

Research paper

Liability of lessor and lessee when factory premises leased.



Business Laws

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BRIEF HISTORY OF THE RESEARCH PAPER



1. SITUATION

A Company (“**Company**” or “**Lessor**”), executed a lease agreement (“**Lease Agreement**”) with another Company (the “**Lessee**”) for operation and maintenance of factory plant premises (“**Leased Premises**”, “**Plant**” or “**Factory**”).

The Lessor wants to understand the exact role, responsibility, rights and liabilities of the Lessor and Lessee in a situation when premises. This *inter-alia* includes, research, who between the Lessor and Lessee is responsible for obtaining various factory related approvals, registrations and licenses, who’s responsibility is it to comply with provisions of the Factories Act, 1948 (the “**Factories Act**”) and other labour laws applicable to workmen employed at the said factory.

2. APPLICABLE LAWS

The research paper, *inter-alia* comprises of interpretation of the Factory Act, rules made there under, the Transfer of Property Act, 1882 (the “**Transfer of Property Act**”), Contract Act, 1872 (the “**Contract Act**”), Contract Labour (Regulation and Abolition) Act, 1970 (the “**Contract Labour Act**”), the Lease Agreement and other ancillary legislations intertwined directly or indirectly with the above legislations.

3. CRITICAL QUESTIONS TO BE ANSWERED

- a. Who is an ‘occupier’ as per the Factories Act?
- b. What are the liabilities and obligations of an ‘occupier’ of a factory?
- c. With respect to the leased premises, between Lessor and Lessee, who is responsible for legislative compliance?
- d. What interest in property gets transferred from the Lessor to Lessee by way of the Lease Agreement?
- e. In the present situation, who between the Lessor and Lessee is responsible for legislative compliance from time to time, both under the Factories Act and other legislations applicable to the leased premises?

LEGAL OPINION



1. AS PER THE FACTORIES ACT - OCCUPIER DEFINED

- (i) Before we begin interpretation of various legislations and the lease agreement, let us first understand the exact meaning of an 'occupier' of a factory. This because, the role of an occupier is very important as he alone is the sole responsible person who can be held liable for various non-compliances under the Factories Act.
- (ii) In order to understand exactly who an occupier is, let us first refer to Section 2 (n) of the Factories Act. According to the aforesaid section, *"An occupier' of a factory means the person who has 'ultimate control' over the affairs of a factory."* It's important to note the term 'ultimate control' being used in the above definition. Further, the definition goes on to state, *"An occupier in the case of a company shall be any one of the directors of the company. And in the case of a factory owned or controlled by the central government or any state government, the person or persons appointed to manage the affairs of the factory by the central government or the state government."*
- (iii) The above definition clearly states that an occupier is a person who has 'ultimate control' over the affairs of a factory. In other words, an occupier means a person who occupies the factory either by himself or his agent. The litmus test therefore is who has 'ultimate control' over affairs of a factory.
- (iv) Under normal circumstance an occupier of a factory will be the owner of the factory since he alone is the person who is in ultimate control. But what happens when premises have been leased?

2. AN OCCUPIER – WHEN PREMISES LEASED

- (i) The Supreme Court in *John Donald Mackenzie Vs Chief Inspector of Factories, Bihar*¹ has clearly stated, *"Once it is shown that, by the execution of a document, ultimate control over a factory is completely transferred by the owner to another person, such person shall then be the occupier of the factory"*. The court further stated, *"the expression occupier is not to be equated with owner. But it must be borne in mind that the ultimate control over the factory*

¹ 1961 II LLJ 412 : 1961 : 62 (20) FJR 466 : 1961 (3) FLR 342 : 1962 AIR (SC) 1351 (S.C.3J)

must necessarily be with an owner, unless the owner has completely transferred that control to another person.”

