

(1963) 11 BOM CK 0008
In the Bombay High Court
Case No : Criminal Appeal No. 1135 of 1962

Jamnabai Purshottam Asar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-11-1963

Acts Referred:

Bombay Factories Rules, 1950 — Rule 3
Bombay Municipal Corporation Act, 1888 — Section 390
Constitution of India, 1950 — Article 14
Criminal Procedure Code, 1898 (CrPC) — Section 431
Factories Act, 1948 — Section 2, 7(1), 85, 85(1), 85(2)
Industrial Disputes Act, 1947 — Section 12(5)

Citation : AIR 1964 Bom 267 : (1964) 66 BOMLR 341 : (1964) CriLJ 644 : (1964) 9 FLR 27

Hon'ble Judges : Naik, J;Chandrachud, J

Bench : Division Bench

Advocate : Poras A. Mehta, V.J. Taraporewala and R.T. Walavalkar, for the Appellant; V.H. Gumaste, Addl. Govt. Pleader, for the Respondent

Judgement

Chandrachud, J.—An order of conviction u/s 92 of the Factories Act, 1948, read with Rule 3 A of the Bombay Factories Rules, 1950, is being challenged by this appeal. The main question which arises in the appeal is as regards the true construction of Section 85 of the Factories Act. The question is whether a person in the position of the accused, who has no control over or interest in the manufacturing process earned on in the factory and who is not concerned, directly or indirectly, with the engagement of the workers who work in the factory, is compellable to comply with the diverse requirements of the Factories Act.

2. An open plot of land belonging to the Port Trust was taken on lease by the accused Purshottamdas Ranchod-das. He constructed sheds over the plot and in the year 1908 he started a factory therein called the Sunderdas Saw Mills. The factory was closed down on the 1st of April 1957 and though the State has

sought to suggest that the closure was a mere camouflage, there is no clear material on the record to bear out that suggestion. In July 1957 five partnership units were formed by the ex-workers of the Sunderdas Saw Mills and by written agreements of leave and licence the accused agreed to give to the five units the use of the sheds and the machinery of his factory. The accused himself was not a partner in any of the five partnership units and the arrangement, as reflected in the agreements of leave and licence, was that the five units were to run the business on their own and were to pay a fixed sum to the accused in consideration of the use of the sheds and the machinery.

3. Soon after the partnerships started to function, some of the ex-workers of the Sunderdas Saw Mills, who were not admitted to the newly formed partnerships, complained to the Conciliation Officer that the closure of the factory was unreal, that the five partnership units were in truth and substance a mere splitting up of the old factory and that, therefore, the workers should be reinstated. The Conciliation Officer made a report to the Government which, through its Under Secretary in the Labour and Social Welfare Department, wrote a letter to the Manager of the Sunderdas Saw Mills that there was no case for referring the dispute for adjudication u/s 12(5) of the Industrial Disputes Act, as

"the Sunderdas Saw Mills which was closed down from 1st April 1957, remains closed even now, and that there is nothing to suggest that the closure of the Mills from 1st April 1957, was in any way mala fide and that the demand for reinstatement of discharged workers affected by that closure made against the Sunderdas Saw Mills is not justified".

(4) In the year 1959, a prosecution was launched against one of the firms as a test case u/s 92 of the Factories Act, on the charge that the notice contemplated by Section 7(1) was not given by the firm and that a licence as required by Rule 4 of the Bombay Factories Rules, 1950, was also not obtained. That prosecution ended in acquittal and by judgment, dated the 14th of August, 1959, it was held by this Court, while confirming the order of acquittal, that the persons who were found working in the factory were not working under a contract of employment and that, therefore, the place was not a "factory" within the meaning of the Factories Act, 1948. In the concluding portion of the judgment of this Court which is reported in *State v. M. M. Pinto*, 61 Bom L. R. 1617 : AIR 1960 Bom 236, it was observed that it was open to the Government to declare the place as a factory u/s 85 of the Factories Act if it was satisfied that steps were taken by the real owner of the business to evade the provisions of the Factories Act.

5. On the 29th of September 1960, a notification was issued by the Government of Bombay u/s 85 of the Factories Act, declaring that

"all the provisions of the said Act shall apply to the places specified in Column II of Schedule appended hereto, wherein manufacturing process is carried on with or without the aid of power or is so ordinarily carried on notwithstanding that the persons working therein are not employed by the owner of such places but are

working with the permission of, or under agreement with, such owner". The "places" specified at serial Nos. 2 to 6 of the schedule cover the five partnership units.

