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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/136/2025
With WPO/284/2025
IA No. GA/1/2025

PRIMELINK TRADECOM LLP
-VS-
SHIV SHANKAR DUBEY AND ORS

BEFORE:

The Hon'ble JUSTICE TAPABRATA CHAKRABORTY
-AND-
The Hon'ble JUSTICE REETOBROTO KUMAR MITRA

Date: May 22, 2025.

Appearance:

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Soumya Majumdar, Sr. Adv.
Mr. Shounak Mukhopadhyay, Adv.
Mr. Kallol Saha, Adv.
Mr. Aakash Ghosh, Adv.
...for the appellant

Mr. Lakshi Kumar Gupta, Sr. Adv.
Mr. Biswajit Mukherjee, Adv.
Mr. Rishava Karnani, Adv.
Ms. Sonali Ghosh Basu, Adv.
...for the respondent No. 1

Ms. Jhuma Chakraborty, Adv.
Mr. Suddhadeb Adak, Adv.
...for the State

Mr. Alak Kumar Ghosh, Adv.
Mr. Swapan Kumar Debnath, Adv.
Mr. Gopal Chandra Das, Adv.
...for KMC

Mr. Sudarsan Roy, Adv.
Mr. Debayan Ghosh, Adv.
...for the respondent nos.6 to 14

Mr. S. K. Poddar, Adv.
...for the respondent nos. 15 and 16

Mr. Chayan Gupta, Adv.
Mr. Dwipraj Basu, Adv.
Mr. Rithick Choudhury, Adv.
...for respondent no. 17

The present appeal has been preferred challenging an order dated 7th May, 2025 passed by the learned single Judge in the writ petition being WPO No. 284 of 2025. The said writ petition was preferred challenging, *inter alia*, a Fire Safety Certificate (hereinafter referred to as FSC) dated 11th April, 2025 issued by the Director, Fire Prevention Wing, West Bengal Fire and Emergency Services. By the said order the learned single Judge directed that the '*subject premises shall not be used for any commercial purpose till 19th May, 2025 or until further order, whichever is earlier*'. The matter was made returnable on 16th May, 2025 directing the respondent no.2 '*to file a report as to whether all documents in relation to the subject premises was duly considered prior to issuance of the fire safety certificate. Whether the infringement in the side upon spaces of the subject structure and the roof cover in the terrace was noticed at the time of issuance of the fire safety certificate shall be disclosed in the report*'.

The present appeal was earlier heard and adjourned on 16th May, 2025 and directed to appear on 21st May, 2025, as the writ petition was fixed for hearing before the learned single Judge on 19th May, 2025. On the said date, the respondent no.2 filed a report as called for, before the learned single Judge. The said report was accepted and the writ petition was adjourned. As per the earlier order, the present appeal has been enlisted today.

Mr. Bhattacharjee, learned senior advocate, assisted by Mr. Majumder, appearing for the appellant argues that the respondent no.1 herein had no locus to file the writ petition inasmuch as he is not a resident of premises no. 39, Bentinck Street, Kolkata- 700069 (hereinafter

referred to as the said premises). The said premises was originally operated as a cinema hall under the name and style of 'Paradise Cinema' which ceased to operate since 2020. The appellant herein is lawful sub-lessee and is in possession of portions of the said premises. On the ground floor of the said premises, the appellant was carrying on and operating a garment shop/store since the year 2024. Alleging that the appellant was operating the business by making unauthorized constructions and was running the said business without proper fire safety recommendation, the respondent no.1 lodged a complaint before the Kolkata Municipal Corporation (hereinafter referred to as KMC) and as no steps were taken by the authorities a writ petition being WPO 1109 of 2024 was preferred. The appellant also preferred a writ petition being WPO 134 of 2024 challenging a notice dated 20th January, 2025 directing the appellant to stop commercial activity. Both the writ petitions were heard together and an order was passed on 17th March, 2025 directing the department to conduct an inspection.

Mr. Bhattacharjee submits that after conducting inspections, the Fire Safety Recommendation (hereinafter referred to as FSR) was issued '*subject to regularization of change of occupancy form the competent building sanctioning authority, i.e., KMC*'. On the basis of the said FSR the FSC was issued on 11th April, 2025 and on the basis of the same the appellant started operating its shop engaging about 50 employees. However, the learned single Judge by the order impugned upon calling for a report from the respondent no.3, abruptly directed that the subject premises shall not be used for any commercial purpose. The impugned order does not disclose

any reason as to why the business was stopped ignoring the subsistence of a valid FSC. By a cryptic order, the final relief claimed was granted at the interim stage. The appellant's business has been stopped granting unnecessary weightage to the unfounded allegations levelled by a person who is not even a resident of the said premises.

