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INDUSTRIAL SUPPLIES PVT. LTD. & ANR.

v.

UNION OF INDIA & ORS.

(AND VICE VERSA)

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August 7, 1980

[V. R. KRISHNA IYER, O. CHINNAPPA REDDY AND A. P. SEN, JJ.]

Coking Coal Mines (Nationalisation) Act, 1972, sub-s. (1) of s. 4—Whether a raising contractor of a coal mine is an "owner" and if so, whether the fixed assets like machinery, plants, equipment and other properties installed or brought in by such a raising contractor vest in the Central Government—Whether subsidy receivable from the erstwhile Coal Board established under s. 4 of the Coal Mines (Conservation, Safety and Development) Act, 1952 upto the specified date from a fund known as a Conservation and Safety Fund, by such raising contractor prior to the appointed day can be realised by the Central Government by virtue of their powers under sub-s. (3) of s. 22 of the Nationalisation Act, to the exclusion of all other persons including such contractor and applied under sub-s. (4) of s. 22 towards the discharge of the liabilities of the coking coal mine, which could not be discharged by the appointed day.

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The appellants by virtue of two agreements with M/s. Balihari Colliery Co. Pvt. Ltd. and with New Dharamband Colliery Ltd. became the managing contractor for a period of 20 years of the former and the raising contractor of the latter. In terms of the said agreements, they installed from time to time various fixed assets like machinery, plants and equipment and erected structures and raised new roads within the said collieries. These two collieries were taken over by the Central Government under its management with effect from October 17, 1971, by virtue of the powers vested in it under the Coking Coal Mines (Nationalisation) Act, 1972. The appellants aggrieved by the said taking over filed a writ petition in the Delhi High Court seeking a declaration that sub-s. (1) of s. 4 of the Nationalisation Act does not provide for the acquisition of the right, title and interest inasmuch as being raising contractors they were not covered by the term 'owner' within the meaning of s. 3(n) of the Nationalisation Act and, therefore, they were entitled to dismantle and remove the fixed assets like machinery, plants etc. They also sought to recover the amount of subsidy of about Rs. 4,50,000 collected by the Central Government from the erstwhile Coal Board.

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The High Court substantially disallowed the claim of the appellants holding that they fall within the meaning of term 'owner'. It, however, held that the amount of subsidy of Rs. 4,50,000 receivable from the Coal Board by way of reimbursement towards the cost of sand stowing and hard mining operations carried on by them could not be treated to be as an amount due to the coking coal mine within the meaning of sub-s. (3) of s. 22 and, therefore, could not be utilised by the Central Government under sub-s. 4 of s. 22 for discharge of the liabilities of the coking coal mine. Hence, the two appeals one by the appellants and the other by the Union of India.

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Allowing the Union of India's appeal only and dismissing the Company's appeal, the Court

A HELD : (1) The appellants do fall under the purview of the term "owner" in s. 3(n) of the Nationalisation Act read with s. 2 of the Mines Act, 1952 and any other construction as sought to be placed on the definition would frustrate the very object of the legislation and the intention of the Legislature. [387 F]

Parliament, with due deliberation, in s. 3(n) adopted by incorporation the enlarged definition of the "owner" in s. 2(1) of the Mines Act, 1952 to make the B Nationalisation Act all embracing and fully effective. The definition is wide enough to include three categories of persons (i) in relation to a mine, the person who is the immediate proprietor or a lessee or occupier of mine or any part thereof, (ii) in the case of a mine the business whereof is carried on by a liquidator or a receiver, such liquidator or receiver, and (iii) in the case of a mine owned by a company, the business whereof is carried on by a managing agent, such managing agent. Each is a separate and distinct category of persons C and the concept of ownership does not come in. The insertion of the clause "but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability" is to make both the owner as well as the contractor equally liable for the due observance of the Act. In the case of a mine the working whereof is being carried on by a raising contractor he is primarily responsible to comply with the provisions of the Mines Act. Though D a contractor for the working of a mine or any part thereof, is not an owner he shall be subject to the provisions of the Mines Act in the like manner "as if he were a owner" but not so as to exempt the owner from any liability. [387 A-D]

The whole object and purpose of the Nationalisation Act is to expropriate private ownership of coking coal mines and all interests created therein. The term 'owner' in sub-s. (1) of s. 4 is to be given an extended meaning so as E to include a contractor for the working of a mine or any part thereof. It has to be presumed that Parliament was fully aware of the normal pattern of working of all the coal mines, that is, by employment of raising contractors. Any other construction would lead to a manifest absurdity and attribute to Parliament a result which it never intended. It would result in the contractors escaping from the consequences of vesting under sub-s. (1) of s. 4 of the Act and permit them to dismantle and remove the additional machinery, plants F and equipment which are being utilised for the working of mines. [388 B-D]

