
(1997) 02 CAL CK 0020

In the Calcutta High Court

Case No : C.O. No's. 17832 (W) 20322 (W) , 20308 (W) and etc. of 1996

Santosh Kumar Roy and others etc.

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 17-02-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 299
Contract Act, 1872 — Section 23

Citation : AIR 1997 Cal 168

Hon'ble Judges : Satya Brata Sinha, J

Bench : Single Bench

Advocate : Ajit Kumar Panja, Asoke Dey, Anowar Mondal, Ms. Sipra Majumdar, Anami Sikdar, Amitava Nayak and Subrata Ghosh, for the Appellant; Rameswar Bhattacharyya, Tarun Raoy, Subrata Mukherjee, Debasis Kargupta, Pulak Ranjan Mondal and Ms. Bandana Das, for the Respondent

Judgement

1. All these applications involving common questions of facts and law are being taken up for hearing together and are being disposed of by its common judgement.
2. The petitioners are tenants in the flats owned by the State of West Bengal. For the purpose of such tenancy agreements had been entered into by and between the Government of West Bengal and the tenants. Some of the tenancies relate back to early 60's.
3. The petitioners in these applications are aggrieved by an order whereby adhoc increase in the monthly rent was directed in terms of a letter dated 14-10-1996 as c6n-tained Annexure "G" in the writ application filed by the Belgachia Villa Tenants' Association and others, being C. O. No. 20322(W) of 1996.
4. The basic fact of the matter would be considered from the averments made in the said applications.
5. The petitioner No. 1 is a Registered Society and other petitioners are its

members and tenants of respective flats at Beigachia Villa being Premises No. 64 Beigachia Road, Calcutta. By a letter dated 28-6-96 the petitioners allegedly pointed out various difficulties to the Minister Housing Department and asked for an appointment with him. On 16-8-86 the petitioners addressed a letter to the Executive Engineer, Housing Construction Division wherein they pointed out the bad state of maintenance of the building, boundary walls and inter roads as also alleged failure on the part of the Calcutta Municipal Corporation to supply filter water. It is stated that there had been no maintenance of the tenanted premises for the last 10 years and even the campus was not being cleaned. On 22-8-96 the petitioners wrote another letter to the Hon'ble Minister pointing out that despite a memorandum submitted to the Chief Engineer on 23-2-86 no step had been taken for repair and water supply or maintenance of the flats or the boundary wall and roads and/ or the sewerage system. Again a letter dated 18-9-96 was issued by the petitioner No. 1 to the Hon'ble Minister allegedly pointing out about re-structuring of the rent, maintenance and repair of the flats and the roads. A High Power Committee admittedly came into being for the purpose considering the matter relating to increase in the rate of rent. On or about 23-9-96 the concerned respondents purported to be relying on or on the basis of the said report directed increase in rent. The grievances of the petitioners appear to be that neither any report of the said High Power Committee had been supplied to them nor the petitioners were called by the said Committee for a hearing. Such increase in rent was to take effect from 1-10-96. However on 3-10-96 an advisory committee was constituted by the Governor of the State of West Bengal on the representation of the petitioners to examine thoroughly the provisional revision of rent made by the government on the basis of the recommendations and to reach a final decision as also to consider the scope of proper work of maintenance. The said resolution was published in the Calcutta Gazette. By reason of the said resolution the members of the committee were directed to submit a report within six months. On or about 4-10-96 the petitioners pointed out various difficulties as regard payment of the increased rent to the Secretary of the Housing Department. The petitioners also filed a representation before the Government of West Bengal on 8-10-96. However by reason of a memorandum issued on 14-10-1996 as contained in Annexure "G" to the writ petition the rate of rent was directed to be doubled on an adhoc basis. By reason of the said memorandum, the earlier memorandum dated 23-8-96 being Annexure "C" to the said writ petition was superceded. On 7-11-96 the advisory committee was to make on the spot study, wherefor a notice was issued. The said notice envisaged interaction with the Tenants' Association a copy whereof was also sent to the petitioners.

