable in one year ten per centum of the amount reasonably spent by the landlord in making the said addition, alteration or improvement the added amount being divided amongst installments for payment of rent of the year as would be just and convenient.

The proviso and the rest of the section are omitted.

11. Section 10 provides for the determination of the date from which the standard rent fixed by the Controller on an application u/s 9 is to take effect. It gives the Controller power to fix the date from which the decrease in the rent, if any, ordered is to be effective. Normally this decrease is to be effective from the month next after the date of the application. The Controller has also the power to fix the date from which the increase in rent, if any, is allowed by the fixation of standard rent. Sub-section (3) of the section makes it obligatory on the Controller in fixing the standard rent to specify in his order the time from which the rent so fixed shall become payable.

12. Section 11 lays down that&#65533;

Nothing in the provisions of this Act, including Schedule A, shall entitle the landlord to claim rent from the tenant at a rate different from that at which it is being paid at the time, except by agreement with the tenant, valid in law including this Act, or unless a different rate is fixed u/s 9.

13. The effect of Section 11 is that if for any reason the rate at which rent was being paid was below the standard rent which would be arrived at in terms of Sch. A or which would be fixed in terms of Section 9 the landlord is not to be at liberty to claim rent at the higher figure so long as he does not enter into an agreement with, the tenant for the purpose or gets the rent fixed u/s 9.

14. Section 17(1) lays down that&#65533;

Such portion of rent as exceeds the standard rent determined according to the provisions of this Act shall be irrecoverable from the month of the tenancy next after the month in which this Act comes into force, whether the said rent was fixed by agreement, or by proceeding under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948.

(2) Where standard read has been fixed under the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, whether by the Controller or on appeal from his order, the Controller shall, on application made to him, re-fix the standard rent according to the provisions as laid down by this Act.

(3) If at the date when this Act comes into force proceeding for fixing standard rent is pending before the Controller or in appeal, the Controller or the appellate officer shall fix the standard rent in accordance with the provisions as laid down by this Act.

By Section 45 the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, was repealed.

15. Schedule A contains provisions for determining the standard rent of premises. It proceeds on the basis that certain increases are permissible over and above the basic rent of the premises. The basic rent is to be rent fixed by the Controller under

the Bengal House Rent Control Order, 1942, or the Calcutta House Rent Control Order, 1943, or the Calcutta Rent Ordinance, 1946, if fixed thereunder and, in other cases where the rent has not been so fixed, the rent which was payable for the premises on the first day of December 1941, or if any increased rent was paid for the premises between that date and the coming into operation of the Act, the increased rent, which was last paid out so as not to exceed the rent payable on the first day of December 1941 by more than ten per centum in case of premises within Calcutta and twenty per centum in case of other premises. Sub-clause (2) of Sch. A provides that&#65533;

Where the premises are used for residential purposes, or mainly for residential purposes, the standard rent shall be (a) the basic rent, if a period of three years has not elapsed after the time when rent was fixed as mentioned in paragraph (l)(a), or the increased rent as mentioned in paragraph (l)(b) was first paid ;

(b) when the said period of three years relevant to the case has elapsed or elapses the basic rent increased by five per centum, if the basic rent per mensem is not more than Rs. 100, and the basic rent increased by ten per centum, if the basic rent is more, than Rs. 100. Provided that where the basic rent is. the rent payable on the 1st day of December, 1941, the standard rent shall be the basic rent increased by ten per centum.

