(10) The case will now go back to the learned Single Judge for decision on other questions raised in the second appeal. The costs in this reference will be costs in the cause.

Mehar, Singh, C. J.—I agree.

K.S.K.

LETTERS PATENT APPEAL

Before S. B. Capoor and R. S. Narula, JJ.

LT. COL. MICHEAL A. R. SKINNER AND OTHERS,—*Appellants*

versus

THE MUNICIPAL COMMITTEE, HANSI AND ANOTHER,—*Respondents*

Letters Patent Appeal No. 27 of 1964

September 25, 1968.

Punjab Municipal Act (III of 1911)—S. 3(1)—Building not let out—"Annual value" of such building—Whether to be fixed under S. 3(1)(c).

East Punjab Urban Rent Restriction Act (III of 1949)—S. 4—'Building' or 'land' in occupation of the owner—Rent Controller—Whether has the jurisdiction to fix fair rent for such building or land.

Held, that rent of a building which has never been let out cannot be fixed under clause (b) of sub-section (1) of section 3 of the Punjab Municipal Act, 1911 and therefore, the 'annual value' of such a property has to be fixed in accordance with the principles laid down in clause (c) of sub-section (1) of section 3 of the Act. (Para 7).

Held, that the Rent Controller under the East Punjab Urban Rent Restriction Act, 1949 has no jurisdiction to fix the fair rent of any premises which do not fall within the expression "building or rented land" and such fair rent can be fixed only on an application of a tenant or landlord of a "building or rented land." The expression "rented land" itself implies that it should be a land which is already rented out on the date when the application is made and it is only of rented land that fair rent can be fixed and not of land in the occupation and possession of the owner, which is not rented out. Similarly, under the Act, fair rent cannot be fixed of a building or part of a building which is not let out and which has all along been and continues to

be in the possession and occupation of the owner himself. Such a building or part of a building may, however, become a "building" within the meaning of section 2(a) of the Rent Restriction Act if and when it is let out and then the provisions of sections 4 to 6 of the Act would straightaway apply to it. **(Para 6).**

Letters Patent Appeal under Clause X of the Letters Patent of the Punjab High Court against the judgment of the Hon'ble Mr. Justice Shamsher Bahadur dated 22nd October, 1963, passed in Civil Writ No. 1716 of 1962.

G. C. MITTAL, ADVOCATE, for the Appellants.

H. S. WASU, AND L. S. WASU, ADVOCATES, for the Respondents.

JUDGMENT

NARULA, J.—This is an appeal under clause 10 of the Letters Patent against the judgment, dated October 22, 1963, of a learned Single Judge of this Court dismissing Civil Writ 1716 of 1962, which had been filed by the appellants to quash the order of the Administrator, Municipal Committee, Hansi, dated March 14, 1962, raising the annual value of the property in dispute belonging to the writ petitioner-appellants (Annexure 'C') to Rs. 3,600, and the appellate order of the Deputy Commissioner, Hissar, dated July 3, 1962, reducing the annual value of the property to Rs. 2,400 and not allowing the contention of the appellants to maintain the previous value of Rs. 1,440.

(2) An idea of the extent of the property involved in this case which appears to consist of six separate residential portions can be had from the description of the property contained in Annexure 'R-1'. The property admittedly belongs to the appellants. Since 1946-47, the property is subject to the levy of house-tax under section 61(1)(a)(i) of the Punjab Muncipal Act (3 of 1911) as subsequently amended (hereinafter called the Act), which provision states:—

> "Subject to any general or special orders which the State Government may make in this behalf, and to the ruels, any committee may, from time to time for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes, namely:—
>
> (1) (a) a tax payable by the owner, on buildings and lands—
> (i) not exceeding twelve and-a-half per centum on the annual value;"