6. Mr. Ajit Panja the learned senior counsel appearing on behalf of the petitioners in C. O. No. 20322 (W) of 1996 has inter alia raised the following conditions:--

1) The tenancy in question being governed under the West Bengal Premises (Regulation of Occupancy) Act, 1976 and the rules framed thereunder, no rent could be revised as there does not exist any provision therefor.

2) Although in terms of the agreement the government is entitled to increase rent but the tenancy being governed under a statute, the statute shall prevail over the said agreement in view of the non obstante clause contained in the said Act.

3) Inasmuch as the respective rights and obligations of the parties are governed the said Act, any revision of rent must be made by way of an agreement between the concerned parties and not unilaterally.

4) In any event the impugned order is barred under the doctrines of "Estoppel" and "Legitimate expectation".

5) In any view of the matter the Governor having appointed an advisory committee, the impugned order cannot be given effect to unless the advisory committee submits its report upon giving an opportunity of hearing to the petitioners.

6) Mala fide on the part of the respondents would be evident from the fact that despite filing of the writ application, notices of eviction had been issued during pendency of the writ application.

7) The allegations of the non-maintenance and non-repair of the premises having not been denied, the same would be deemed to be admitted and in support of the aforementioned contention reliance has been placed on 70 CWN 339 (sic). The learned counsel contends that as admittedly no maintenance was being carried out; the question of payment of any enhanced rate does not arise.

8) The largess of the State should be distributed in a fair and reasonable manner and in support of his aforementioned contentions reliance has been placed on State of Rajasthan Vs. Botamal Sachdeva (Dead) through his Lrs.,

9) The resolution of the state having been published in the gazette, the same would form part of the Act. Reliance in this connection has been placed in Krishan Lal Vs. State of Jammu & Kashmir,

10) The state in the backdrop of events of the case is estopped and precluded from enhancing the rent.

7. Mr. A. K. Dey, the learned counsel appearing in one of the writ petitions adopted the submissions of Mr. Panja, Mr. Dey, however, submitted that the respondents being statutory authorities, must act within the four corners of the statute. Reliance has been placed in this connection in Maniruddin Bepari v. The Chairman of the Municipal Commissioners, Dacca reported in 40 CWN 17 and in Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, on the point of legitimate expectation the learned counsel has also relied upon the decision in Union of India and others Vs. Hindustan Development Corpn. and others, and Smt. Nirmala Dixit Vs. State of U.P. and Others, It was further submitted that so far as the tenants under the middle income group is concerned, they having been

allotted flats-on the basis of their annual income, as there is nothing on record to show that the annual income of such tenants have been doubled, the impugned order must be held to be bad in law.

8. Mr. Mondal appearing on behalf of the petitioners in Writ Petition No. 20435 (W) of 1996 submitted that the petitioners of the said writ applications have been discriminated inasmuch as they had been inducted as a tenant only in the years 1990-91 and paying much more as rent than those tenants who are petitioners in the other writ petitions as they had been inducted in the sixties.

9. Mr. Rameswar Bhattacharyya appearing on behalf of the Estate Manager submitted that a power has been granted to the respondents to increase rent in term of the agreement and thus in instant case the question of invoking the principles of "Estoppel" or "Legitimate Expectation" does not arise. He further denied and disputed the fact that the earlier notification constituting the high power committee had been superceded. According to/the learned counsel as the enhancement of rent is permissible under the agreement, the principles of natural justice is not required to be complied with and in support of his aforementioned contention reliance has been placed on an unreported decision in Estate Manager, Estate Directorate Ex-Officio Deputy Secretary, Housing Department v.Dilip Kumar De (FMAT No. 3882 of 1995) disposed of on 19-3-96.