16. On a conspectus of the above sections of the Act it appears that the Legislature intended to define and alter, if necessary, the rights of the landlords and tenants immediately after the Act came into force. If a tenant was under the impression that, the rate at which he was paying rent was higher than what would be the standard rent under the Act, he could at once apply for fixation of standard rent. Conversely, if a landlord was of the view that the rent which he was receiving was lower than the rent which would be fixed as the standard rent, he too could apply at once to the Controller for fixation of the standard rent. So long, however, as the standard rent was not fixed, the landlord was precluded by reason of Section 11 from claiming rent at a rate higher than that of which he was in receipt. It was also open to a tenant to raise a defence in a suit for rent that the landlord should not be allowed to, recover more than the standard rent. As soon as either the landlord or the tenant applied for fixation of the standard rent, it was the duty of the Controller to do so, and in case of any alteration he had to fix the date from which the alteration was to be effective. If the tenant had paid or deposited any amount in excess of the standard rent he could, within six months from the date of such payment or deposit, apply to the Controller for refund or adjustment in terms of Section 7. But the landlord was not given the corresponding right to recover "from the tenant any amount which fell short of the standard rent before the date of his application for fixation of rent. If the tenant was occupying furnished premises of which the rent was higher than that allowable under the Act, he could apply for reduction of rent u/s 8 within six months of the beginning of the tenancy. But, if he did not do so, he

could still apply for fixation of standard rent under the provisions of Section 9 but then he could not get a refund or adjustment except u/s 7. On an application for fixation of standard rent u/s 9, the Controller had to see whether the provisions of Sch. A applied. If the case was covered by Sch. A the fixation of the standard rent was quite a simple affair. If, however, there had been increase in the municipal taxes or rates etc,, the Controller had to add something under the provisions of Section 9(l)(b) to the standard rent which he would have otherwise fixed. So in the case Where the landlord had made some additions, alterations or improvements in the premises by proceeding u/s 9(l)(c). Both these Sub-sections speak of a period ''during the currency of a standard rent payable for any premises''. The word ''currency'', according to the Shorter Oxford English Dictionary, means ''the time during which anything is current, the fact or quality of being current, prevalence, vogue''. Ordinarily, therefore, the expression ''during the currency of a standard rent payable for any premises'' would refer only to the period when the standard rent had been fixed or determined but inasmuch as standard rent as defined in Section 2(10)(b) includes ''the rent which would have been fixed if an application was made u/s 9 for the purpose'' the expression ''currency of standard rent payable for any premises'' would include any period during which the Act was in force and the standard, even though not fixed, was fixable thereunder.

17. Even if no standard rent has been fixed or determined, the landlord is precluded from recovering any money in excess of the standard rent u/s 3 subject to the provisions of the Act. This means that even in a case where there has been no fixation or determination but the Court finds that the landlord has been receiving rent in excess of the standard rent it can determine the standard rent in accordance with Sch. A if that be applicable or find the figure of standard rent on the basis that the tenant had applied for such fixation for the purpose of relieving the tenant of liability in excess of the standard rent. A note must also be made of the difference between the wording of Sections 3 and 11 of the Act. Section 11 prevents the landlord from claiming rent at a rate different from that at which it was being paid at the time. Section 3 is aimed at preventing him from recovering any amount in excess of the standard rent. The word ''recover'' in legal phraseology means ''secure restitution or compensation by legal process'' (Oxford Dictionary). In other words, the Legislature did not prevent the landlord from claiming rent in excess of the standard rent if it was being paid at the time but prevented the landlord from recovering any amount in excess of the standard rent if he had to take recourse to law. Read with Section 7, the intention of the Legislature appears to have been to direct the parties to apply for fixation of standard rent immediately after the coming into force of the Act if they were not satisfied with the term as to rent. If, however, they did not do so, the tenant could still apply on a later date u/s 9 for fixation of a standard rent and u/s 7 for refund or adjustment of any amount paid in excess in terms of that section. Where the landlord omitted to apply for fixation of the standard rent which would have been to his benefit he was precluded from

recovering the difference between the standard rent fixed under the Act and the rent of which he was in receipt before such fixation. The result is that both the parties stood to lose the benefit of- the Act, at least in part, if they did not take stock of their position as soon as the Act came into force and applied accordingly. Section 3 of the Act has to be read with Section 17, Sub-sections (1), (2) and (3) so that fixation of standard rent under the Act of 1948 has to be altered or modified according to the terms of the new Act.