6. On the 10th of November 1961, five separate complaints were filed against the accused in respect of the five partnership units, on the charge that by failing to obtain licences for the five factories, as required by Rule 3-A of the Bombay Factories Rules, 1950, the accused had committed offences u/s 92 of the Factories Act. It is stated in the complaints that the accused was the owner of the factories, that the workers were working in the factories under an agreement with the accused, that the premises were notified u/s 85 of the Factories Act and that, therefore, the accused had committed an offence in not applying for a licence for the factories.

7. The defence of the accused to the charge was that he was not the owner of the factories, that he was merely the owner of the sheds and the machinery, that he had no control over the affairs of any one of the five firms "in their business matters or "their management matters or in any other matter", that he had "no control -- proximate or ultimate -- over the affairs of the alleged factory", that it was "physically and legally impossible" for him "to enforce the provisions of the Factories Act on the persons working on these premises" and that the prosecution under Rule 3-A was misconceived.

8. The learned Presidency Magistrate, Mazagaon, Bombay, has convicted the accused of the offences of which he was charged, holding that the Legislature had "probably intended not only to put responsibility on the occupier as defined in Section 2(m) of the Factories Act, but also on the owner of the premises in which the factory is run or conducted", that it was not open to the Court to consider the object behind this provision, that as the accused was the owner of the premises in which the factory was being run, he became an occupier under the fiction created u/s 85(2) of the Factories Act and that, therefore, it was incumbent on the accused to apply for a licence under Rule 3-A. The learned Magistrate has sentenced the accused to pay a fine of Rs. 201 in one of the five cases and in each of the remaining four cases, the accused has been sentenced to pay a fine of Rs. 25. being aggrieved by the order of conviction and the sentence of fine of Rs. 201 passed in Case No. 394/S of 1961, the accused has filed this appeal. Though the accused died during the pendency of the appeal, the appeal does not abate, in view of the provisions contained in Section 431 of the Code of Criminal Procedure, the sentence being one of fine only. The appellant before us is the heir and legal representative of the accused.

9. After this appeal was admitted, notice was directed to issue to the Attorney General as the constitutionality of Section 85 of the Factories Act was challenged on behalf of the appellant on the ground that it offended against the provisions of Article 14 of the Constitution of India. The contention seems to have been that if the word "owner" was given the wider interpretation canvassed on behalf of the State, the provisions of Section 85 will result in discrimination. The constitutional

question was not argued before us in view of the indication given by us that we were not disposed to accept the argument advanced on behalf of the State.

10. Before proceeding to deal with the rival contentions of law, it would be necessary to dispose of an argument of fact which was raised before us on behalf of the State. It was argued by the learned Additional Government Pleader that the accused is the real owner of the business carried on by the five partnership units, that the splitting up of the business is a mere camouflage and that the accused had resorted to a subterfuge in order to evade the beneficent provisions of the Factories Act. In this behalf, our attention has been drawn by the learned counsel for the State to a few circumstances, principal amongst which is the circumstance that on the 2nd of December 1960 and the 30th of January 1961, the accused had obtained licences [Exhibit B) from the Bombay Municipal Corporation for establishing a factory on the premises on which the partnership units are conducting their business. The argument of the learned counsel is that if the accused had closed down the old business which he was running under the name of Sunderdas Saw Mills and if he was in no manner concerned with the business carried on by the five partnership units, there is no reason why the accused should have obtained licences from the Bombay Municipal Corporation for establishing a factory at the very place where the partnership units are carrying on their business. We are unable to accept this submission because the mere circumstance that the accused had obtained licences for establishing a factory at the place where the partnership units do their business cannot mean that the accused is the real owner of the partnership business. The licences have been obtained by the accused under the provisions contained in Section 390 of the Bombay Municipal Corporation Act and one cannot reasonably exclude the probability that the accused obtained the licences, to be able to establish his own business at a future date, as and when the need arose, as e.g. on the termination of the leave and licence held by the partnership units. The main question which we have to decide is whether the accused is "an owner" as contemplated by Section 85(2) of the Factories Act and no estoppels can arise against him by reason of the circumstances that he has obtained a licence for establishing a factory. The application made by the accused for a licence u/s 390 of the Bombay Municipal Corporation Act, might perhaps, have raised an inference of fact against him, if nothing more appeared on the record. There are, however, certain circumstances which, in our opinion, more (hardly) counter-balance the inference arising out of the circumstance that the accused had obtained licences for establishing a factory at the very same premises where the partnership units carry on their business. We will refer to those circumstances in due course.