(2) The word 'occupier' in s. 3(n) of the Nationalisation Act should be understood to have been used in the usual sense according to its plain meaning. In the legal sense an occupier is a person in actual occupation. The appellants being "raising contractors" were under the terms of the agreement dated February 7, 1969 entitled to and were in fact in actual possession and enjoyment of the colliery and were, therefore, an occupier thereof. That being G so, the appellants in possession in their own right by virtue of their substantial right acquired by them under the agreement were not in possession on behalf of somebody else. [384 F-G]

The Chief Inspector of Mines and Anr. v. *Lala Karamchand Thaper etc.* [1962] 1 S.C.R. 9, distinguished.

(3) The Nationalisation Act, no doubt, separately defines 'owner' and 'managH ing contractor'. The words and expressions used and defined in the Act have the meaning respectively assigned to them "unless the context otherwise requires". Therefore, the expression 'managing contractor' as defined in s. 3(1) of the Nationalisation Act comes into play only for the purpose of apportionment

of compensation under sub-s. (2) of s. 26. To exclude a "managing contractor" from term 'owner' used in sub-s. (1) of s. 4 of the Nationalisation Act would be against the scheme of the Act. The term 'owner' in sub-s. (1) of s. 4 of the Act must bear the meaning given in the definition contained in s. 3(n). Any reservation under any process of any agreement between the parties to reserve the power to appoint managers, does not take the appellants out of the definition of 'managing contractor' under s. 3(1) of the Nationalisation Act since they still had substantial control over the mine. The plea that not they but someone else was the managing contractor is only an after-thought. The appellants who have bound themselves by the terms of the agreement, cannot be permitted to escape from the provisions of sub-s. (1) of s. 4 of the Act, as they come within the purview of the definition of 'owner' in s. 3(n) of the Nationalisation Act. [384 H, 385 C, 385 H—386 A; 386 E-F]

(4) When a legal fiction is incorporated in a statute, the Court has to ascertain for what purpose the fiction is created. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion. The court has to assume all the facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. The legal effect of the words "as if he were" in the definition of owner in s. 3(n) of the Nationalisation Act read with s. 2(1) of the Mines Act is that although the petitioners were not the owners, they being the contractors for the working of the mines in question, were to be treated as such though, in fact, they were not so. [388 E-G]

East End Dwelling Co. Ltd. v. *Finebury Borough Council,* L.R. [1952] A.C. 109, p. 132; quoted with approval.

(5) The bills for the subsidy were for the cost of stowing and connected safety operation and all hard mining operations which the appellants had already prior to October 17, 1971 at their own cost, carried out. If that be so, the amount of subsidy in question was like any other amount due to the coking coal mines prior to the appointed day and, therefore, did not fall outside the purview of sub-s. (3) of s. 22. [389 H—390 A]

The payment in question was not by way of assistance receivable from the erstwhile Coal Board for carrying out the stowing and other safety operations and conservation of the coal mines. The payment of Rs. 4,50,000 claimed by the appellants was, therefore, one to reimburse for the expenditure already undertaken. Indubitably, the amount in dispute was payable "by way of reimbursement". The appellants were, therefore, free to utilise their money in any manner they liked. In other words, the grant was not impressed with any particular purpose or purposes. [390 B-C]

(6) Even if the subsidy receivable from the erstwhile Coal Board was by way of 'assistance' the amount of Rs. 4,50,000 was recoverable by the Central Government in whom the coking coal mines have vested under sub-s. (1) of s. 4 of the Nationalisation Act and not by the appellants. If the grant were by way of assistance under rule 49 of the Coal Mines (Conservation and Safety) Rules 1952, the grant being conditional, the Central Government would in that event, be bound to comply with the requirements of r. 54 and apply the same for the purposes for which it was granted namely, for the purposes of stowing or other safety operations and conservation of coal mines. [390 D-E]

Barclays Bank Ltd. v. *Quistclose Investments Ltd.*, L.R. [1970] A.C. 567, *Coal Products Private Ltd.* v. *Income Tax Officer* (1972) 85 I.T.R. 347 explained and distinguished.

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 815 and 1284 of 1978.

Appeals by special Leave from the Judgment and Order dated 20-12-1977 of the Delhi High Court in Civil Writ No. 616/76.

B *Soli J. Sorabjee, A. C. Gulati, A. K. Ganguli, G. S. Chatterjee* and *B. B. Swahney* for the Appellant in CA No. 815/78.

