

Now "building or other construction work" is defined in a manner that it "does not include any building or other construction work to which the provisions of the Factories Act, 1948... apply".

To be covered under the Factories Act you only need to be a factory where a "manufacturing process" is being carried out by 10 or more workers with the aid of power by 20 or more persons without the aid of power.

Now in my view a "manufacturing process" could include the activity of construction of buildings (making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use sale, transport, delivery or disposal). If so, it would be covered by the Factories Act if it otherwise satisfies the other conditions (10 or more workers with the aid of power by 20 or more persons without the aid of power). However, this question is not free from doubt. The Bombay High Court has held (Cemendia Company Ltd. Vs ESIC 1995 (2) LLJ 519) that it is not. Yet there are other decisions (Lal Mohammad Vs. Indian Railway Construction Co. Ltd. AIR 1999 SC 355) where the construction of a railway line was held to be a "manufacturing process". It was held to be a factory under the Factories Act. Similarly (in ESIC Vs. Enkay (India) Rubber Co. Pvt. Ltd. 2009 (4) LLJ 182 SC) the construction of an additional building for factory expansion was held to be incidental work and the persons engaged in such construction were held to be employees under the ESI Act. Even though this is different from saying that it is a factory for the purposes of the Factories Act, the point is that there is no clarity here.

Hence at the very least there is some ambiguity here. If it is held to be a "manufacturing process" then the Building And Other Construction Workers

(Regulation Of Employment And Conditions Of Service) Act would apply only to those construction sites where between 10 and 19 persons are employed without the aid of power.

This would virtually defeat the very purpose of this Act. As a matter of fact this is a rather strange exclusion considering that the “Statement of Objects and Reasons” of this Act expressly says that “the provisions of certain Central Acts are applicable to building and other construction workers yet a need has been felt for a comprehensive Central Legislation for regulating their safety, health, welfare and other conditions of service”. This needs to be corrected. In any case the ambiguity should be removed. The Building And Other Construction Workers (Regulation Of Employment And Conditions Of Service) Act should clearly say that it applies to all construction sites and it would override other enactments if and to the extent of repugnancy with other statutes.

Further, the manner in which “establishment” is defined (but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs) enables individuals to get away even if more than 10 persons are employed. Even though we know that most constructions today cost well above Rs. 10 lakhs, we also know that most individuals do not register themselves under this Act.

Though the Building And Other Construction Workers (Regulation Of Employment And Conditions Of Service) Act obliges the employer to register his establishment, registration of “building workers” as beneficiaries (under Section 12) is merely optional (a building worker is merely “entitled” to be registered as a beneficiary). There is no mandatory requirement that he must be registered. Most workers are not even aware that such a law exists and therefore do not bother to get themselves registered. The law must therefore make it

mandatory for registered employers to only hire registered building workers. It is only then that workers will get registered. **Further, employers must be mandatorily required to first give a notice under the Act to the prescribed authority before they engage any such worker.** When an inspector comes to site he should not find any worker who is not already registered under the Act. There should be very stiff penalties for breach of this condition. It is only then that in the event that such a worker meets with an accident that it will get reported and the worker will be able to get treatment and compensation. The law as it exists today permits a lot of deniability by the employer.

To this issue is also linked the issue of workers contracting occupational diseases. The fact that a worker has been engaged by a particular contractor/ developer is very difficult for him to prove, that too after a number of years when the disease shows up. In the event that the worker is mandatorily required to be registered before he is engaged by a contractor, then his entire service record can be seen (which would be maintained centrally) and it can be determined with ease where he had worked and for how long. This will not only help to get him compensation for the disease that he is contracted but will also help the government in identifying those activities and particular worksites that are causing such diseases. It is only when such databases have been built over some period of time that we will get the capacity to prevent such diseases from occurring in the first place.

Development of colonies and buildings

The system in our country whereby developers merely develop some basic infrastructure and divide new colonies into plots (whether residential or commercial or industrial) which are then sold to individuals creates a number of problems. A very large number of purchases of plots are for speculative

purposes. Such land is therefore lost to agriculture for a number of years. The developer does not provide the infrastructure at the scale that it is needed knowing full well that the colony would develop only very gradually and over a number of decades and therefore the inadequacy of the infrastructure will not be noticed until after a very long time. The additional adverse fallout of this is that by such time it is also not possible to remedy basic defects in the planning. For instance,

- (a) at the early stages of development of a colony the fact that the Colony needs wider roads does not become evident. It is too late to address this problem at a later stage
- (b) every time a new house is constructed, the road has to be dug up in order to provide a water connection. This leads to deterioration of the road
- (c) provision for adequate electricity load is not made because the authorities presume that occupancy will be low in the early stages. The infrastructure for electricity has to be upgraded several times which adds unnecessary costs to the entire exercise
- (d) the fact that undeveloped plots continue to lie idle and open not only leads to blocking of money of investors but also leads to a lot of litigation when people illegally squat on it or illegally deal with such plots.
- (e) when an individual builds his house he does not benefit by economies of scale. He is at the mercy of small developers and contractors. Such constructions also often end up in disputes.
- (f) The colony develops in a haphazard way. There is no uniformity to the constructions and the entire colony gives an ugly look.
- (g) It is also very difficult for the municipal authorities to check unauthorised constructions because each construction has to be viewed with respect to its own plans.
- (h) It is much easier and more practical for a developer to provide safety gear, safety instructions and to arrange the work site such that there is least danger to the workers. It is much more difficult for small contractors to do

this and they usually avoid these responsibilities. Hence we have to be pragmatic and hence take steps to organize our activities in a manner that it encourages compliance of safe practices.

In my view given that the construction industry is fairly well-developed now, developers should be permitted only to sell already developed colonies. Someone who has purchased a house is more likely to put it to productive use immediately by renting it out even if he does not need it for his own residence. The money of investors would therefore also be put to productive use and land would not be unnecessarily taken away from agriculture and other uses only to make plotted colonies which would lie empty for a number of years. Big developers would then be able to develop properties in a scientific and systematic manner and they can be better monitored for compliances in respect of their workers.

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