11. The second circumstance on which the learned Additional Government Pleader relies in support of his argument that the accused is the real owner of the business carried on by five partnership units is the terms and conditions contained in the agreement of leave and licence at Exhibits 12 to 17, particularly in clauses (8), (9) and (21) thereof. Clause (8) of the agreement of leave and

licence provides that the licensees will have no control over the premises in which the licensor had agreed to allow the licensees to carry on the manufacturing process. Clause (9) provides that the licensees bound themselves to produce all the books of account and other documents which they were required to maintain under the various Acts before the officers concerned and clause (21) says that the agreement of leave and licence shall be in force for a period of 11 months. The argument of the learned counsel is that the workers were working in the factory in pursuance of an agreement as evinced by clause (8) and that, at any rate, it is clear from the provisions of clause (8) that the workers were allowed or permitted by the accused to carry on the manufacturing process. It is impossible to accept this submission because all that clause (8) means is that the licensees will be allowed to carry on the manufacturing process. That clause cannot be construed to mean that the licensees were working in the factory in pursuance of an agreement with the accused or that they were working in the factory by reason of being allowed or permitted to work under the agreement itself. The reliance placed by the learned counsel on clauses (9) and (21) of the agreement of leave and licence seems to us to be misplaced, for if the licensees bound themselves to comply with the provisions of the several laws governing the working of the factories, it could not follow that the accused had any control over the working of the factory or the manufacturing process carried on therein. Lastly, the circumstance that the agreements of leave and licence were made for a period of 11 months only, cannot establish that the business was split up as a matter of camouflage and that the accused had retained with himself the real and effective control over the working of the factory.

12. In support of his contention that the closure of the old factory was a mere subterfuge, the learned Additional Government Pleader craved leave to rely upon an affidavit which was filed before us on behalf of the State. The affidavit is sworn by Mr. P. N. Pimenta, Under Secretary to the Government of Maharashtra in the Industries and Labour Department. It sets out various facts and contains allegations which are not on the record and which were not made at the trial. In these circumstances, the recitals contained in the affidavit cannot be taken into account for the purposes of the decision of the appeal, and indeed the procedure of filing an affidavit in answer to the memorandum of appeal filed by an accused seems unprecedented.

13. Mr. Mehta, who appears on behalf of the appellant, contends that apart from the question that there is no material on the record to justify the submission made on behalf of the State, it is not open to the State to allege for the first time in this appeal that the accused is the real owner of the five partnership units and that he has divided the old business into live different units for the purpose of evading the provisions of law. Mr. Mehta seems to us to be justified in making this submission, De-cause the judgment of the learned Magistrate shows clearly that it was at no time argued before him that the accused was the real owner of the five partnership units and that the business was split up into separate units

by way of a camouflage. The learned Magistrate has specifically observed in paragraph 4 of his judgment that one of the undisputed facts was that the old business was discontinued by the accused with effect from the 1st of April 1957 and that the five partnership units were being managed by the partnerships formed by the workers. Anna Sundara-chiarya Vijay Gopalan, inspector of Factories, was examinee? on behalf of the prosecution in the trial Court and he has not said in his evidence that the closure of the old business was not bona fide or that the accused had resorted to a subterfuge by dividing his business into five separate/ units. If anything, the witness has admitted in his cross-examination that the accused was not a partner in any of the five firms, that the units were run and conducted by the partnership firms and that he was not aware if the accused had any effective control over the management to the firms. It is also important to mention that the Factory Inspector has admitted in his evidence that he had verified the facts stated in Exhibit C, which is a letter written by the accused to the Secretary, Industries and Labour Department, Government of Maharashtra. The letter, which was written by the accused on the 19th of February 1962, after the present complaints were filed, states That the prosecutions were misconceived, that the old mill was closed down on the 1st of April 1957, that there was nothing to show that the closure was not bona fide, that the demand which was made by the workers for reinstatement had already been rejected by the Government and that he was in no manner concerned with the partnerships. If these facts are admitted to have been verified by the Inspector of Factories, we find it difficult to appreciate-how it could be held, on the record as it stands, that the accused is the real owner of the business carried on by the partnerships. In the first place, therefore, the- case that the accused is the real owner of the partnership units was not made out at the trial and, secondly, there is nothing on the record to show that the accused had resorted to a subterfuge for the purpose of evading the provisions of law, The evidence rather shows that the accused is a mere owner of the building and the machinery installed therein, that he has no control over the affairs of the partnership -firms, that he has no interest in the manufacturing process carried on by the firms, and, finally, that he bears no relationship, direct or indirect, real or disguised, with the workers who were found working in the factory.