10. Mr. D. Kar Gupta appearing on behalf of the State in some of the writ applications submitted that the policy of the State Government to induct tenant was on a "no profit or no loss" basis and thus the State Government cannot incur any loss. According to the learned counsel a financial emergency arose before passing the impugned order and thus the question of complying with the principles of natural justice does not arise and in this connection reliance has been placed in Charan Lal Sahu Vs. Union of India, The learned counsel urged that the State Government had acted fairly inasmuch as although the high power committee had recommended for a stiff rise in the rent, the State Government did not accept the said report in its entirety keeping in view the difficulties which may be faced by the tenants and directed appointment of another committee and in the meantime Erected to pay the increased rent on an adhoc basis. According to the learned counsel, as the matter is pending consideration by the said committee the writ application is premature. It has been submitted that the petitioners are guilty of suppression of the material facts inasmuch as the earlier committee had given notice to the petitioners. The learned counsel pointed out that whereas the first order revising rent was issued on 23rd September; the second one was issued on 14-10-96 and on 7-11-96 a notice for a spot visit had been issued. According to the learned counsel this court has a limited role to play while exercising its power of judicial review for which reliance has been placed in U. P. Financial Corporation v. M/s. Gem Cap (India) Pvt. Limited, reported in AIR 1993 SC 1435 and in M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, .

11. Mr. Subrata Roy appearing on behalf of the State in some other matters

submitted that in the instant case, principles of natural justice have been complied with as views had been exchanged relating to objection to the rent revision on 2-9-96 and 21-8-96. The learned counsel submitted that the revision of rent is essentially a question of policy depending on the financial condition of the State. It - has been pointed out that State had been paying 75% of the costs by way subsidy and according to the State, it is not a priority sector where the State can continue pay subsidy to the tenants. The learned counsel contends that the tenants cannot claim themselves to be belonging to a privileged class and this enhancement of rent cannot be said to be against public interest. It was pointed out from an allotment letter dated 20-12-1976 it would appear that the monthly rent was fixed on an adhoc basis @ Rs. 93 which included the occupation charges, taxes and existing service charges. The learned counsel submits that in the meantime the salary of the government employees had increased many fold and thus increase in house rent is not irrational. It was further submitted that although the said Act provides for a non obstante clause but as there is no restriction relating to enhancement of rent the State has enough power to enhance rent which was not repugnant to the Act. Reliance has been placed in this connection in Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, .

12. Admittedly except in some cases, tenancies were entered into by and between the Government of West Bengal and the tenants by reason of an agreement, a sample copy whereof is contained in Annexure "A" to C. O. No. 20322 {W} of 1996 which states that the rent was fixed on a provisional basis for the said flat subject to revision from time to time. (Underlinng is mine for emphasis)

13. The said Act came into force in the yea/1976. After coming into force of the said act which was enacted for regulating such tenancies, the tenancy became a statutory one to the extent covered by the statute, but the other terms and conditions of the tenancy were governed by contract. However, the right of the petitioner to occupy a tenanted premises is not an absolute right. The terms and conditions of such tenancy are governed by the agreement. The said act had merely imposed restrictions upon the right of the tenant and created certain rights in favour of the State. It is true that the said Act does not contain any provision for enhancement of rent but that does not mean that the State has no power in respect thereof. It is also true that a statutory authority can exercise his jurisdiction within the four corners of the statutes but the said principle has no application in the instant case. In Maniruddin Bepari v. Chairman of the Municipal Commissioners, Dacca, reported in 40 CWN 17, a learned single Judge of this court was dealing with the provisions of Bengal Municipal Act relating to the exercise of power to grant licenses for vending on a public path-way which power it did not have. In that situation this courl held :--

"It is a fundamental principle of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is

equally a fundamental principle that in the case of a statutory corporation it is just the other way. The corporation has not power to do anything unless those powers are conferred on it by the statute which creates it. In the Municipal Act of 1884, I do not find any power given to the Municipality to allow the use of a public thoroughfare from day to day for any other purposes than a public pathway".