18. The impact of the Act on the tenancy before us is that after May 1960 the Plaintiffs could not recover any sum in excess of the standard rent. In this case it was quite easy to fix the standard rent- in terms of Sch. A and there can be no doubt that it would be Rs. 2,815-26 P. per month. I feel sure that if the Defendant had approached the Plaintiffs after the passing of the Act, the latter would have agreed to take the rent at the reduced figure. The tenant never thought of doing so. It never applied for fixation u/s 9. As the tenant did not apply u/s 7 of the Act no question of. adjustment or refund arose.

19. It was contended before us by the learned Standing Counsel that standard rent under the Act did not come into force so long as it was not either agreed to by the parties in terms of Section 2(10)(a) or fixed by the Controller u/s 2(10)(b) read with Section 9. In aid of his contention the learned Counsel relied on a judgment of a single Judge of this Court in Ramchandra Singhi and Anr. v. Kanhaiyalal Choudhury Unreported decision of a single judge in Suit No. 774 of 1951 dated April 4. 1951. That was a suit for ejectment of the tenant and other relief&#65533;s. One of the main issues in the suit was whether this Court had jurisdiction to entertain the suit. The rent for the premises had been fixed under the Act of 1948 at Rs. 504 per month and the Defendant had, as a matter of fact, paid at that rate from January 1949 till June 1950. Under the original agreement between ; the parties, the rent payable was Rs. 600 per month. Acting under the Rent Control Act, 1948, the Controller had reduced it to Rs. 360, but in appeal it was raised to Rs. 504 per month. No standard rent had been fixed under the 1950 Act. According to the Defendant the standard rent under the 1950 Act would be less than Rs. 500 and, as such, the suit did not lie in this Court. The jurisdiction of the different Courts to entertain suits for ejectment under the 1950 Act is dealt with in Section 16 read with Sch. B. This Schedule provided that when the rent payable for one month was Rs. 500, the suit for possession had to be filed in the Ordinary Original Civil Jurisdiction of this Court. The learned Judge, who heard the suit, came to the conclusion that until reification or determination under the Act of 1950, the old standard rent under the Act of 1948 must be given effect to. He came to this conclusion on an analysis of different sections of the Act, namely Sections 3, 7, 9, 10, 11 and 17. With respect, although in my view the learned Judge was right in holding that the suit was properly filed in this Court it is not possible to hold that the landlord could recover rent in excess of the standard rent by any legal process. If the standard rent under the 1950 Act meant the rent fixed u/s 9 by the Controller, then there was no need to define it as rent determined in accordance

with the provisions of Sch. A in terms of Section 2(10)(a). This definition goes to show that it is possible to determine the standard rent even without going to the Rent Controller. Moreover, if there can be no fixation of standard rent, except by a Controller, the inclusion of the words ''or at which it would have been fixed if application were made under the said section'' in Section 2(10)(b) would be surplus age. I agree with the conclusion of the learned Judge in that case that this Court had jurisdiction to try the suit. My reasoning is as follows: u/s 11 the landlord could only claim rent at the rate fixed by the Controller under the Act of 1948 as that was the rate of rent claimable by the landlord. It was not open to him to claim rent at a different rate, and if he had filed his suit before the Chief Judge of the Calcutta Court of Small Causes, he might have been met by the plea that the rent payable under sell. B being in excess of Rs. 500, the suit could only have been filed in this Court. As I have already held that there was no bar on the tenant paying a sum in excess of the standard rent which would have been fixed under the Act of 1950 which would be determined in terms of Sch. A, and as the landlord had to claim rent at that rate, Section 3 of the Act can only mean that in any proceedings for recovery of the rent in excess of the standard rent the Court would be. bound to give relief to the tenant in respect of the said excess. On the strength of the above judgment it was contended that the case of P.C. Mallick v. Bhabatosh Das (1954) 59 C.W.N. 491 had been wrongly decided. That case turned on the interpretation of the words ''currency of a standard rent'' as used in Clasue (b) and (c) of Sub-section (1) of Section 9 of the Act of 1950. For the reasons given in that judgment, I agree with the observations there made reading
to say that there exists no standard rent of the premises unless it had been fixed u/s 9 is to ignore these words of the definition clause of standard rent in the Act.