14. The question which we are called upon to decide on these facts is whether the accused is "an owner" with-in the meaning of Section 85(2) of the Factories Act, 1948, hereinafter referred to as the Act. If he is an owner as contended by the State, he would undoubtedly be under an obligation to apply for a licence under Rule 3-A of the Bombay Factories Rules, 1950, and as it is undisputed that he has not so applied, he would be guilty u/s 92 of the Act. Section 85 of the Act runs as follows :

"(1) The Provincial Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on notwithstanding that-

(i) the number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or

(ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner:

Provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

(2) After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be the occupier, and any person working therein, a worker.

Explanation. -- For the purposes of this Section, "owner" shall include a lessee or mortgagee with possession of the premises."

Section 2, clause (I) of the Act defines a "worker" as a person employed, directly or through any agency, whether for wages or not, in any manufacturing process or in cleaning any part of the machinery or premises used for manufacturing process, or in any other kind of work incidental to or connected with, the manufacturing process, or the subject of the manufacturing process. Section 1 clause (m) provides that "a factory" means any premises including the precincts thereof-

"(i) wherein ten or more workers are working or,

were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) wherein twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,

but does not include a mine subject to the operation of the Mines Act, 1952 [XXXV of 1952) or a railway running shed."

Lastly, Section 2 clause (n) of the Act defines "an occupier" of a factory to mean a person who has ultimate control over the affairs of the factory.

15. Two rival contentions are pressed before us, the contention of the accused being that the word "owner" which occurs in Section 85(2) of the Act, cannot include a person who is merely the owner of the building and machinery but has no connection either with the manufacturing process carried on by the factory or with the workers who are engaged in that process. The contention of the State on the other hand is that the word "owner" must be construed to mean what it says, that the word must be given its normal, literal meaning and that a person who owns "a building in which the manufacturing process is carried on or a person who owns the machinery in case, the manufacturing process is carried on with the help of machinery, must be held to be an owner. Now, it is true as

contended by the learned Additional Government Pleader that the strict grammatical meaning of the words is often the safest guide for the construction of those words. But as observed by the Supreme Court in *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, :

"... .. That, however, does not mean that the decision should rest on a literal interpretation at the words used in disregard of all other materials."

If the language of the statute which we are called upon to construe were plain and unambiguous, the rule of literal construction would certainly have had the right of preference. The language, however, used by the Legislature in sub-section [2] of Section 85 is so wide as is capable of being applied to owners of different classes and of varying categories. While Interpreting the word "owner", therefore, it is necessary to have regard for circumstances like the historical background of the statute, the object of the statute, the mischief which it intended to suppress, and the various other provisions contained in the statute. As stated in *Maxwell on the Interpretation of Statutes*, 10th edition, page 18, in a passage cited with approval by Venkatarama Aiyar, J in the Supreme Court decision cited above:

"To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parliament has appointed; and (4) the reason for the remedy."

16. "A worker" is defined in Section 2(I) of the Act as a person "employed", directly or through any agency, in certain processes. The word "factory" is defined in clause (m) of Section 2 to mean Premises where ten or more persons are working, if the manufacturing process is carried on with the aid of power or where twenty or more workers are working, if the manufacturing process is carried on without the aid of power. In order, therefore, that the provisions contained in the Act, could apply to a place, it is necessary that a certain number of persons must be engaged in the manufacturing process and what is even more important, it must be established, as held by the Supreme Court in *Shankar Balaji Waje Vs. State of Maharashtra*, , that those persons are "employed" under a contract of service. The first of these conditions is easy of evasion and a common mode of evasion is to split up a factory apparently into so many smaller units so as to bring the number of workers below the minimum prescribed. The second condition is in practice often difficult of proof, and workers engaged in certain manufacturing processes, like the bidi making, work generally not under a contract of service but as independent contractors. The object of the Legislature in enacting Section 85 was, as stated by the Supreme Court in *B. Y. Kshatriya (P.) Ltd. V. Union of India* AIR 1963 SC 1951:

"..... to extend in appropriate cases the provisions of the Act to establishments which are otherwise not factories within the meaning of the Act,

and to ensure to persons working in factories even if not workers within the meaning of the Act, the benefits provided there-by."