14. The said decision was, therefore, rendered in a different fact and situation. The fact of the matter of R.R. Engineering Co. Vs. Zila Parishad, Bareilly and Another, also appears to be different.

15. In the instant case, the rights and obligations of the parties are not only governed by a statute but also by an agreement. Admittedly by reason of an agreement a rent in the adhoc nature had been fixed with a right to the government to revise the rent from time to time. It is, therefore, not a case where no enhancement in rent could be made except by an agreement entered into by the parties in terms of Article 299 of the Constitution of India, inasmuch as power to revise rent has been conferred by reason of the agreement itself. Such a power flows from the contract and, thus, the tenants are bound thereby. It is not and cannot be the case of the petitioners that the said provision is against a public policy and thus attracts Section 23 of the Indian Contract Act or Article 14 of the Constitution of India. It is difficult to accept the contention that on an interpretation of Clause 3(a) it must be held that no unilateral power had been granted for increase in rent to the state but as is well-known such a power has to be exercised reasonably. If the tenants question an increase in rent on the ground that the same is arbitrary, the State may produce all records to show that it had not acted in an arbitrary manner. The provisions of West Bengal Premises Tenancy Act and the Transfer of Property Act have no application to the tenancies in question. There is no independent agency to fix a fair rent as in the case of the tenants governed under provisions of the West Bengal Premises Tenancy Act. The decision of the Supreme Court of India in State of Rajasthan Vs. Botamal Sachdeva (Dead) through his Lrs., has no application to the instant case; inasmuch as therein the Apex Court was concerned with a contract of construction given by the State Government to a Contractor which did not contain any provision relating to forfeiture of security deposit and thus it was held in absence of such provision, no security deposit could be forfeited.

16. It may be true that the statements made in some of the writ applications had not been properly traversed as regards poor maintenance/repair of the premises in question but keeping in view of the questions of law involved in these applications, the Court directed the parties to file a short affidavit within a very short time. In any event, as all the records have been produced before, this Court, the rules of pleadings cannot have much relevances in the facts and circumstances of this case.

17. There cannot, however, be any doubt that for the purpose managing the estate, the State, the State has to maintain a huge establishment and engage a

large number of staff. It is also required to pay the municipal charges. It is also" required to incur the expenses towards services for upkeeping the sanitation and cleanliness.

18. If the petitioners are aggrieved by inaction on the part of the State to fulfil their constructional and / or statutory obligation to maintain the premises properly, it can certainly take action against them in accordance with law before an appropriate forum but in these applications this Court is merely concerned with the question as to whether the State has the requisite power to increase the rent or not. Such a power having been expressly reserved in Clause 3(a) of the agreement, this Court has no other option but to hold that such a power exists and can be exercised in a reasonable manner. The State in these cases cannot be said to have acted wholly arbitrarily as it appointed a High Power Committee before directing such an enhancement which had gone into all aspects of the matter and came to the conclusion that the State has to bear more than 75% of the actual costs incurred for maintenance of the flats in question on "on profit no loss" basis. The State while introducing the housing scheme although adopted a bene-volent scheme, it never meant to spend a huge amount for doling out the same by way of subsidies to the tenants. The State is entitled to act in terms of its policy decision of "no loss no profit" basis so as to enable it to fix such a rent as a result whereof, the exchequer does not have to incur any extra amount for maintenance of those flats. The petitioners have not been allotted flats by way of condition of service. They were allotted flats although they are not the Government servants. This benevolent scheme had been adopted by the State so as to ameliorate the difficulties faced by a large section of the people who had no shelter but the State has its own limitations both fiscal and otherwise.