The annual value was fixed at Rs. 600 in that year and remained the same till 1948-49. On receipt of a notice under section 65 of the Act for raising the annual value to Rs. 3,600, the petitioners filed objections which ultimately resulted in the appellate order of the Deputy Commissioner reducing the same to Rs. 1,440. The amount so fixed continued to be the annual value from 1949-50 to 1961-62. Enhancement was again proposed in the revision taken up in December, 1961, to Rs. 3,600. The objections of the petitioners against the proposed enhancement were dismissed by the order of the Administrator of the Municipal Committee, dated March 14, 1962 (Annexure 'C'). On the appeal of the petitioners, dated April 19, 1962 (Annexure 'B'), the value was reduced by the order of the Deputy Commissioner, dated July 3, 1962 (Annexure 'A') to Rs. 2,400. Not satisfied with the same, appellants came to this Court in October, 1962, under Articles 226 and 227 of the Constitution. The petition was resisted by the respondent-municipality. At the hearing of the writ petition, the claim for impugning the order of the Municipal Committee and of the appellate officer fixing the annual value at Rs. 1,440 was given up as it was too much delayed. Only the validity of the orders, dated March 14, 1962, and July 3, 1962, was questioned before the learned Single Judge. The solitary point which appears to have been argued on behalf of the present appellants before Shamsher Bahadur, J., was that the annual value as defined in clause (b) of sub-section (1) of section 3 of the Act could not be enhanced in the case of a property which had not been let out as the East Punjab Urban Rent Restriction Act did not permit the enhancement of rents which were being charged by landlords from tenants in the Punjab in 1949-50, when the previous annual value was fixed. While dismissing the writ petition, the learned Single Judge held that it was not legitimate for the petitioners to contend that the revised assessment has ignored the provisions of the Rent Restriction Act as alterations or improvements might have been made and amenities provided by the Municipal Committee after the previous fixation of the annual value. It was found as a fact that certain additional amenities had been provided by the respondent-municipality subsequent to the last assessment. It was further observed by the learned Single Judge "that to hold that the rental value once determined remains unchanged and unchangeable would be to ignore altogether the provisions of the Act as also the realities of the situation."

(3) At the hearing of this appeal Mr. Gokal Chand Mittal, learned counsel for the appellants firstly submitted on the authority

of a Division Bench judgment of this Court (Dulat and Pandit, JJ.) in *Municipal Corporation of Delhi* v. *Ganesh Das* (1), that under section 3(1) (b) of the Act annual value of a house or building means the gross annual rent at which such a house or building may reasonably be expected to be let and that inasmuch as no building can be let against the provisions of the Rent Restriction Act, the annual value cannot be more than the rent which could be fixed by a Rent Controller. Reference was then made in the same connection to the judgment of Mahajan, J., in *Inder Mohan* v. *The Excise and Taxation Commissioner, Punjab, and others* (2). That case arose under the Punjab Urban Immovable Property Tax Act (17 of 1940). It was held that the annual value which has to be fixed under rule 4(e) and (f) of the Punjab Urban Immovable Property Tax Rules, 1941, framed under the 1940 Act cannot be fixed at a figure higher than the rental value under the Rent Restriction Act. Mahajan, J., made it clear in that case that if the property is subject to the provisions of the East Punjab Urban Rent Restriction Act, 1949, it cannot earn nor can it reasonably be expected to earn more rent than what that Act permits, and that it is, therefore, incumbent on the assessing authority to determine the annual rental value for purposes of the assessment of the tax under the 1940 Act, with reference to the relevant provisions of the Rent Restriction Act. The basic judgment on this point is of the Supreme Court in the *Corporation of Calcutta* v. *Sm. Padma Debi and others* (3), which arose under section 127(a) of the Calcutta Municipal Act (3 of 1923) relating to the interpretation of the phrase "gross annual rent at which the building might reasonably be expected to be let". Dealing with the implications of the above-mentioned phrase, it was held by the Supreme Court that though the word "reasonably" in section 127(a) of the Calcutta Municipal Act was not capable of precise definition, it signifies "in accordance with reason", and that on a combined reading of the relevant provisions of the Rent Control Act there can be no doubt that a contract for rent at a rate higher than the standard rent is not only not enforceable but also that the landlord will be committing an offence if he collects more than the standard rent. It was observed that in such a situation, it would be legitimate to say that a landlord cannot reasonably be expected to let out a building for a rent higher than the

(1) 1964 P.L.R. 361.
(2) I.L.R. (1962) 2 Punj. 884.
(3) A.I.R. 1962 S.C. 151.

standard rent. Taking notice of the fact that section 127(a) of the Calcutta Municipal Act did not contemplate the rent actually received by a Landlord, but a hypothetical rent which he could reasonably be expected to receive if the building was let, their Lordships of the Supreme Court held that in spite of this hypothetical rent may be described as rent which a landlord may reasonably be expected to get in open market and in view of the statutory limitation of rent, the hypothetical rent could not exceed the standard limit laid down by the Rent Restriction Act. It was on that basis that it was authoritatively held that the rental value under setcion 127(a) of the Calcutta Municipal Act could not be fixed higher than the standard rent under the relevant Rent Control Act.