The provisions of Section 85 shall have to be construed in the light of this background and in reference to the object set out above.

17. There is an especial aspect of Section 35 to which attention must be particularly drawn. The general scheme of the Act, is to make the occupier or the manager liable for breaches of the provisions contained in the Act. Section 93 is almost the solo exception to this rule and even then that section seeks to make the owner, as distinguished from the occupier or manager, liable in a very limited class of cases. The inclusion of the "owner" in Section 85(2) and the particular reference contained in clause (ii) of the non obstinate clause of Section 85 to the "owner" is, therefore, in the nature of an innovation. It is relevant to consider whether by introducing this innovation, the Legislature wanted to bring about a radical change in the concept of liability under the Factories Act. The background referred to above, the context in which the word "owner" is used in clause (ii) of the non obstinate clause, and the other circumstances which we will presently mention indicate in our opinion clearly that such a radical departure was not contemplated by the framers of the Act. It seems to us difficult to imagine that for the more effective enforcement of the provisions contained in the Factories Act, it was thought necessary by the Legislature to penalize persons in the position of the accused who are neither connected with the manufacturing process nor with the workers working in the place notified by the State Government u/s 85(1) of the Act,

18. In the construction of the word "owner" which occurs in sub-section (2) of Section 85, the first consideration which must be borne in mind is that the Legislature has not indicated expressly the subject-matter of the ownership by a predicative clause. Sub-section (2), which creates a three-fold fiction, provides, in so far as is material, that after a place is declared by the Government to be a place to which all or any of the provisions of the act shall apply "..... the owner shall be deemed to be the occupier". The contention of the learned Additional Government Pleader is that the word "owner" must mean the owner of the place in respect of which the Government has issued the notification and that the ownership of the place must in turn mean the title to the premises in which the manufacturing process is carried on, regardless of the consideration as to whether the owner of the premises is in any manner concerned with the manufacturing process. We find it impossible to accept this all embracing contention. A clue to the meaning of the word "owner" can be found in the context in which that word is used in the non obstinate clause, and in the proviso to Section 85(1) of the Act. The non obscene clause says that the State Government can issue a notification with regard to a place wherein a manufacturing process is carried on notwithstanding that-

"(i) the number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or

(ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner :

Provided that the manufacturing process is not being carried on by the owner only with the aid of his family." It is clear from the wording of clause (ii), that the owner who was within the contemplation of the Legislature, was a person who bore some relationship with the workers who were working on the premises. A person who is merely the owner of a place on which the premises at the factory are situated, as for example, the Port Trust in the present case, or a person who is merely the owner of the premises in which the machinery is installed or who again is merely the owner of the machinery with the help to which the manufacturing process is carried on, cannot, in our opinion, be deemed to be an owner such as is contemplated by Sub-section (2) of Section 85. The proviso to sub-section (1) also emphasises that the "owner" contemplated by Section 85, must be a person who in some manner is concerned with the manufacturing process carried on in the place in respect of which the power is conferred on the State Government, to issue a notification. If the "owner" as contemplated by clause (ii) of the non obstante clause and the proviso to Sub-section (1) of Section 85 must mean a person who is either connected with the manufacturing process or is concerned directly or indirectly with, the persons engaged in the manufacturing process, we are of the opinion that the word "owner" which occurs in sub-section (2) of Section 35 must bear a similar meaning.

19. It is contended by Mr. Mehta that the non obstante clause is worded in such a peculiar fashion that in the context in which it occurs, it must be construed as imposing a condition on the exercise of the power which is conferred on the State Government to issue a notification u/s 85 sub-section (1). The argument is that if the State Government cannot issue a notification unless the terms of either clause (i) or clause (ii) of the non obstante clause are satisfied, then the word "owner" which occurs in sub-section (2) of Section 85 must necessarily be construed in the context of the provisions which are contained in the non obstante clause, particularly in clause (ii) thereof. In answer to this contention, the learned Additional Government Pleader has drawn our attention to two decisions of the Supreme Court reported in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, and *The Dominion of India and Another Vs. Shrinbai A. Irani and Another*, . It was held in the earlier of these two cases that :

"The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously;"

and it was held in the later case that:

". although ordinarily there should be a close approximation between the non obstante clause and the operative part of the Section, the non obstante clause need not necessarily and always be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a

plain and grammatical construction of the words thereof a non obstante clause cannot cut down the construction and restrict the scope of its operation."