The learned Judges also pointed out that the words "or at which it would have been fixed if applications were made under the said section", to be found in Section 2(10)(b) of the 1950 Act were not included in the Act of 1948.

20. It is to be noted that the judgment in P. C. MaUich''s case was followed in the Corporation of Calcutta Vs. Sm. Padma Debi and Others, .

21. I was also referred to my own judgment in the case of Gonstantine Mackertich v. The West Bengal Provincial Co-operative. Bank Limited Unreported decision in Suit No. 1162 of 1951 dated April 19, 1955. In that case I had held:

But unless there was a clear provision in the Act making the tenant liable for the enhanced rent or unless it could be gathered

from the Act that the liability to pay the enhanced rent was clearly implied in its various provisions, I do not think it would be open for a landlord to contend that he is ipso lacto. entitled - to enhancement of rent even if he would have been entitled to it had he made an application to the Controller for the purpose.

22. I was informed that another suit which was decided by me on the basis of the judgment in Constantine Mackertich''s case had gone up in appeal which was dismissed. It was, therefore, argued that the conclusion that the standard rent does not come into force before it is fixed by the Controller has received the sanction of an Appeal Bench of this Court. No useful purpose will be served by analyzing the provisions of the 1948 Act and, comparing the same with those under the 1950 Act and I refrain from expressing any views about my conclusion in Mackertich''s case. That was under a different Act altogether.

23. As I already indicated, in my view it is not necessary for a tenant to go to the Controller for fixation of a standard rent in order to claim relief u/s 3 of the Act. If the tenant can show that the rate at which rent was being sought to be collected exceeded the standard rent determined on the basis of Sch. A, there is no reason as to why the Court trying the suit for recovery of arrears of rent should refuse to give relief to the tenant. But such relief can only be had in respect of rents which were unpaid at the date of the suit. To be able to claim refund the tenant had to apply u/s 7. The Act made serious inroads into the rights of the landlords under the general law of the land including the Transfer of Property Act. As it was a special Act creating obligations in derogation of the general law of the land and giving the tenant special privileges and laying down the procedure for enforcement thereof the tenant should be limited to such procedure alone for enforcement of the special rights created by the Act. He ought not to be allowed to claim either refund or adjustment on the basis that he made a payment not sanctioned by law and, therefore, the same had become recoverable by him by means of a suit. In my view, the. Act clearly provided that tenants and landlords should protect their interests under the Act as soon as possible, and if they slept over their rights for sometime they were not to be allowed to reap the benefits provided by the Act during the period of their sleep.

24. It was argued, however, on behalf of the Respondent that Section 7 of the Act only provided for a speedy remedy to the tenant where he had paid anything in excess of the standard rent or by way of premium, selami etc. and that it did not affect the right of the tenant to claim refund or adjustment if the payments had been made by mistake so as to bring his case within Section 72 of the Indian Contract Act. Reference was made in this connection to the judgment of the House of Lords in Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government and Ors. (1960) A.C. 260. There a private Act of Parliament (The Malvern Hills Act, 1924) was passed to preserve the amenities of the hills against depredations by quarrying. In December 1954, the Appellant company commenced the action claiming relief in the shape of declarations framed with a view to establishing their contentions. Substantially this was to the effect that the working by the company after the appointed day of two granite quarries in the Malvern hills which admittedly constituted development within the meaning of the Town and Country Planning Act, 1947, was development which was unconditionally permitted under Article 3 of the First Schedule to the Town and Country Planning (General Development) Order,

1948, made in pursuance of Section 13 of the Act. The company contended that this question should be answered in the affirmative on the ground that such working was within the meaning of Class XII in such Schedule&#65533;

development authorised by any local or private Act of Parliament&#65533;being an Act&#65533;which designates specifically both the nature of the development thereby authorised and land upon which it may be carried out and the Act relied on by the company as development being the Malvern Hills Acts, 1884 to 1924. It was agreed between the parties that if the company''s contention to the above fact was well-founded, the permission which the Minister purported to grant to the company under Sections 14 and 15 of the Act to work the quarries upon certain conditions was wholly inoperative inasmuch as the company already had unconditional permission to work them under the order. The Respondents took a preliminary objection to the effect that the Court had no jurisdiction to adjudicate upon the company''s claim that the working of the quarries was development falling within the terms of Clause 12 in the First Schedule to the order on the ground that the statutory procedure for the determination of questions, such as this provided by Section 17 of the Act was exhaustive and that the jurisdiction thereby conferred on the local authority or the minister was exclusive.