19. The state, therefore, cannot be expected to incur any loss for inducting tenant in the flats in question.

20. If the State had not been able to maintain its properties properly owing to non availability of fund, the same itself is aground for enhancement of rent. This Court can take judicial notice of the fact that the rent in and around the town of Calcutta may vary from Rs.5/- to Rs. 10/- per sq. ft. or even more excluding municipal charges or other service charges; whereas the petitioners were inducted as tenants on very paltry sum by way of rent. It is not for this Court to go into the details as regards computation of the expenditure required to be incurred by the State, inasmuch as for the said purpose the State had already constituted a High Power Committee. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India has a limited role to play, while exercising its power of judicial review, it cannot sit in appeal over the decision of the executive. Similarly the interest of the tenant to occupy the premises, on payment of an exceptionally low rent, cannot outweigh the burden of the public exchequer which affects the public at large. In *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, the Apex Court had held that a policy decision of

grouping sugar factories on the basis of their geographical location for the purpose of fixation of price of Levy Sugar does not attract the power of the judicial review stating (at p. 1299 of AIR):

"Judicial review is not concerned with matters of economic policy. The Court does not substitute its judgement for that of the legislature or its agents as to matters within the province of either. The Court does not supplant the "feel of the expert" by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive provided that such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact was reasonably based on evidence and whether such findings are consistent with the laws of the land, Price fixation is not within the province of the Courts. Judicial function in respect of such matters is exhausted when there is found to be a rational basis for the conclusions reached by the concerned authority.

21. In *U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd.* reported in AIR 1993 SC 1435 the law has been stated thus :--

"It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, Even so that extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities it follows equally that it cannot do so in the case of administrative authorities.

While this is not the occasion to examine the content and contours of the doctrine of fairness, it is enough to reiterate for the purpose of this case that the power of the High Court while reviewing the administrative action is not that of an appellate Court. The judgement under appeal precisely does that and for that reason is liable to be and is herewith set aside."

The scope of judicial review has been firmly set at rest by the Appex Court in *Tata Cellular Vs. Union of India*, Yet recently in *State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd.*, the Supreme Court inter alia observed that the interpretation of the terms and conditions of contract cannot be agitated and could not have been agitated in a writ petition I, therefore, find much substance in the contention of the learned counsel appearing on behalf of the State that the State has a power to increase the rent.

22. The meaning of the word "revision" in the context of rent is so simple that it is not necessary to refer to any dictionary to find out its meaning.

23. The words in the agreement "from time to time" confers an extensive power upon the Government to revise the rent, albeit such a power should not be exercised arbitrarily but must be exercised bona fide, reasonably and in keeping

and in tune with its policy decision of "no loss no profit" basis.

24. By reason of an order dated 23-9-1996 as contained in Annexure "C" to the application, the Government adopted a revised rent structure on adhoc basis for the present, pending final decision to be taken on the report of the advisory Committee in respect of all flats of LIG, MIG, HIG and HIS and HIS on the following basis:

- "1. HIG Rs.750/- (Rupees seven hundred and fifty) only or double of the existing rent whichever is higher.
2. MIG Rs.400/- (Rupees four hundred) only or double of the existing rent whichever is higher.
3. LIG Rs. 200/- (Rupees two hundred) only or double of the existing rent whichever is higher.
4. HIS including HIS & Rs. 80/- (Rupees eighty) SCP only or double of the existing rent which ever is higher."

The petitioners in their representation very firmly stated that the Government cannot be asked to provide highly subsidised flats to the tenants but the Government is also bound to maintain the same.

25. The said representation was acknowledged by the Secretariat of the Hon'ble government of the State of West Bengal. By reason of an order dated 3-10-1996 the Government appointed an Advisory Committee with a view to reach a final decision and also to consider the scope and proper work of maintenance in different flats of Housing Estate. The terms inter alia envisage a study on the existing practice of maintenance, examining the role of Housing Agent Association and the management of the Housing Estate as also need on further change/revision of the rent structure. In the context of the report of the revision committee taking into consideration the interim increase already made and as to the corrective measure to remove anomalies if there be, any as also to take step of the unauthorised occupation and of find out ways means and eviction of such occupants.