20. The two decisions on which the learned Additional Government Pleader relies are, in our opinion, distinguishable from the facts of the case before us, because, in the first place, the non obstante clauses, which their Lordships of the Supreme Court were considering, were of a general nature and were not particularized as the non obstante clause in the case before us is particularized. In both the cases, the non obstante clause contained provisions indicating that the power which was conferred by the main provision could be exercised notwithstanding anything contained in certain Act or Acts. In the case before us, the Legislature has conferred on the State Government the power to issue a notification applying all or any of the provisions of the Act, to certain places and the non obstante clause does not say as it did in the two cases before the Supreme Court, that the power so conferred could be exercised notwithstanding anything contained in the Act. What is provided is that the power to issue the requisite notification can be exercised notwithstanding that the number of persons employed is below the minimum prescribed under the definition of the word "factory", and notwithstanding that the persons working in the factory are not employed by the owner thereof, but are working with the permission of or under an agreement with such owner. Though, however, the decisions of the Supreme Court on which counsel for the State relied cannot, in our opinion, afford him any assistance, it seems unnecessary to decide the question raised by Mr. Mehta (or the simple reason that the notification issued by the State Government in the present case is not challenged on the ground that it does not comply with the provisions contained in Section 85.

21. A reference to the rule, for the violation of which the accused is prosecuted, will emphasize that the word "owner" which occurs in Sub-section (2} of Section 85 cannot be construed in the sense in which the State wants us to construe it, Rule 3-A of the Bombay Factories Rules, 1950, provides that no occupier of a factory shall use any premises as a factory, except under a licence obtained or renewed in accordance with the provisions of the Rules. Rule 4, which deals with applications for registration and grant of licences, says that the occupier or manager of every factory which falls within the scope of the Act shall submit to the Chief Inspector of Factories, an application in form No. 2 for the registration of the factory accompanied by an application in form No. 3 for the grant of licence therefore. Now, If one turns to the several particulars which are required to be filled in these forms, it would be transparent that a person in the position of the accused cannot possibly possess the information which is required to be mentioned in the application form No. 2 which is the form prescribed for an application for registration of the factory and for notice of occupation, for example, requires that, amongst other things, information must be given of the nature of manufacturing process carried on in the factory during the last 12 months, the nature of the manufacturing process to be carried on during the next 12 months, the names of the principal product and the other products which

are manufactured or intended to be manufactured, the maximum number of workers proposed to be employed during the ensuing year, and the full name and residential address of "the occupier or the proprietor or the directors if the factory is a public limited company and of the shareholders if it is a private company. One of the particulars required to be mentioned in form No. 3, which is prescribed for an application for a licence or for renewal of a licence, is the maximum number of workers intended to be employed during the ensuing year. In the very nature of things, a person who is merely the owner of the premises in which the manufacturing process is carried on or who is merely the owner of the machinery which has been given on leave and licence to those who carry on the manufacturing process, cannot possess the information which is required to be mentioned in the statutory forms which are prescribed under the Act. To hold, therefore, that a mere owner of the plot of land on which the factory stands or a mere owner of the premises or the machinery is an "owner" within the meaning of Sub-section (2) of Section 85 of the Act is to impose on these persons an obligation which is impossible for them to discharge. It is contended by the learned Additional Government Pleader that it is not legitimate to construe the provisions of an enactment by reference to the Rules which are framed under it and that in any event, it would not be proper to put down the clear meaning of the words used in Sub-section (2) of Section 85 by reference to the requirements of a rule which has been framed under the Act. The learned Additional Government Pleader may be right that, normally, it is not legitimate to cut down the import of a statutory provision by reference to the rules which are framed under the statute. But as observed in *Pramod C. Bhat Vs. Kanwar Raj Nath*, in cases where there is ambiguity in the language used by the Legislature, or where more than one construction is possible, then the rules framed under the Act would help the Court in coming to the right conclusion as to the construction which should be placed upon a particular provision in the Act.