25. It was held by the House of Lords that the Act did not prohibit the subject from having recourse to the Courts of law. Referring to the principle that the right of the subject to have recourse to Her Majesty''s Courts for the determination of his rights is not to be excluded except by clear words. Vicount Simonds was of the view that the Act only provided the subject with another remedy and said:

There is nothing in the Act to suggest that, while a new remedy, perhaps cheap and expeditious, is given the old and, as we like to call it, the inalienable remedy of Her Majesty''s subjects to seek redress in her Courts is taken away. J Similar observations were made by Lord Jenkins.

26. The question before us is whether the rights created and the remedy provided by the Act of 1950 were special and exclusive. If in this case Section 3 had provided that any amount in excess of the standard rent of any premises shall be irrecoverable after the passing of the Act and Section 10 had not given the Controller any power to fix the date from which the standard rent was to become effective and Section 7 had not provided for relief in respect of payment only when application was made within six months, it might have been argued that the relief by way of adjustment or refund would be available in any Court of law. Under the ordinary law of the land when a landlord and tenant agree as to the amount of the rent to be paid they are bound by such agreement unless, of course, a case for avoidance of the contract can be established. When the Legislature makes elaborate provisions for controlling the payment of rent, selami, hire of furniture etc. and indicates that it is to be in the interest; of the tenant and the landlord to enforce their rights under the Act as soon as possible, taking away the landlord''s right to

ask for increase of rent even if allowable under the Act without recourse to the Controller, and gives the Controller the power to fix the time from which any increase or decrease in rent is to take effect, it must be concluded that the remedies provided were exclusive remedies.

27. The case is comparable to that of Barraclough v. Brown and Ors. (1897) A.C. 615. There the Ouse Improvement Act, 1884, incorporated some of the powers and provisions of the Harbours, Docks and Piers Clauses Act, 1847, including Section 56, which related to the removal of a wreck or other obstruction to a Harbour, dock or pier or the approaches to the same. Section 47 of the Air and Calder Navigation Act, 1889, made certain provisions with regard to the removal of sunken, vessels and the power to sell such boat, barge, or vessel, or a sufficient part thereof, to pay such expenses and the expenses of the same, returning to the owner of such vessel the surplus, if any, on demand or the undertakers might, if they think fit, recover such expenses from the owner of such boat, barge or vessel in a Court of summary jurisdiction. The suit was brought by the Appellant as secretary to the undertakers of the navigation of the rivers Air and Calder against the Respondent for the aggregate of the sums expended by the undertakers in endeavoring to raise and in removing the vessel belonging to the Respondents. The action was decided in favour of the Defendants.

In delivering his judgment in the House of Lords, Lord Herschell said:

Unwilling as I am to determine the appeal otherwise than on the merits of the case, I feel bound to hold that it was not competent for the Appellant to recover the expenses, even if the Respondents were liable for them, by action in the High Court. The Respondents were under no liability to pay these expenses at common law. The liability if it exists, is created by the enactment I have quoted. No words are to be found in that enactment constituting the expenses incurred a'' debt due from the owners of the vessel. The only right conferred is to recover such expenses from the owner of such vessel in a Court of summary jurisdiction. I do not think the Appellant can claim to recover by virtue of the statute, and at the same time insist upon doing so by means other than those prescribed by the statute which alone confers the right.....I think it would be very mischievous to hold that when a party is compelled by statute to resort to the inferior Court he can come first to the High Court to have his right to recover the very matter referred to the inferior Court determined.