26. It is difficult to accept the submission of Mr. Panja that only because the said notification was published in the Official Gazette, the same would form part of the act. The said notification was in relation to constitution of an Advisory Committee, which committee had been formed for the purpose of making recommendations to the Government and not for the purpose of exercising any statutory power. Only a subordinate legislation when framed in accordance with law may be considered to be a part of the Act and not otherwise. The decision of the Apex Court in Madras City Wine Merchants' Association and Another Vs. State of T.N. and Another, thus, cannot have any application to the fact of the present case. It is also difficult to accept the submission of Mr. Panja to the effect that the State has no power to increase the rent on an adhoc basis. In the instant case, the respondents have placed before this Court, the report of the

committee. The Committee was constituted on 28-1-1994 which consisted of nine members including the Chief Valuers, CMC, the Representative of the Central Valuation Board, Govt. of West Bengal, Executive Engineer, Housing Directorate, Joint Secretary, Housing Department, and Deputy Secretary of the Housing Department. It has been pointed out that the flats were constructed with LIC loan and initial rent was fixed so as to enable the Government to repay the same at annually equated payment together with maintenance cost @ 1254% of the annual valuation and 5% of the capital cost. However, according to the members of the committee, the quantum of rent became unrealistic after a few years and against comparable rent of 1,53, 68,000 during the year 1992-93 the expenditure showed up to 6,98,46,000. The committee, therefore, considered that the factors which contribute to the determination of rent are the following:

"(A) Capital cost of the flat including cost of land;

(B) Cost of maintenance which includes,

(i) Ordinary and Special;

(ii) Cost of services like supply of water, electricity, maintenance of sewerage and sanitary services;

(iii) Municipal Taxes and also collection charges."

27. The details of finding of the committee have been stated in the affidavit-in-opposition filed by the respondent No. 6.

28. However, it is evident that the State considering the hardship of the tenants did not accept the said recommendations in its entirety as by reason of the impugned order, the rates were only made double the existing rate on an ad hoc basis.

29. In its Affidavit-in-Opposition of the State filed in C.O. No. 17832 (W) of 1996 it was categorically stated that it had never wanted to make any profit or to curtail down the interest of the common people. According to the State, the Government has taken a very liberal view of the matter and fixed the rent within the range of the persons concerned. It appears from the said affidavit-in-opposition that the State has sought for the relevant records relating to the basis for maintenance from the respective officers. Upon perusal of the introductory note on the recommendations of the committee for revision of rent structure, it appears that the committee took into consideration various aspects in eluding the basis for fixing rent adopted by CMDA for similar flats and came to the conclusion that the State had been paying 75.71% by way of subsidy. Although strictly speaking in such matters principles of natural justice were not required to be complied with but the State had invited representatives of the Association for exchanging their view points. Further more, it is well-known that the principles of natural justice are to be viewed in circumstantial flexibility. As the matter relating to the cost and other factors is merely a subject matter of accounting; an

opportunity of hearing would not have served very fruitful purpose but still then the Government wanted to know the view points of the association. In view of the decision in Union of India and another Vs. W.N. Chadha, it cannot be said that revision of rent on an adhoc basis treating the report of the High Power Committee as a prima facie basis cannot be said to be wholly arbitrary and violative of the principles of Natural Justice.

30. Principles of natural justice is normally required to be complied with unless the same is excluded by express provision of any statute or by necessary implication. However, the principles of natural justice cannot have any application in a case of emergency. In Charan Lal Sahu Vs. Union of India, while considering the case for grant of compensation in terms of Bhopal Gas Disaster (Processing of Claims) Act, the Apex Court, inter alia, held that the principles of natural justice have no application as the Central Government was not judging any claim but was fighting and advancing the claims of the victims. In Estate Manager, Estate Directorate Ex-Officio Deputy Secretary, Housing Department v. Dilip Kumar Dey being P.M.A.T. No. 3882 of 1995 reported in 1996 (2) Cal HN 533 this Court has held that were the provisions of Section 3 of the said Act applies, principles of natural justice are not required to be complied with.