He submits that the learned single Judge failed to appreciate that the appellant had taken all fire safety measures in the said premises as would be explicit from the report of the Divisional Fire Officer dated 21st March, 2025. The competent authority upon perusal of all records took a conscious decision to issue the FSC. Without arriving at any *prima facie* satisfaction that the said FSC is unsustainable in law or that the same suffers from any jurisdictional error, the appellant's business was stopped calling for a further report from the respondent no.3.

Mr. Gupta, learned senior advocate appearing for the respondent no.1 denies and disputes the contention and submits that only on the basis of an unconditional FSR, the impugned FSC could have been issued. The FSR dated 20th March, 2025 was issued with a specific rider that the same would be '*subject to regularization of change of occupancy form the competent building sanctioning authority, i.e., KMC*'. Admittedly, the change of occupancy pertaining to the said premises has not yet been granted and the appellant has approached the competent authority challenging such decision disallowing the appellant's prayer for change of occupancy. In the said conspectus, it is explicit that the FSC issued on the basis of a conditional FSR is not sustainable in law.

He further alleges that the conditions for issuance of FSC detailed in Rule 19 of the West Bengal Fire Services (Fire, Prevention and Fire Safety) Rules, 2003 have not been fulfilled. In the report dated 21st March, 2025 it has been clearly stated that the building has no clear open space as statutorily required and in view thereof, the FSC could not have been issued. In support of the arguments advanced reliance has been placed upon the judgment delivered in the case of *Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others*, reported in (2007) 2 *Supreme Court Cases* 230 wherein it has been *inter alia* observed that equity can only supplement the law but it cannot supplant or override it.

Ms. Jhuma Chakraborty, learned advocate appearing for the State respondents submits that the Technical Expert Committee (hereinafter referred to as TEC) has considered the inspection reports and all other documents and has recommended for issuance of FSC upon observing that the occupancy load at the premises stands reduced.

In reply Mr. Bhattacharjee submits that the issue of change of occupancy is relevant for calculation of taxes and has no direct nexus with regard to grant of FSC moreso when it would be evident from the tax receipts that the KMC is aware that the nature of use of the building is as '*Shop, Office + Theatre*'.

He contends that before the learned single Judge the respondent no.3 had already filed a report dated 14th May, 2025 wherefrom it would be evident that the competent TEC did recommend for issuance of the FSC.

We have the learned advocates appearing for the respective parties and considered the material on record.

A perusal of the impugned order reveals that the learned single Judge upon calling for a report from the respondent no.3 as to whether all documents were considered prior to issuance of FSC and as to whether any infringement of the side open spaces and roof cover was noted prior to issuance of the FSC, directed that the premises shall not be used for any commercial purpose till 19th May, 2025.

Records reveal that on the returnable date, the report as called for was submitted by the respondent no.3. A perusal of the same would reveal that the TEC upon considering all documents and taking note of side open space and roof of the building and upon extensive evaluation recommended for issuance of FSC. As regards the change of occupancy it was observed that *'the ground floor of the building was earlier used as Cinema Hall (Assembly occupancy) and it is presently used as Retail shop (Mercantile occupancy) which has lesser occupancy load than earlier'*. Considering the lesser occupancy load and upon conducting thorough inspection the TEC recommended for issuance of FSC. The judgment delivered in the case of *Raghunath Rai Bareja (supra)* is distinguishable on facts. The respondent no.1 has already used an exception to the report filed by the respondent no.3. Let the same, as produced, be kept on record.

Prima facie the direction that the subject premises shall not be used for any commercial purpose, is not supported with appropriate reasons. Initially the interim order was passed for about two weeks calling for report from the respondent no.3. The said report dated 14th May, 2025, as filed was not considered by the learned single Judge and the matter was

adjourned in view of pendency of the appeal and the interim order was extended till 21st May, 2025.

In our opinion, *prima facie*, the appellant ought not to have been restrained from operating its business in the said premises before arriving at any finding that the FSC, as issued, is not sustainable in law. The vacation of the interim order shall not cause a greater loss and prejudice to the respondent no.1 than the loss and prejudice, the absence thereof, is likely to be caused to the appellant.

Accordingly, the interim order passed by the learned single Judge on 7th May, 2025 is set aside.

The respondents herein shall file the affidavits-in-opposition to the writ petition within a week after the vacation. Reply thereto, if any shall be filed within a week thereafter. The period specified for exchange of the affidavits shall be mandatory and the parties would be at liberty to pray for expeditious disposal of the writ petition.

With the above observations and directions the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(TAPABRATA CHAKRABORTY, J.)

(REETOBROTO KUMAR MITRA, J.)