28. According to Lord Watson "the only right which the undertakers have to recover from an owner" is conferred by these words:

or the undertakers may, if they think fit, recover such expenses from the owner of such boat, barge or vessel in a Court of summary jurisdiction." The right and the remedy are given uno flatu, and the one cannot be dissociated from the other. By these others the Legislature, has, in my opinion, committed to the summary Court

exclusive jurisdiction not merely to assess the amount of expenses to be repaid to the undertaker, but to determine by whom the amount is payable: and has, therefore, by plain implication, enacted that no other Court has any authority to entertain or decide these matters.... It cannot be the duty of any Court to pronounce an order when it plainly appears that, in so doing, the Court would be using a jurisdiction which the Legislature has forbidden it to exercise.

29. In my opinion, Section 72 of the Contract Act has no application to the facts of this case. That section provides that a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it. This section must be read along with Sections 20, 21 and 22 of the Contract Act. The contract of tenancy cannot be avoided because payment was being made at a rate higher than that sanctioned by the Act. It has come out in the evidence in this case that the Union of India was a tenant under the Plaintiffs not only of the two floors in respect of which the suit has been brought but in respect of another floor as well in respect of which they took the matter to the Rent Controller and obtained relief under the Act. It is true that formerly the tenancies were under the control of two different departments of the Government, of India. But that does not matter because the tenant was the same. In any event, even long after the same department came to be in charge of the two tenancies, no steps were taken to enforce the rights under the Act. It is not possible to hold on the facts of the case that there was any mistake made by the Union of India. It would be more appropriate to hold that nobody bothered to find out what the rights of the Government would be in respect of the tenancy in question after the coming into force of the 1950 Act. It only engaged the attention of a junior officer a few months before the suit was filed and then the inertia of the department was disturbed and attempts were made to retrieve the position after ten long years.

30. The case of Sri Sri Shiva Prasad Singh v. Maharaja Sris Chandra Nandi and Anr. ILR IndAp 244, relied on by the Respondent, has ho application to the facts of this case. There a document of lease provided for payment of royalty at different rates on steam coal, rubble coal etc. as distinct; from rubble and dust for burning bricks. The rates were fixed for the time being on the basis, that the coal would be dispatched by the East Indian Railway line. It was then, however, known to the parties that the Bengal Nagpur Railway Company proposed to construct a Railway line close to the collieries. The lease provided that in future, if the. Bengal Nagpur Railway line be constructed and the freight of coal becomes less by two annas at least or more than what was fixed by the lease, the lessee would pay royalty for those coals at the said reduced freight at five annas per ton on steam coal rubble etc. and two annas six pies per ton on rubble and dust for burning bricks. The lease further provided that, if the said Railway freight became less than two annas per ton, the amount which would be reduced would be enhanced on the rate of royalty fixed by the lease on steam, steam rubble coal etc. and enhanced by half thereof on rubble and dust for burning coal. At the time when the lease was granted the freight