Lal Narain Sinha, Att. Genl. *Miss A. Subhashini* and *Girish Chandra* for the Appellant in CA No. 1284 and Respondent. No. 1 in CA No. 815/78.

C The Judgment of the Court was delivered by

SEN, J.—These appeals by special leave against a judgment of the Delhi High Court turn on the construction of certain provisions of the Coking Coal Mines (Nationalisation) Act, 1972.

D The appeals raise a question of far reaching importance namely, whether a raising contractor of a coal mine is an owner within the meaning of sub-s. (1) of s. 4 of the Coking Coal Mines (Nationalisation) Act, 1972 (hereinafter referred to as the Nationalisation Act); and if so, whether the fixed assets like machinery, plants, equipment and other properties installed or brought in by such a raising contractor E vest in the Central Government. They also give rise to a subsidiary question, namely, whether subsidy receivable from the erstwhile Coal Board established under s. 4 of the Coal Mines (Conservation, Safety and Development) Act, 1952 upto the specified date, from a fund known as Conservation and Safety Fund, by such raising contractor prior to the appointed day, can be realised by the Central Government F by virtue of their powers under sub-s. (3) of s. 22 of the Nationalisation Act, to the exclusion of all other persons including such contractor and applied under sub-s. (4) of s. 22 towards the discharge of the liabilities of the coking coal mine, which could not be discharged by the appointed day.

G To make the points intelligible, it is necessary to state a few facts. By an agreement dated February 7, 1969 made between Messrs Balihari Colliery Co. Pvt. Ltd. (hereinafter referred to as the 'owner') of the one part and Messrs Industrial Supplies Pvt. Ltd. (hereinafter referred to as 'the petitioners') of the other part, it was recited as follows:

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"WHEREAS the Owners are the Owners of a Working Colliery comprising an area of 800 Bighas more or less and known

as Balihari Colliery particularly described in the first Schedule hereunder written held under the lease and subleases mentioned in the said Schedule and in connection therewith have built various structures, dhewrahs coolie lines (hereinafter referred to as the said buildings) and also installed and put up various machinery, plants, tools, implements and utensils (hereinafter referred to as the said machinery) therein ;

AND WHEREAS the owners have appointed INDUSTRIAL SUPPLIES PRIVATE LIMITED as Managing Contractor of their said colliery and the said Managing Contractor has agreed to act as such Managing Contractor for the period and upon the terms and conditions herein contained:"

Under the said agreement, the petitioners were appointed to be the Managing Contractors of Kutchi Balihari Colliery for a period of 20 years. Under cl. 7(a) the petitioners were required at their own cost to install fixed assets like equipment, machinery and plants and also invest in the form of current assets like stores in the said colliery and to work the same as raising contractors. By cl. 7(b) the additional machinery so installed and the chattels and utensils so brought in by the petitioners were to remain the property of the petitioners absolutely and on the determination of the agreement they were entitled subject to the provisions of cl. 9, to remove such additional fixed assets and current assets. Clause 9 gave an option to the owners to purchase the additional machinery, chattels and utensils referred to in cl. 7. Clause 25 of the agreement is material for our purposes and it reads:

"25. That in case the said colliery is nationalised these presents shall stand determined and all moneys then due and owing by the owners to the Managing Contractor or by the Managing Contractor to the owners under the provisions hereof shall at once become due and payable by the owners to the Managing Contractor or by the Managing Contractor to the owners as the case may be. If as result of such nationalisation the machinery, chattels and utensils installed at and/or brought into the said colliery by the Managing Contractor under the provisions of clause 7 of these presents or any one or more of them or the buildings and structures created by it at the said colliery under the provisions of clause 8 of these presents are taken over by the authorities concerned then and in such event the Managing Contractor shall be entitled to compensation payable for or attributable to the said machinery, chattels and utensils and the buildings and structures so taken over and the owners shall be entitled to receive compensation for all other properties comprised in the said colliery."

A Under the said agreement, the petitioners installed from time to time various fixed assets like machinery, plants and equipment and erected structures and raised new roads within the said colliery and brought in various current assets and movables for the efficient working of the said mine.

B The petitioners were also raising contractors in respect of another coking coal mine known as 'Khas Dharmaband Colliery' owned by Messrs Khas Dharmaband Colliery Co. Pvt. Ltd., subsequently known as 'New Dharmaband Colliery'. They had similarly brought over various assets including stores which were being used in the said colliery. Under an agreement of October 1969, the New Dharmaband C Colliery was brought over by Messrs Sethia Mining & Mfg. Corporation Ltd. An inventory was prepared of the assets like plants, machinery and stores belonging to the petitioners which were lying in the colliery, the value of which was approximately Rs. 1,21,000.