(4) Mr. Mittal lastly referred to the judgment of Shamsher Bahadur, J., in *Tejaswi Chand Khanna* v. *The Joint Excise and Taxation Commissioner, Punjab* (4). A short note of that judgment appears in 1967 P.L.R., at page 30 (Short Note No. 49). That case arose under the Punjab Urban Immovable Property Tax Act (17 of 1940), and it was held by the learned Judge that the reasonable rent envisaged in the relevant provisions of that Act and the rules framed thereunder could be nothing more than the fair rent of the building and that such a fair rent has to be fixed under the provisions of the Rent Restriction Act. Shamsher Bahadur, J., further observed that where fair rent of a building had not been fixed by the Rent Controller, the assessing authority has to determine the same on the principles laid down in the Rent Restriction Act. Reliance was placed for that proposition on the above-mentioned judgment of the Supreme Court.

(5) Clause (b) of sub-section (1) of section 3 of the Act on which the whole argument of Mr. Mittal is based is in the following terms:—

> "In this Act, unless there is something repugnant in the subject or context,—
>
> (1) 'annual value' means—
>
> (a) * * * * * * * *
> * * * * *
>
> (b) in the case of any house or building, the gross annual rent at which such house or building, together with

(4) C.W. 2662 of 1962 decided on 23rd February, 1967.

its appurtenances and any furniture that may be let for use or enjoyment therewith may reasonably be expected to let from year to year, subject to the following deductions:—

(i) such deduction not exceeding 20 per cent of the gross annual rent as the committee in each particular case may consider a reasonable allowance on account of the furniture let therewith;

(ii) a deduction of 10 per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent. The deduction under this sub-clause shall be calculated on the balance of the gross annual rent after the deduction (if any) under sub-clause (i);

(iii) where land is let with a building such deduction, not exceeding 20 per cent, of the gross annual rent, as the committee in each particular case may consider reasonable on account of the actual expenditure, if any, annually incurred by the owner on the upkeep of the land in a state to command such gross annual rent;

Explanation I.—For the purposes of this clause it is immaterial whether the house or building, and the furniture and the land let for use or enjoyment therewith, are let by the same contract or by different contracts, and if by different contracts, whether such contracts are made simultaneously or at different times.

Explanation II.—The term 'gross annual rent' shall not include any tax payable by the owner in respect of which the owner and tenant have agreed that it shall be paid by the tenant."

There appears to be little doubt that if the case of the appellants were covered by clause (b) of sub-section (1) of section 3, and if the restrictions on the quantum of rent imopsed by the East Punjab Rent Restriction Act were applicable thereto, the respondent-municipality would have been bound to justify the enhancement in the

amount of the annual value on the basis of the prinicples contained in the relevant provisions of the Rent Restriction Act.

(6) Mr. Harnam Singh Wasu on the other hand contended that neither the provisions fixing the ceiling on rents contained in the Rent Restriction Act apply to this property nor clause (b) of sub-section (1) of section 3 of the Punjab Municipal Act has any application to the case. The only admitted relevant fact on which both sides have relied in this connection is that no part of the building in dispute has at any known time been ever let out to any tenant and that in any case there has been no tenant in this building during the last fifty or sixty years. What is called "standard rent" in some of the Rent Restriction Acts is called "fair rent" in the East Punjab Urban Rent Restriction Act of 1949 (hereinafter called the East Punjab Act). With the exception of cases covered by section 5, landlords are prohibited by section 6 of the East Punjab Act from claiming anything in excess of fair rent. Section 5 deals with the circumstances in which increase in fair rent is admissible. Section 4 provides for determination of fair rent. Sub-section (1) of that section states :—

> "The Controller shall on application by the tenant or landlord of a building or rented land fix the fair rent for such building or rented land after holding such inquiry as the Controller thinks fit."