22. The construction which is canvassed on behalf of the State will, in our opinion, lead to absurd results. As we have indicated already, a wider construction of the word "owner" would require particulars to be furnished for obtaining licences, by persons who in the very nature of things would not be able to furnish them. Yet another absurdity to which the wider construction would lead is that it would make a person liable for acts over which he has no control and which he cannot possibly prevent, remedy or account for. An owner of the premises and the machinery, for example, may give them on leave and licence; if a manufacturing process is carried on in the premises then (he place would fail within the definition of the word "factory" provided, of course, the other conditions are fulfilled. If the place is a factory within the meaning of the Act, the several consequences which are provided for in the Act would necessarily ensue, but the person who is a mere owner of the premises or the machinery would not be in a position to ensure compliance with the various provisions of the Act, like the provisions governing the safety and the health of the workers. The third absurdity, as pointed out by Mr. Mehta, which would inevitably result if a wider

construction were put on the word "owner" Is that a person who is not connected with the manufacturing process or is not concerned in any manner, direct or indirect, with the workers who are engaged in the manufacturing process, would find himself In a far more disadvantageous position if the place is notified under S. 85 of the Act, than a person similarly situated, but in respect of whose premises a notification under S. 85 is not issued. Section 85(1) confers upon the State Government the power to apply all the provisions of the Act to any place in which the manufacturing process is carried on, and If the word "owner" is construed to mean, as contended by the State, to be a person who may merely be the owner of the premises or of the machinery, such a person would be under an obligation to comply with all the requirements of the Act, as the owner becomes by fiction an occupier u/s 85(2) of the Act. On the other " hand, an owner of the premises in respect of which a notification is not issued u/s 85 would be under no obligation to comply with the requirements of the Act save to the extent to which provision is made in Section 93 of the Act, for an owner, as distinguished from an occupier, is made liable only to the limited extent indicated in Section 93. The learned Additional Government Pleader says that hard consequences have no relevance on the true meaning of an Act, and in support of this submission he relies very strongly on the observations of Mr. Justice Bhagawati in AIR 1954 SC 59S at p. 600, that Courts are not concerned with the equities of individual cases. Now, there can be no doubt that the Judge must administer the law as he finds it and that in one's zeal to do substantial justice one must not ignore the clear provisions of law. We have, however, not construed the word "owner" in a somewhat limited sense with the sole object of avoiding hard or inconvenient results. In construing the section as we have, we have taken into account various circumstances mentioned during the course of this judgment and we have, as an additional circumstance, indicated the hard consequences which would flow out of the construction canvassed on behalf of the State. The unqualified submission that in the construction of a statute consequences ensuing out of a particular construction are not a matter of any relevance seems to us to be difficult to accept. If more than one construction is reasonably possible, we must adopt a construction which would avoid strange results.

23. It was argued by the learned Additional Government Pleader that we must not construe the word "owner" to mean anything less than it says, because to cut down the amplitude of the word is to nullify the effect of the deeming provision contained in sub-section (2) of S. 85. The argument of the learned Counsel is that the Legislature may have intended to bring within the fold of the Factories Act, persons who would not normally fall within it Tin order to meet the widespread evasion of the Act. We are unable to appreciate how, by holding that the word "owner" does not cover the case of a person who is merely the owner of the premises or the machinery, we will not be giving full effect to the fiction created by sub-section (2) of section 85. It is significant that though the Legislature has created the three fictions mentioned in sub-section (2) no fiction

has been created as to who shall be deemed to be the owner. The fiction can come into play only if and when a person is held to be an "owner" within the meaning of Sub-section (2), for it is only upon such a finding being made and not until then that the owner becomes an occupier by reason of the fiction. The question as to whether a person is an owner within the meaning of Sub-section (2) of Section 85 must, therefore, be decided on its own merits, untrammelled by the deeming provision.

24. For these reasons, we are of the view that the accused, who is not shown to bear any connection with the manufacturing process carried on by the five factories and who is also not shown to bear any relationship with the workers who are engaged in the manufacturing process, cannot be said to be an "owner" as contemplated by Section 85(2) of the Factories Act. The appeal will, therefore, be allowed and the order of conviction and sentence will be set aside. Fine, if paid, shall be refunded to the appellant.

25. Appeal allowed.