On October 17, 1971, the President promulgated the Coking D Coal Mines (Emergency Provisions) Ordinance 1971 to provide for the taking over by the Central Government, in the public interest, of the management of 214 coking coal mines and 12 coke oven plants, including the coal mines in question, pending nationalisation of such mines. The Ordinance was replaced by the Coking Coal Mines (Emergency Provisions) Act, 1971. Thereafter, Parliament enacted E the Coking Coal Mines (Nationalisation) Act, 1972 to complete the process of nationalisation of the coking coal mines and coke oven plants. It was entitled as 'An Act to provide for the acquisition and transfer of the right, title and interest of the owners of the coking coal mines specified in the First Schedule and the right, title and interest of the owners of such coke oven plants as are in or about F the said coking coal mines with a view to reorganising and reconstructing such mines and plants for the purpose of protecting, conserving and promoting scientific development of the resources of coking coal needed to meet the growing requirements of the iron and steel industry and for matters connected therewith or incidental thereto'.

G "Appointed day" under s. 2(a) of the Coking Coal Mines (Emergency Provisions) Act, 1971 was October 17, 1971, while that under s. 3(a) of the Coking Coal Mines (Nationalisation) Act, 1972, is May 1, 1972.

According to the petitioners, the total value of the fixed and current assets and movables of Kutchi Balihari Colliery taken over by H the Central Government on October 17, 1971 was to the tune of Rs. 11,85,591.00. As regards New Dharmaband Colliery they allege that between October 1969 and October 17, 1971, Messrs Sethia Mining

& Mfg. Corporation Ltd., had utilised some of the stores lying in the colliery to the extent of Rs. 50,000.00 and the balance of the stores lying in the colliery as on October 17, 1971 was approximately Rs. 72,000.00. A

Since April 1969 when the petitioners became raising contractors of Kutchi Balihari Colliery and until October 17, 1971 when the management of the said colliery was taken over by the Central Government, the petitioners allege that they had undertaken, at their cost, operations for sand stowing and hard-mining and had accordingly submitted bills to the Coal Board established under s. 4 of the Coal Mines (Conservation and Safety) Act, 1952 for subsidy through the owners from time to time. As on October 17, 1971 the amount of subsidy payable to them was about Rs. 4,50,000. B C

On May 5, 1976 the petitioners filed a Writ Petition in the Delhi High Court seeking a declaration that sub-s. (1) of s. 4 does not provide for the acquisition of the right, title and interest of the petitioners inasmuch as being raising contractors they were not an owner within the meaning of s. 3(n) of the Nationalisation Act and, therefore, they were entitled to dismantle and remove the fixed assets like machinery, plants and equipment installed in the two mines and also to remove the movables and current assets thereof like furniture, stores, etc. and were further entitled to recover the amount of subsidy of about Rs. 4,50,000 collected by the Central Government from the erstwhile Coal Board. They, accordingly, sought a writ or direction in the nature of *mandamus* requiring the Central Government to return the assets like machinery, plants, equipment and other assets and movables and all amounts collected by way of subsidy or other dues, or in any event pay Rs. 16,35,591 with interest thereon from May 1, 1972 till the date of payment. D E F

The High Court substantially disallowed the claim of the petitioners, holding that they fall within the meaning of the term 'owner' as defined in s. 3(n) of the Nationalisation Act read with s. 2(1) of the Mines Act, 1952 and that as such the various machinery, plants, equipment and other fixed assets, current assets and movables belonging to them lying in the two coal mines were included in the expression "mine" as defined in s. 3(j) of the Nationalisation Act, and therefore, the right, title and interest of the petitioners therein stood vested in the Central Government under sub-s. (1) of s. 4 free from all incumbrances. It, however, held that the amount of subsidy of Rs. 4,50,000 receivable from the Coal Board by way of reimbursement towards cost of sand stowing and hard mining operations carried on by the petitioners, could not be treated to be as an "amount due to the coking coal mine" within sub-s. (3) of s. 22 and, therefore, could not be G H

A utilised by the Central Government under sub-s. (4) of s. 22 for discharge of the liabilities of the coking coal mine.