31. In the instant case, as indicated hereinbefore, the State had formed a committee. The said committee apart from considering the documents relating to the expenditures required to be incurred by the State, would also take the view point of the tenants. The rent fixed under the agreements was adhoc in nature. Admittedly the flats had been let out on a very nominal rent. To revision in rent has been made by the State for about three decades, despite the fact that there had been an all round increase in the costs of materials, salary of the staff and the Municipal Taxes etc.,

32. The committee has submitted its report on the basis of the relevant materials and if the said report has tentatively been accepted and another committee has been formed to consider the matter in depth it cannot be said that there has been a violation of principles of natural justice.

33. The doctrine of "Legitimate Expectation" has also no application in the instant case.

34. As indicated hereinbefore, rent is sought to be revised by the State in terms of the provisions contained in the agreements. Such revision in rent cannot be done on the subjective satisfaction of the State.

The point at issue is covered by the decision of the Apex Court in Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, where it has been held that allotment of flat is a matter of agreement and the decision in the matter of allotment of flat is governed by such agreement but such decision may be taken on an objective basis. In Madras City Wine Merchants' Association and Another Vs. State of T.N. and Another, the Apex Court upon taking into consideration a large number of decisions including Union of India and others Vs.

Hindustan Development Corpn. and others, inter alia held :--

"From the above it is clear that legitimate expectation may arise --

- (a) if there is an express promise given by a public authority; or
- (b) because of the existence of a regular practice which the claimant can reasonably expect to continue;
- (c) such an expectation must be reasonable.

However, if there is a change in policy or in public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise."

The matter relating to the question of applicability of doctrine of legitimate expectation has been dealt with by this Court in D. Wren International Ltd. and another Vs. Engineers India Ltd. and others, wherein this Court has considered all the decisions cited at the bar. In fact it is now well known that no cause of action for maintaining a writ application can be based on legitimate expectation alone.

35. In Judicial Review of Public Law by Clive Lewis upon which Mr. Dey has placed strong reliance, it is stated :--

"In the public law field, individuals may-not have strictly enforceable rights but they may have legitimate expectations. Such expectations may stem either from a promise or a representation made by a public body, or from a previous practice of public body. The promise of a hearing before a decision is taken may give rise to a legitimate expectation that a hearing will be given.

"A past practice of consulting before a decision is taken may give rise to an expectation of consultation before any future decision is taken. A promise to confer, or past practice of conferring a substantive benefit, may give rise to an expectation that the individual will be given a hearing before a decision is taken not to confer the benefit. The actual enjoyment of a benefit may create a legitimate expectation that the benefit will not be removed without the individual being given a hearing. On occasions, individuals seek to enforce the promise or expectation itself, by claiming that the substantive benefit be conferred. Decisions affecting such legitimate expectations are subject to judicial review."

36. The aforementioned passage is of no assistance to the petitioners as it is clearly stated therein that in public law field individuals may not have strictly enforceable rights. It is now well known in view-of the decisions of the Supreme Court as referred to hereinbefore, that expectations must emanate either by reasons of an express promise or by reason. of existence of a regular practice. A matter, which is covered by the contractual obligations of the parties, does not involve any public law element and, thus the principles of legitimate .expectation would have no application whatsoever in such a case The petitioners in fact entered into an agreement of tenancies with their eyes wide open. They knew that the ad hoc rent payable under the agreement was subject to revision from

time to time. It is, therefore, not a case where revision of rent was wholly unexpected.

37. In any event the petitioners were all along contending that the State is empowered to revise rent from time to time and they have not been able to point out that the State at any time made any promise on the basis whereof the petitioners acted; as in absence of any practice, question of invoking the principles of legitimate expectations does not arise.

38. Although the contract is a statutory one in so far as the terms of the tenancy which are governed by the provisions of 1976 Act are concerned; the matter relating to revision of rent is primarily governed by the agreement.