- (ii) Further, in *Jamnabai Parshottam Assar Vs State of Maharashtra*², the Bombay High Court held, *“By fiction created under Section 2 (n) of the Factories Act, if the owner does not have any relationship with the work done at the factory or does not have any connection with manufacturing process, owner cannot be deemed to be an occupier.”*
- (iii) In another judgment of the Madras High Court³, where the petitioner who was the owner of a rice mill, leased the mill as per a lease agreement, the court held that the **lessee** in this situation would no doubt be occupier within the meanings of Section 2 (n) of the Factories Act as they had ‘ultimate control’ over the affairs of the mill. The court further stated that if the **lessee** failed to comply with provisions of section 7⁴ of the Factories Act they could be proceeded against for default.
- (iv) In another leading judgment of the Kerala High Court⁵, the court has categorically stated, *“Only the person having supervision and control over the work of the factory has the right to apply for registration or license, even though he may be the **lessee** or licensee and not the owner.”* The court further said, *“Provisions of the Factories Act and rules made there under make it perfectly clear that the owner of a factory has, by virtue of such status alone, no right to make an application for and get either the registration or license of a factory or the transfer or renewal of the license once granted. It is the occupier and he alone who takes this paramount place. Such occupier may be a licensee or a **lessee**.”*
- (v) In another case, where the plant and machinery had been specifically entrusted to the custody and use of the various partnerships, the Supreme Court in its judgment⁶ held that since the

² 1964 II LLJ 7.

³ 1966 ILLJ 707: 1965-66 (29) FJR 374 (Madras High Court).

⁴ **Section 7** of the Factories Act states that it is the occupier’s responsibility, at least fifteen days before he begins to occupy or use any premises as a factory, to send to the Chief Inspector a written notice containing: (a) The name and situation of the factory; (b) the name and address of the occupier; (c) the address to which communications relating to the factory may be sent; (d) the nature of the manufacturing process. (e) the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate stand-by plant; (f) the name of the manager of the factory for the purposes of this Act; (g) the number of workers likely to be employed in the factory; (h) the average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act; and (i) such other particulars as may be prescribed.

⁵ *South India Corporation (Travancore) Limited Vs Chief Inspector of Factories, Trivandrum*. 1957 II LLJ 501 (Kerala HC).

⁶ *State of Maharashtra Vs Jamnabhai Purshottam Assar*, 1968 I LLJ 12 : 196768 (33) FJR 55 : 1968 (16) FLR 25: 1968 LIC 7: 1968 AIR (SC) 53: 1967 (3) SCR 808 (SC.2J)

owner had given the plant and machinery specifically to “lessees” and owner had no control over the affairs of the factory, hence the owner cannot be held liable for violation of the Factories Act, since the ultimate control and day to day management of the factory is not with the owner but with the “lessee”.

In the aforesaid case, the owner, Purshottamdas Ranchhoddas was a lessor of an open plot of land. He established a factory called the Sunderdas Saw Mills. One day, the ex-workers of the factory combined together to form five partnerships and by agreements of lease, Purshottamdas Ranchhoddas gave in their use the premises of the factory and the machinery installed there. Under Section 2 (n) of the Factories Act an occupier of a factory means the person who has the ultimate control over the affairs of the factory. Where the machinery and the plant has been so specifically entrusted to the custody or use of the various partnerships, the Supreme Court in its judgment held, *“The owner of the premises cannot be made liable for non-compliance of various provisions of the Factories Act. A person, who is merely the owner of the premises and the machinery installed therein, which has been given on “lease”, but has no control over or interest in the manufacturing process carried on in the factory by the “lessee”, and who is also not concerned directly or indirectly with the management of workers, who work in the factory, is not an “owner” in a lateral sense and, therefore, cannot be compelled to comply with the various requirement of the Factories Act.*

Held - *“Premises given over to partnership firms in return for periodic payment, owner having no control over them – owner not occupier.”*

3. AS PER THE TRANSFER OF PROPERTY ACT - LEASE DEFINED

- (i) To make matters even clearer, let us now understand the exact definition of lease.

As per Section 105 of the Transfer of Property Act, lease of immovable property is defined as, *“transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.”*

- (ii) The Supreme Court in *B. Arvind Kumar Vs Government of India*⁷ has further defined lease and mentioned the following essentials for a valid lease transaction:

⁷ (2007) 5 SCC 745: JT 2007 (8) SC 602: 2007 (8) SCALE 520

- a. There should be a transfer of right to enjoy an immovable property;
 - b. Such transfer may be for a certain term or in perpetuity;
 - c. The transfer should be in consideration of premium or rent; and
 - d. Transfer should be bilateral transaction, the transferee accepting the terms of transfer.
- (iii) Studying the above definitions, we can infer that the Lease Agreement executed between the Lessor and Lessee is a valid lease transaction, leading to transfer of specific rights and liabilities as mentioned above and in the Lease Agreement.