It was contended by the petitioners that they were neither the owners nor immediate occupiers or managing contractors of the coal mines in question, but were merely raising contractors thereof and, therefore, they did not come within the purview of the term 'owner' B as defined in s. 3(n) of the Nationalisation Act read with s. 2(1) of the Mines Act, 1952. It was, therefore, said that the plants, equipment and machinery and other assets, and current assets and movables belonging to them as on October 17, 1971 could not, and did not, vest in the Central Government under sub-s. (1) of s. 4 of the Nationa- C lisation Act. It was urged that the High Court was in error in construing the definition of the term 'owner' as defined in s. 2(1) of the Mines Act, 1952 so as to include a raising contractor, by laying emphasis on the words 'as if he were' in the last sentence of the definition, and particularly so, because the Act itself, separately and/or clearly distinguishes between an 'owner' and a 'contractor'.

D It was further contended that due to the absence of the word 'includes' in the last sentence, in the definition of 'owner' in s. 2(1) of the Mines Act, a 'contractor' cannot be treated to be an 'owner'. It was said that the object of the fiction in s. 2(1) of the Mines Act, 1952 was for the limited purpose of making such a raising contractor responsible for the due observance of the provisions of that Act and E such a deeming provision could not be invoked for construing the purpose and object of the Nationalisation Act which were different, i.e., for the purpose of acquiring machinery, plants and equipment and other assets belonging to such raising contractor, lying within the mine, under sub-s. (1) of s. 4 of the Act. We are afraid, we F cannot accept these contentions.

The construction that is sought to be placed on the definition of 'owner' in s. 3(n) of the Nationalisation Act read with s. 2(1) of the Mines Act, upon the basis of which the argument proceeds would, if accepted, frustrate the very object of the legislation.

G The Nationalisation Act provides by sub-s. (1) of s. 4 that the right, title and interest of the owners in relation to the coking coal mines specified in the First Schedule, on the appointed day, i.e., on October 17, 1971 shall stand transferred to and shall vest absolutely in the Central Government free from all incumbrances.

In the Nationalisation Act, 'owner' is defined in s. 3(n) thus:

H "3(n) "owner",—

(i) when used in relation to a mine, has the meaning assigned to it in the Mines Act, 1952;

(ii) when used in relation to a coke oven plant, means any person who is the immediate proprietor or lessee or occupier of the coke oven plant or any part thereof or is a contractor for the working of the coke oven plant or any part thereof;"

Section 2(1) of the Mines Act, 1952 reads as follows:

"(1) "owner", when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver and in the case of a mine owned by a company, the business whereof is being carried on by a managing agent, such managing agent; but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;"

In support of the contention that the petitioners could not be regarded as occupiers and, therefore, do not come within the definition of 'owner' under s. 3(n) of the Nationalisation Act, reliance was placed on the decision in *The Chief Inspector of Mines & Anr.* v. *Lala Karamchand Thapar etc.*(1) While a raising contract may not be a lease and, therefore, the contractor not a lessee, we find no reason why he should not be treated to be an occupier within the meaning of s. 3(n). Under the terms of the agreement dated February 7, 1969, the petitioners acquired complete dominion and control over the colliery in question for a period of 20 years. It is common ground that the said agreement was by a registered instrument and even though this perhaps may not amount to a lease, there can be no doubt that it was a licence coupled with a grant. The petitioners were by virtue of cl. 7(a) of the agreement entitled to install at their own cost such additional machinery, tramways, ropeways etc., in connection with the transport of coal raised and to bring in chattels for the purpose of discovery and removal of coal. They were entitled under cl. 7(b) to remove such additional machinery that may be installed and such chattels and utensils as may be brought in by them to the said collieries unless of course, the owners exercised their option to purchase the same under cl. 9. In view of these terms, it is futile to contend that the petitioners were not occupiers of the mines. They had the actual use and occupation of the coal mine in question.

(1) [1962] 1 SCR 9.

A We have carefully gone through the judgment in *Lala Karamchand Thapar's case* and, if we may say so, the decision is distinguishable on facts. There the question was whether the managing agent of a company owning a colliery was an occupier of the colliery, and the Court negatived this observing:

B "From the very collocation of the words "immediate proprietor, or lessee or occupier of the mine", it is abundantly clear that only a person whose occupation is of the same character, that is, occupation by a proprietor or a lessee—by way of possession on his behalf and not on behalf of somebody else is meant by the word "occupier" in the definition. Thus, a tres-
C passer in wrongful possession to the exclusion of the rightful owner would be an occupier of the mine, and so be an "owner" for the purpose of the Act."

The Court further observed:

"That must be because possession on behalf of somebody
D else was not in the contemplation of the legislature such "occupation" as to make the person in possession an "occupier" within the meaning of s. 2(1)."