39. In Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, the Apex Court held where terms are governed by contract, constitutional provisions cannot ordinarily be invoked. In that Case the question of payment of instalments pursuant to a scheme to payment of rent was involved. It cannot be said that the quantum of rent which was fixed in the early sixties can still hold good despite stiff increase in the maintenance cost, municipal charges, salary of the staff as also other incidental costs. It is also not in dispute that rate of rent of the flat in question compared to the market rent is abysmally low.

40. Nobody can expect to get two or three roomed flat or so, on payment of a paltry sum of Rs..60/- to 130/- or so. Thus, there is absolutely no arbitrariness in fixing the rent at double of the existing rate so as to attract the power of judicial review of this Court.

41. It is further not correct to contend that by formation of the advisory committee, the State had given a go-bye to the report of the High Power Committee. In fact from Annexure "G" to the writ application, it "appears that the advisory committee is required to take into consideration the said report also, as no final decision has yet been taken thereupon. The State must have felt the necessity of increasing the rent on an ad-hoc basis in view of financial urgency. In any event of the advisory committee upon giving an opportunity of hearing and "Upon taking into consideration all aspects of the matter arrives at a different finding, any payment made by the tenants excess has to be adjusted. In that view of the matter the contention of Mr. Mondal that his clients were inducted in" the year 1990 and are paying a rent of Rs. 170/-Rs. 190/-per month whereas others are paying rent Rs. 60/- per month is not required to be considered at this stage as payment of any rent in terms of Annexure "G" to the writ application shall abide by the final decision taken by the State.

42. Mr. Panja contended that by reason of Annexure "G", the earlier notification dated 23-3-1996 was superceded but the said notification has nothing to do with the constitution of the High Power Committee. The High Power Committee, as noticed hereinbefore was constituted in the year 1994. By reason of the notification No. 839 dated 23-9-1996 as contained in Annexure "G" to the writ

application the earlier notification as contained in Annexure "C" has been superceded. The petitioners, therefore, are required to pay rent not in terms of Annexure "C" but in terms of Annexure "F".

43. However, it is expected that the advisory committee which has been formed evidently in view of the representations made by the writ petitioners would consult various representative of the association and submit its report within a reasonable period upon taking into consideration all relevant factors.

44. There cannot be any doubt whatsoever that in the event, the petitioners find that increase in rent is arbitrary or unreasonable it would be open to the petitioners to question the validity therefore before an appropriate forum. Keeping in view the quantum of prevailing market rate, and in view of the fact that the decision of the State to increase the rent is ad-hoc in nature, in my opinion, at this stage this Court should not interfere with the impugned order. These writ applications are, therefore, disposed of with the aforementioned observations but in the facts and circumstances of this case there will be no order as to costs. It may be noticed that even the initial fixation of rent was an ad-hoc basis and in view of the fact that the State is entitled to revise the rent from time to time, pending final decision, in my opinion it is permissible for the State to fix the rent at an ad-hoc basis.

45. Before parting with this case I may notice that an argument has been advanced that there had been ascheme so as to allow the tenants to purchase the flats in question. As at present advice it is not necessary to go into the said question, inasmuch as nothing has been shown that there exists any policy decision conferring any right upon the petitioners to purchase such flats. If there exists any such policy, the petitioners may avail the remedy as is available to them in law.

46. For the reasons aforementioned these applications are dismissed with an observation that in the event the Advisory Committee finds that the rate of rent should not have been doubled, the excess rent paid by the petitioner may be adjusted. However, till determination of the matter by the Advisory Committee and acceptance thereof by the State Government, the petitioners should not be evicted. In the facts and circumstances of this case the parties shall pay and bear their own costs.

47. However, it is made clear as has been prayed for by Mr. Kar Gupta, that this order is confined only to those petitioners who had been directed to pay enhanced rent and not in respect of those petitioners who are in unauthorised occupation in the premises.

48. Applications dismissed.