for coal from the colliery to Calcutta was Rs. 3-11-0, but in 1902 that was reduced to Rs. 3-2-0, and after some fluctuation, both the East Indian Railway and the Bengal Nagpur Railway maintained the freight at Rs. 3-2-0 from 1904 for many years. The interpretation of the clause mentioned above gave rise to litigation in 1910 between the then lessor and the lessee. This ended in an appeal to His Majesty in Council. There was great deal of controversy about the actual meaning of the above term in the lease. The Judicial Committee determined the rights of the parties before it. After that judgment, royalty was regularly paid at the enhanced rate of five annas and two annas six pies per ton until 1923. During 1923, payment of royalties fell into arrear and in 1924 the Raja of Kasimbazar (the predecessor-in-interest of the Respondent) himself paid Rs. 57,069-3-0 to the lessor in full payment of royalty from January 1 to September 30, 1923, calculating at the enhanced rates of five annas and two annas six pies per ton. At this time Messrs H.V. Low & Co. Ltd. were managing the colliery for the lessees. Their agency was terminated in February 1924. The Kasimbazar estate was before that date taken charge of by the Court of Wards. On March 8, 1924, the Manager of the Court of Wards wrote to the Raja (the predecessor-in-interest of the Appellant) that the rate of freight for coal had been raised on April 1, 1921, to Rs. 3-13-0 and that the highest rate of royalty of five annas and two annas six pies per ton was only payable on coal which may be dispatched at a freight of two annas less than the freight which was in force at the time of the execution of the lease arid that the lessor had been over-paid. Correspondence between the parties did not put an end to the dispute. The lessor contended that once the higher rate of royalty had come into operation it was permanent and not affected by a subsequent rise in the rate of freight. According to the lessee, on a true construction of the lease, the higher rate of royalty was only payable on coal dispatched by Rail at a freight more than two annas below the freight at the date when the lease was entered into. On this view the higher rate of freight ceased to operate on April 1, 1921. By continuing to pay at the higher rate from that date until September 30, 1923, he had paid Rs. 63,680 more than was due and he was entitled to retain future royalties upto that amount and, thereafter, to pay at the lower rate. The High Court in India had held that the lessee was not entitled to set off the amount of the over-payment against the royalties which substantially became due on the ground that over-payment had been made because the lessee and his agents were unaware of their rights under the lease and that this was not a mistake of fact but was a mistake of law. Harries C.J. who delivered the judgment of the Patna High Court came to the conclusion that money paid under mistake of law was not recoverable. The Judicial Committee pointed out that Section 72 of the Indian Contract Act was over-looked by the High Court, and that there was no reason for holding that ''mistake in Section 72 must be given a limited meaning''. It was observed:

once it is established that the payment in question was not due, it appears to their Lordships to be irrelevant to consider whether or not there was a contract between

the parties under which some other sum was due.

The Board expressed its approval of the judgment of this Court in Pannalal v. Produce Exchange Corporation Ltd. AIR 1946 Cal. 245 and said-:

it may be well to add that their Lordships'' judgment does not imply that every sum paid under mistake is recoverable no matter what the circumstances may be. There may in a particular case be circumstances which disentitle a Plaintiff by estoppel or otherwise.

On the facts of this case the Board observed:

in this case there was not sufficient evidence to show why the lessee and his agents made the over-payments. They may have acted on inadequate information, they may have taken a wrong view of their legal rights or they may have continued paying at the old rates without giving any thought to the master. But it is clear that there was no intention to make a present to the lessor of money which was not due. The money was paid under the belief that it was legally due. This belief was mistaken. In their Lordships'' view that is sufficient to bring the case within Section 72 and therefore the cross appeal must succeed.

31. In this case, there is no room for saying that the Union of, India had acted on inadequate information. It is difficult to hold that it had proceeded on a wrong view of its legal rights as it was fully aware of them and had applied for and obtained relief in respect of another tenancy in the same building. No lessee ever has the intention of making a present to the lessor of money which is not due. But that does not ipso facta lead to the inference that money was paid under the belief that it was legally due. After all, somebody must come and say and it was his belief that notwithstanding the passing of the Rent Act, 1950, the rate of rent fixed by the Rent Controller under 1948 Act was still payable. Section 17 of the Act makes an express provision for this. As already pointed out, Section 7 provides for cases where money has been over-paid and fixes the limit of time within which refund or adjustment may be claimed. If the lessee does not take the benefit of the different sections of the Act meant for giving him relief, his only right will be u/s 3 to put forward the plea that nothing in excess of the standard rent is to be recoverable by legal proceedings and the Court will give effect to that by disallowing any claim for rent in excess of the standard rent.

32. In the result, it must be held that the Union of India was only liable to pay rent at the rate of the standard rent, i.e. Rs. 2,815-26 P. per month for the period for which the rent fell in arrears and that it was not entitled to adjust the over-payments against the rents in arrears or future rents.

33. The appeal must, therefore, be allowed and a decree be passed calculating rent due at Rs. 2,815-26 P. per month from June 1960 for the period claimed. The Appellant will be entitled to costs, throughout. Certified for two counsel.

Masud, J.

34. I agree.