These observations, if we may say so, with great respect, are rather widely stated. They are indeed susceptible of a construction that a raising contractor being in possession on behalf of a proprietor or the
E lessee of a mine in possession is not an 'occupier' within the meaning of s. 3(n) of the Nationalisation Act read with s. 2(1) of the Mines Act, 1952. We are quite sure that that was not the intention of the Legislature. There is no reason why the word 'occupier' should not be understood to have been used in its usual sense, according to its plain meaning. In common parlance, an 'occupier' is one who 'takes'
F or (more usually) 'holds' possession: Shorter Oxford Dictionary, 3rd edn., vol. 2, p. 1433. In the legal sense, an occupier is a person in actual occupation. The petitioners being raising contractors were, under the terms of the agreement dated February 7, 1969 entitled to, and in fact in actual physical possession and enjoyment of the colliery
G and were, therefore, an occupier thereof. That being so, the petitioners being in possession, in their own right, by virtue of the substantial rights acquired by them under the agreement, were not in possession on behalf of somebody else and, therefore, the decision in *Lala Karamchand Thapar's case* cannot apply.

H It is next urged that the Nationalisation Act itself makes a distinction between an 'owner' and a 'managing contractor', there being separate provisions made with regard to both. It is said that in view of this, there is no legal justification to read the word 'contractor'

for the word 'owner' in sub-s. (1) of s. 4. The contention is wholly misconceived and cannot be accepted. The Nationalisation Act no doubt separately defines 'owner' and 'managing contractor'. The definition of managing contractor in s. 3(i) reads:

> "3(i) "managing contractor" means the person, or body of persons, who, with the previous consent in writing of the State Government has entered into an arrangement, contract or understanding, with the owner of a coking coal mine or coke oven plant under which the operations of the coking coal mine or coke oven plant are substantially controlled by such person or body of persons ;"

The words and expressions used and defined in the Act have the meaning, respectively, assigned to them 'unless the context otherwise requires'. The expression 'managing contractor' finds place in Chapter VI, which deals with the power, functions and duties of the Commissioner of Payments appointed under sub-s. (1) of s. 20, for the purpose of disbursing the amounts payable to the owner of each coking coal mine or coke oven plant. It appears in sub-s. (2) of s. 26, which provides:

> "(2) In relation to a coking coal mine or coke oven plant, the operations of which were, immediately before the 17th day of October, 1971 under the control of a managing contractor, the amount specified in the First Schedule against such coking coal mine or in the Second Schedule against such coke oven plant shall be apportioned between the owner of the coking coal mine or coke oven plant and such managing contractor in such proportions as may be agreed upon by or between the owner and such managing contractor, and in the event of there being no such agreement, by such proportions as may be determined by the Court."

Under cl. 25 of the agreement, it was agreed upon between the parties that (i) in the event the colliery was nationalised, the agreement shall stand determined and all moneys then due and owing by the owners to the petitioners and *vice versa* shall at once become due and payable, and (ii) in the event of such nationalisation, if the machinery, chattels and utensils installed at and/or brought into the colliery by the petitioners or the buildings and structures erected by them are taken over by the authorities, they shall become entitled to compensation payable for or attributable to the said machinery, chattels and utensils and buildings and structures so taken over and the owners shall be entitled to receive compensation for all other properties comprised in the said colliery. The expression 'managing contractor' as defined in s. 3(i) of the Nationalisation Act comes into play only

A for the purpose of appointment of compensation under sub-s. (2) of s. 26. The submission that the term 'owner' used in sub-s. (1) of s. 4 of the Nationalisation Act excludes a 'managing contractor' is against the scheme of the Act. The term 'owner' in sub-s. (1) of s. 4 of the Act must bear the meaning given in the definition contained in s. 3(n).

B It was asserted that the petitioners were really not the managing contractors but wrongly described as such in the agreement. A bare perusal of the agreement would, however, be destructive of the argument. It is a document drawn consisting of 46 clauses defining the mutual rights and obligations of the parties. The petitioners were conferred all the rights to work the mine for winning, getting and C raising coal. The so-called 'remuneration' payable to them was virtually the price of coal supplied leaving to the owners a margin of profit. Even the liability for payment of rent, royalty, taxes etc., in relation to the mine was saddled on the petitioners. In view of these terms, they cannot be heard to say that they were not the managing contractors though they have been so described in the preamble D to the agreement and in each and every clause thereof. It is, however, asserted that the functions of a managing contractor, namely, appointment of managers, were not entrusted to the petitioners but were actually assigned to Messrs Madhusudan & Co. under a separate agreement. The submission is spelled out from the terms of cl. 11 relating to employment of workers of the colliery. All that was done E was that the erstwhile owners had by this clause reserved to themselves the power to appoint managers. Such reservation does not take the petitioners out of the definition of managing contractor under s. 3(i) of the Nationalisation Act, as they still had substantial control over the mine. The plea that not they but someone else was the managing contractor is only an after thought. The petitioners having F bound themselves by the terms of the agreement, cannot be permitted to escape from the provisions of sub-s. (1) of s. 4, as they come within the purview of the definition of 'owner' in s. 3(n) of the Nationalisation Act.