It is plain from a reading of the above quoted provision that the Rent Controller has no jurisdiction to fix the fair rent of any premises which do not fall within the expression "building or rented land" and such fair rent can be fixed only on an application of a tenant or landlord of a "building or rented land." The expression "rented land" itself implies that it should be a land which is already rented out on the date when the application is made and it is only of rented land that fair rent can be fixed and not of land in the occupation and possession of the owner, which is not rented out. "Building" is defined in clause (a) of section 2 of the East Punjab Act to mean "any building or part of a building let for any purpose whether being actually used for that purpose or not, --- - -- -". So that it is only a building or part of a building which is "let for any purpose" which will be deemed to be a building for purpose of the East Punjab Act, and of which alone fair rent can be fixed under section 4 of that Act, and for which premises alone, in the very

nature of things the restrictions contained in section 6 of that Act can apply. We find great force in this submission of Mr. Wasu and it appears beyond doubt that under the East Punjab Act fair rent cannot be fixed of a building or part of a building which is not let out and which has all along been and continues to be in the possession and occupation of the owner himself. Such a building or part of a building may, however, become a "building" within the meaning of section 2(a) of the East Punjab Act if and when it is let out and then the provisions of sections 4 to 6 of the Act would straightaway apply to it. On the admitted facts of the present case, therefore, the rent restriction contained in the East Punjab Act is not applicable to the property in dispute.

(7) We also find force in the second argument of Mr. Wasu. He contends that determination of annual rent of a property which has never been let out and continues to be in the personal occupation of the owner has to be made under clause (c) and not clause (b) of sub-section (1) of section 3 of the Act. Clause (b) has already been quoted in an earlier part of this judgment. Clause (c) of sub-section (1) of section 3 of the Act is in the following terms :—

> "In this Act, unless there is something repugnant in the subject or context,—'annual value' means in the case of any house or building, the gross annual rent of which cannot be determined under clause (b), 5 per cent on the sum obtained by adding the estimated present cost of erecting the building, less such amount as the committee may deem reasonable to be deducted on account of depreciation (if any) to the estimated market value of the site and any land attached to the house or building :
>
> (i) in the calculation of the annual value of any premises no account shall be taken of any machinery thereon;
>
> (ii) when a building is occupied by the owner under such exceptional circumstances as to render a valuation at 5 per cent on the cost of erecting the building, less depreciation, excessive, a lower percentage may be taken."

The contention of the learned counsel for the respondent municipality is that it is impossible to fix the annual value of a house or

building which has never been let out, and that, therefore, a municipality governed by the Act can have resort only to the provisions of clause (c) of section 3(1) of the Act for fixing the annual value of such a building. Though Mr. Gokal Chand Mittal did not agree with this proposition, he was unable to give us, though repeatedly asked, any illustration of some other case in which it could be said that the "gross annual rent of house or building cannot be determined under clause (b)". A closer examination of the two rival provisions makes the logic behind Mr. Wasu's argument apparent. First deduction allowed under clause (b) relates to the hire of furniture which might be included in rent in a given case. A ceiling of 20 per cent of the gross annual rent is fixed by the clause. The clause is applicable to a case in which "furniture is let therewith" implying that there is a letting of the premises with which the furniture may also have been given on hire. Similarly the permitted deduction of ten per cent for the cost of repairs and for all other expenses "necessary to maintain the building in a state to command such gross annual rent" also implies that clause (b) is applicable only to a case where the premises are let out. Whatever little doubt there might have been in interpreting clause (b) in the manner canvassed by Mr. Wasu, is removed by reference to the third permissible deduction referred to in the provision. A deduction up to 20 per cent is allowed by the third clause "on account of the actual expenditure, if any, annually incurred by the owner on the upkeep of the land in a state to command such gross annual rent." The two explanations to clause (b) also throw a great deal of light on this aspect of the matter. The explanations have already been quoted with the body of clause (b) in an earlier part of this judgment. The first explanation relates to the treating of the letting as one consolidated unit even though the premises and the furniture contained therein are let out by two separate contracts. The second explanation states that the term "gross annual rent" shall not include any tax payable by the owner in respect of which owner and tenant have agreed that it shall be paid by the tenant. This also shows that clause (b) is intended to apply to premises which are actually let out to some tenant at the relevant time. Clause (c) itself states that it would apply in the case of any house or building of which the gross annual rent cannot be determined under clause (b). It appears to us to be clear that gross annual rent of a house or building cannot be determined under clause (b) if it has never been let out at any time. The second proviso to clause (c) clearly illustrates that one of the contingencies sought to be provided for by clause (c) is a case

