

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO--147 OF 2020
WITH
INTERIM APPLICATION NO.-3642 OF 2022
WITH
INTERIM APPLICATION NO.-1622 OF 2020
IN
APPEAL FROM ORDER NO--147 OF 2020**

Parekh Market Premises Co-Op. Society ...Appellant
Limited

Vs.

Asst. Engineer (B And F), 'D' Ward ...Respondents
Municipal Office, Mumbai And Ors

Mr. Vishal Kanade i/b Mr. Pradeep Debey, for Appellant.

Ms. Dhruti Kapadia a/w Ms. Smita T., for MCGM.

Mr. Bhavesh W. i/b M.V. Kini and Co., for Respondent No.3.

CORAM:- N. J. JAMADAR, J.

DATED:- 8th MARCH, 2023

PC:-

- 1) Heard the learned Counsel for the parties.
- 2) This Appeal is directed against an order passed by the learned Judge, City Civil Court, in Notice of Motion No.4395 of 2015 in Suit No.2599 of 2015, whereby while disposing of the said Notice of Motion, the learned Judge directed the Director or

the Chief Fire Officer to comply with Section 8 (1) of the Maharashtra Fire Prevention and Life Safety Measures Act, 2006 (“the Act, 2006”) prior to resorting Section 8 (1)(2) of the said Act.

3) The plaintiff/appellant had instituted the Suit assailing a communication dated 27th October, 2015, addressed by Assistant Engineer, Customer Care ‘D’ Ward to the Deputy Chief Fire Officer, Mumbai, requesting him to arrange the joint action for disconnection of water supply and electric supply to the 9th and 10th floor of Ms. Parekh Market Co-operative Society Ltd, Paper Mill Lane, 39 Kennedy Bridge, Opera House, Mumbai.

4) The learned Judge, City Civil Court, was of the view that the Director or the Chief Officer had straight away resorted to action under Sub-section (2) of Section 8 of the Act, 2006 without complying with the requirements under Sub-section (1) of Section 8, which enjoins the Director or Chief Fire Officer, to require the persons in possession or occupation of the premises to remove themselves forthwith from such premises, by an order in writing.

5) Section 8 of the Act, 2006 reads as under:-

“8. Power to seal building.- (1) If the Director or the Chief Fire Officer is satisfied that due to inadequacy of fire prevention and life safety measures the condition of any place or building or part thereof is in imminent danger to person or property, then notwithstanding anything contained in this Act, or any other law

for the time being in force, he shall, by order in writing, require the persons in possession or in occupation of such place or building or part thereof to remove themselves forthwith from such place or building or part thereof.

(2) If an order made by the Director or the Chief Fire Officer under sub-section (1) is not complied with, the Director or the Chief Fire Officer may direct,

(a) the authority responsible for supply of electricity or the authority responsible for supply of water to disconnect the supply of electricity or water, as the case may be;

(b) any police officer having jurisdiction in the area to remove such persons from such place or building or part thereof; and such authority or police officer shall comply with such direction;

(3) After the removal of the persons under sub-section (1) or sub-section (2), as may be, the Director or the Chief Fire Officer shall cause such place or building or part thereof, to be sealed by such police officer forthwith.

(4) No person shall remove such seal except under a written order made by the or the Chief Fire Officer suo motu or on an application of the owner or occupier”.

6) The Director or the Chief Fire Officer is empowered to seek assistance of either the concerned authorities for disconnection of the essential supplies or the police authorities to remove the persons in the occupation of the premises, in respect of which in the opinion of the Director or Chief Fire Officer adequate provisions for fire prevention and life safety measures have not been taken.

7) A condition precedent to exercise the said power under Sub-section (2) by the Director or Chief Fire Officer is an order in writing to the persons in the possession or occupation of such premises.

8) Mr. Kanade, the learned Counsel for the appellant, submitted that when the learned Judge found the impugned communication in breach of the mandate of Sub-section (1) of Section 8, the proper course was to quash and set aside the action. Instead the learned Judge give liberty to the Director or Chief Fire Officer to cure the defect and take action under Section 8 (2) of the Act post an order under Section 8 (1). Pursuant to the said liberty, the Deputy Chief Fire Officer addressed communication dated 22nd September, 2020 to the Senior Police Inspector D. B. Marg Police Station, Mumbai, soliciting assistance of the police in removing the occupants from the said premises. Since the said communication expressly records that the order has been passed pursuant to the directions of the learned Judge, City Civil Court, in the impugned order, the appellant/plaintiff is prejudiced in espousing the cause even after seeking the amendment though the appellant/plaintiff has taken out Chamber Summons No.1797 of 2022, in the said Suit, seeking amendment in the

plaint to challenge the communication dated 22nd September, 2020, urged Mr. Kanade.

9) The learned Counsel for the Municipal Corporation would submit that the impugned communication is in conformity with the provisions of law. There is an imminent danger to the life and safety of the occupants of the building. The plaintiff/appellant has failed to ensure requisite compliances to make the premises fire compliant despite adequate opportunity. Therefore, according to the learned Counsel for the Corporation, the Appeal deserves to be dismissed.

10) Since the learned Judge, expressly directed the Director or Chief Fire Officer to comply with the provisions under Section 8(1) of the Act and subsequent action under Section 8(2) is taken with reference to the impugned order, the appellant/plaintiff is deprived of an opportunity to challenge the legality and correctness of the action of the Deputy Chief Fire Officer in terms of the notice dated 22nd September, 2020.

11) As the appellant/plaintiff has already taken out a Chamber Summons seeking amendment in the plaint and assailed the legality and validity of the said communication, it may be expedient to continue the interim protection and allow the plaintiff/appellant to challenge the said communication.

12) Hence, the Notice of Motion stands restored to the file of the learned Judge, City Civil Court.

13) The learned Judge, City Civil Court, shall first consider the prayer in the Chamber Summons seeking amendment in the plaint.

14) Post decision on the Chamber Summons, the plaintiff/appellant be permitted to assail the communication dated 22nd September, 2020.

15) The challenge to communication dated 22nd September, 2020 be decided without being influenced by any of observations in the impugned order.

16) All contents are kept open for consideration.

17) Till the decision on the Notice of Motion, the ad-interim order shall continue to operate.

18) The learned Judge shall endeavor to decide the Notice of Motion as expeditiously as possible and preferably within eight weeks.

19) The Appeal stands disposed.

20) Interim Applications also stand disposed.

[N. J. JAMADAR, J.]