It is then argued, in the alternative, that the term 'owner' as G defined in s. 3(n) of the Nationalisation Act read with s. 2(1) of the Mines Act, 1952 does not in any event, include a raising contractor. It is not suggested that a raising contractor does not come within the description of a contractor in s. 2(1), but it is urged that the word 'includes' is not there. There was no need for Parliament to insert the word 'includes' because of the words 'as if he were'. Although H the term 'owner' in common parlance, in its usual sense, connotes ownership of a mine, the term has to be understood in the legal sense, as defined.

Parliament, with due deliberation, in s. 3(n) adopted by incorporation the enlarged definition of owner in s. 2(1) of the Mines Act, 1952 to make the Nationalisation Act all embracing and fully effective. The definition is wide enough to include three categories of persons: (i) in relation to a mine, the person who is the immediate proprietor or a lessee or occupier of mine or any part thereof, (ii) in the case of a mine the business whereof is carried on by a liquidator or a receiver, such liquidator or receiver, and (iii) in the case of a mine owned by a company, the business whereof is carried on by a managing agent, such managing agent. Each is a separate and distinct category of persons and the concept of ownership does not come in. Then come the crucial last words: "but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability". The insertion of this clause is to make both the owner as well as the contractor equally liable for the due observance of the Act. It is needless to stress that the Mines Act, 1952 contains various provisions for the safety of the mines and the persons employed therein. In the case of a mine, the working whereof is being carried on by a raising contractor, he is primarily responsible to comply with the provisions of the Act. Though a contractor for the working of a mine or any part thereof is not an owner, he shall be subject to the provisions of the Act, in the like manner 'as if he were an owner' but not so as to exempt the owner from any liability.

It is now axiomatic that when a legal fiction is incorporated in a statute, the Court has to ascertain for what purpose the fiction is created. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion. The Court has to assume all the facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. The legal effect of the words "as if he were" in the definition of owner in s. 3(n) of the Nationalisation Act read with s. 2(1) of the Mines Act is that although the petitioners were not the owners, they being the contractors for the working of the mine in question, were to be treated as such though, in fact, they were not so. The oft-quoted passage in the judgment of Lord Asquith in *East End Dwelling Co. Ltd.* v. *Finebury Borough Council*(1) brings out the legal effect of a legal fiction in these words:

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have

(1) L.R. [1952] A.C. 109, p. 132.

A flowed from or accompanied it. ..... The statute says that you must imagine a certain state of affairs ; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

The whole object and purpose of the Nationalisation Act is to B expropriate private ownership of coking coal mines and all interests created therein. It provides by sub-s. (1) of s. 4 that on the appointed day, the right, title and interest of the owners in relation to the coking coal mines specified in the First Schedule shall stand transferred to, and shall vest absolutely in the Central Government, free from all C incumbrances. Now unless the term 'owner' in sub-s. (1) of s. 4 is given an extended meaning so as to include a contractor for the working of a mine or any part thereof, the very object of the legislation would be frustrated. It has to be presumed that Parliament was fully aware of the normal pattern of working of all the coal mines, i.e., by employment of raising contractors. Any other construction D would lead to a manifest absurdity and attribute to Parliament a result which it never intended. It would result in the contractors escaping from the consequences of vesting under sub-s. (1) of s. 4 of the Act and permit them to dismantle and remove the additional machinery, plants and equipment which were being utilised for the working of mines.

E

This brings us to the next question, namely whether the amount of Rs. 4,50,000 receivable by the petitioners from the erstwhile Coal Board, was an amount impressed with a trust, being advanced for a specific purpose, i.e., for the purpose of stowing and other safety operations and conservation of coal mines, and could not be regarded F as "any money due to the coking coal mines" within sub-s. (3) of s. 22 of the Act and the Central Government, therefore, could not appropriate the amount of subsidy and utilize it under sub-s. (4) thereof for meeting the liabilities of the coking coal mines.

The conclusion of the High Court upon this point is contained G in the following passage:

"The amount of subsidy due could not be current assets of the coking coal mine because it had to be utilised for a certain definite specified purpose. In the instant case cost of stowing and other safety operations had already been incurred and the subsidy H was by way of reimbursement. The amount was already identified as belonging to the petitioner and is on the analogy or in the nature of trust money impressed with a specific purpose."

