

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13179 OF 2022

Shital Devshi Khunti

....Petitioner

V/S

The Chief Officer

Diu Municipal Council & Anr.

....Respondents

...

Ms. Samiksha Kanani for the Petitioner.

Mr. H.S. Yenegaonkar a/wj Mr. Aayush Kedia for Respondent No.1.

Ms. Chaitanya Chavan a/w Ms. Dipika Panchmatia, Mr. Sagar Parab and

Ms. Avni Vasani i/b M/s. Vigil Juris for Respondent nos.2 and 3.

...

CORAM: NITIN JAMDAR &

SHARMILA U. DESHMUKH, JJ.

DATE : 14 NOVEMBER 2022.

P.C.:

Heard learned Counsel for the parties.

2 The Petitioner has challenged the notice dated 1 November 2022 addressed to Respondent No.2 to demolish construction stated to be illegal construction on property New City Survey Plot No.PTS 61/35 situated at Bunder Chowk, Diu.

3 The case of the Petitioner is that the Petitioner is running a Restaurant on the property and is a lessee of Respondent No.2. The grievance of the Petitioner is that she was not given any advance show cause notice and straightaway action of demolition is directed.

4 Learned Counsel for the Respondent No.2 states that the Petitioner has carried out illegal construction and Respondent No.2 is ready to remove the said illegal construction carried out on the land owned by Respondent No.2.

5 The Petitioner is running a Restaurant from the property in question and that the Petitioner has a lease in Petitioner's favour. As regards status of lease, proceedings are pending. The Petitioner has made a representation to putforth the case that the structure is not illegal.

6 In the facts and circumstances of this case, therefore, it would be appropriate that any further action, if any, by Respondent Municipal Council should be after giving an opportunity to the Petitioner.

7 The copy of the notice/order dated 1 November 2022 is also addressed to the Petitioner. It is directed that the order/notice dated 1 November 2022 shall be treated as a show cause notice to the Petitioner and the Respondent Nos.2 and 3 giving them period of 15 days from today. It is open to the Petitioner and Respondent Nos.2 and 3 to putforth their say in respect of the said notice. Thereupon Respondent No.1 Municipal Council to take necessary action as per law after giving an opportunity to the Petitioner and Respondent Nos.2 and 3.

8 The Writ Petition is accordingly disposed of.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.

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