4. LEASE AGREEMENT AND BID-DOCUMENT:

- (i) Now, as per the lease agreement and the bid-document executed between the Lessor and Lessee, both parties have explicitly agreed to the following terms:
- a. Lessee agreed to take on lease the operation and maintenance of the plant, which as per Section 3 (1) of the bid documents means, *“High rate biomethanation power project including all land, civil structures, entire equipment, electrical, mechanical and instrumental, piping plant and equipment including moving equipment like wheel loader, tractor etc, dedicate telephone lines and fax computer systems, components, appurtenants, communications etc in the plant area. It also includes mobile and immobile equipments, spares, consumables, tools and tackles and services provided for successful operation and maintenance.”*
 - b. The Lessee as per clause 2.7 of the Agreement agreed to abide by all conditions of the licenses, permits or other rules applicable to the Lessor in relation to the plant. However, all statutory charges incurred by the Lessee shall be reimbursed by the Lessor as per actuals. In other words, as per the above mentioned clause, it is the responsibility of the Lessee to abide by statutory regulations, as applicable from time to time. The Lessor shall only reimburse the Lessee wherever necessary.
 - c. Additionally, a close reading of Section 3 (17) of the bid-document further states that it is the responsibility of the Lessee to obtain all permits, clearances including provident fund and employee state insurance formalities. Further, section 3 (clause 9.2.1.1) of the bid-document states that all statutory approvals, renewals required for the plant, must be taken by the Lessee.

- d. Also, as per clause 3.1 (a) of the Lease Agreement, the Lessee agreed to obtain all consents, permits, clearances and approvals as necessary at the cost of Lessor for storage, installation, use, operation and maintenance of the Plant. The Lessor's responsibility as per the above clause is that it will, as and when required, cooperate with the Lessee for obtaining such licenses and permits. The principal duty to obtain the above licenses shall however vest with the Lessee.
- e. Further, clause 3.1 (c) of the Lease Agreement states that the Lessee agreed to comply with all statutory and other requirements of law, regulations and directions applicable to the storage, installation, operation and maintenance of the Plant.
- f. The Lessee also, as per clause 3.1 (e) of the Lease Agreement agreed to pay all licenses fees, surcharges, registration charges and other statutory outgoings payable in respect of the Plant, subject to them being reimbursed by the Lessor as per actuals. In other words, it is Lessee's duty to make timely and appropriate payment of the aforesaid statutory charges. The only liability of the Lessor is to reimburse the Lessee as and when required.

6. INTERPRETATION AND CONCLUSION

- (i) The Factories Act stipulates that it is the duty of 'occupier' to carry out provisions of the Factories Act and rules made there under. In case of contravention, the occupier is the person who shall be held liable for conviction.
- (ii) Additionally, after meticulously studying various provisions of law and court judgments, it can be clearly deduced that:
 - a. The Factory in consideration has been leased to Lessee with transfer of interest with respect to operations and maintenance of the Factory; and
 - b. Even though the Lessor is the owner of the Leased Premises, it cannot be held to be the 'occupier', because 'ultimate control' and day-to-day working of Plant has clearly been transferred to Lessee, by virtue of a valid Lease Agreement executed between parties.
 - c. It is also clear that in a situation where premises are leased, the responsibility for legislative compliance of factory lies not with the lessor but with the lessee, being the occupier and having 'ultimate control'.

- (iii) Additionally, a close reading of clause 3.1 (a) of the Lease Agreement clearly outlines that the Lessee had agreed to obtain all consents, permits, clearances and approvals as necessary at the cost of Lessor for storage, installation, use, operation and maintenance of the Plant. The Lessor's responsibility as per the above clause is that it will, as and when required, cooperate with the Lessee for obtaining such licenses and permits. The principal duty however to obtain the above licenses shall vest with the Lessee.
- (iv) Given the present scenario, there is no discomfort in affirming strongly that the Lessee being the occupier is at default, if it fails to comply with various provisions of the Factories Act and other legislations applicable to the Leased Premises from time to time.
- (v) It is also safe to conclude that Lessor is responsible only for providing assistance, help or support as and when required in order to help the Lessee obtain various consents permits, clearances, approvals and licenses, as necessary for operation and maintenance of the said Factory on lease. The principal duty however vests with Lessee.