"when a building is occupied by the owner." The use of the phrase "may reasonably be expected to let" used in clause (b) merely indicates that in determining the annual value, a municipality is not bound to fix it according to the rate of the actual letting and may determine it on the basis of higher or lower rent according as it may find that the property would reasonably be expected to be let at a particular figure and not at the figure at which it is let out at the time of the assessment. There can be cases where a landlord may let out a building to a relative or a friend at a rate of rent which is even lower than the fair rent actually determined by the Rent Controller. In such a case the municipality would be justified in holding that the property may reasonably be expected to be let at the fair rent determined by the Rent Controller though it is actually found to have been let out at a lower rate. The use of the abovesaid phraseology does not, therefore, come into conflict with the interpretation placed by us on clause (b). On the other hand it may not be wholly illogical to argue that a building which has not been let out for about a century and continues to be in the personal occupation of its well-to-do owners is in fact not "reasonably expected to be let" at least in the near future. For that additional reason, clause (b) would not in our opinion apply to a case like this. After a careful consideration of the matter, we are firmly of the opinion that normally rent of a building which has never been let out cannot be fixed under clause (b) and, therefore, the "annual value" of such a property has to be fixed in accordance with the principles laid down in clause (c) of sub-section (1) of section 3 of the Act.

(8) Mr. Gokal Chand Mittal then submitted that we should set aside the impugned orders and direct the respondent-municipality to fix the annual value under clause (c). No such prayer was made on behalf of the appellants either before the municipal authorities or before the learned Single Judge. Nor has any such claim been made either in the writ petition or in the grounds of appeal before us. The case has all along been fought by the appellants on the assumption that clause (b) applies thereto. Once it is found that the said clause has no application to the building in question, the petitioners cannot possibly succeed by taking a somersault and trying to make out a new case at this stage. If the appellants had attacked the validity or correctness of the impugned orders on the ground that they have not been passed in accordance with the statutory provision

contained in section 3(1) (c) of the Act, the respondent-municipality would have had an opportunity of swearing an affidavit as to the facts relevant for that purpose and this Court could then possibly have gone into that matter. As already stated, no such thing has been done in this case. We are, therefore, unable to entertain this new plea sought to be raised by the appellants during the hearing of this appeal for the first time.

(9) No other point having been argued by Mr. Mittal before us, we uphold the judgment of the learned single judge, though on different grounds than those which appealed to him. This appeal, therefore, fails and is accordingly dismissed, though without any order as to costs.

S. B. CAPOOR, J.—I agree.

R.N.M.

FULL BENCH

Before Daya Krishan Mahajan, Shamsher Bahadur and R. S. Narula, JJ.

THE PRINTERS HOUSE PRIVATE LTD., *Appellants.*

versus

MISRI LAL AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 20 of 1966

April 18, 1969.

Land Acquisition Act (I of 1894)—Section 17 (as amended by Punjab Act II of 1954, Punjab Act XVII of 1956 and Punjab Act XLVII of 1956)—Ground of urgency of a public purpose—Whether justiciable—S. 17(2)(c)—Whether to be read ejusdem generis for the purposes enumerated in section 17(2)(a) and 17(2)(b)—Doctrine of ejusdem generis—Meaning and scope of-stated.

Held, that the ground of urgency of a public purpose as envisaged in section 17 of Land Acquisition Act, 1894 is not a matter purely for the subjective satisfaction of the Government. It is possible to envision cases where the Government may act under section 17 of the Act, without there being any real urgency in the matter. The Court, may therefore determine