In reaching that conclusion, it relied upon the decisions in *Barclays Bank Ltd.* v. *Quistclose Investments Ltd.*(1) and *Coal Products Private Ltd.* v. *I.T.O.*,(2) which are both distinguishable. They enunciate the principle that when property is entrusted for specific purpose, it is clothed with a trust. It seems somewhat illogical that the equitable doctrine of resulting trust should be brought into play in the construction of the provisions of a legislation dealing with nationalisation like the Coking Coal Mines (Nationalisation) Act, 1972. In *Barclays Bank Ltd.* v. *Quistclose Investments Ltd.*, the House of Lords dealt with a question as to rights of set off following the liquidation of a company. The principle was applied to a sum of money lent to a company (later wound up) for a specific purpose, viz., payment of dividend, which was not implemented; the money, being still identifiable, was held to be impressed with a trust, and accordingly did not enure to the benefit of the general body of creditors, but was recoverable by the lender. In *Coal Products Private Ltd.* v. *I.T.O.* there was an extension of this principle by a Single Judge of the Calcutta High Court to "assistance" which was payable to the assessee and was sought to be attached by the Income-tax Department by way of garnishee proceedings under s. 226(3)(i) of the Income-tax Act, 1961. There was an application made for grant of assistance under r. 49 of the Coal Mines (Conservation and Safety) Rules, 1952. There were conditions attached to the grant under r. 54. There was an affidavit filed before the Calcutta High Court showing that the grant was subject to the condition that it would be utilised for the purpose of stowing and other connected operations in the coal mine. The High Court quashed the garnishee notice on the ground that the Income-tax Department was not entitled to any part of the money for the payment of income-tax liabilities of the assessee, as it could only be utilized for the purpose of stowing and other safety operations and conservation of coal mines.

Two questions arise, both of which must be answered in favour of the Union of India. The first is whether the payment of Rs. 4,50,000 was advanced for a special purpose, i.e., as 'assistance' under r. 49 and not 'by way of reimbursement'. The second is whether, in that event, the money having been advanced for a special purpose, and that being so clothed with a specific trust, it could not be adjusted by the Central Government under sub-s. (4) of s. 22 of the Nationalisation Act towards the liabilities of the coking coal mines.

It is not difficult to establish precisely on what terms the money was advanced by the erstwhile Coal Board. On behalf of the petitioners, it is not disputed that the bills for the subsidy were for the

(1) L.R. [1970] A.C. 567.
(2) (1972) 85 ITR 347.

A cost of stowing and connected safety operations and of hard mining operations which, the petitioners had already prior to October 17, 1971, at their own cost, carried out. If that be so, the inevitable conclusion is that the amount of subsidy in question was like any other amount due to the coking coal mine, prior to the appointed day, and therefore, did not fall outside the purview of sub-s. (3) of s. 22.

B

The payment in question was not by way of 'assistance' receivable from the erstwhile Coal Board for carrying out of stowing and other safety operations and conservation of the coal mines. In the present case, the petitioners on their own showing had already carried out sand stowing and hard mining operations and had admittedly applied C for subsidy by way of reimbursement. The payment of Rs. 4,50,000 was, therefore, one to reimburse for the expenditure already undertaken. Indubitably, the amount in dispute was payable 'by way of reimbursement'. The petitioners were, therefore, free to utilise the money in any manner they liked. In other words, the grant was not impressed with any particular purpose or purposes.

D

Even if the subsidy receivable from the erstwhile Coal Board was by way of 'assistance', the amount of Rs. 4,50,000 was recoverable by the Central Government in whom the coking coal mines have vested under sub-s. (1) of s. 4 of the Nationalisation Act and not by the petitioners. It is, however, needless to stress that if the grant were E by way of 'assistance' under r. 49 of the Coal Mines (Conservation and Safety) Rules, 1952, the grant being conditional, the Central Government would in that event, be bound to comply with the requirements of r. 54 and apply the same for the purposes for which it was granted viz., for the purposes of stowing or other safety operations and conservation of coal mines.

F

For these reasons, the judgment of the High Court partly allowing the claim of the petitioners with regard to the subsidy amount of Rs. 4,50,000 is set aside, and the writ petition is dismissed. Accordingly, the appeal of the Union of India is allowed and that of the Industrial Supplies Pvt. Ltd., is dismissed with costs throughout.

G

Civil Appeal No. 815/78 *dismissed, and Civil Appeal No.* 1284/78 *allowed.*

S.R.