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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
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WRIT PETITION NO.893 OF 2023

Shital D. Khunti

...Petitioner

V/s.

The Chief Officer,
Diu Municipal Council, Diu & Ors.

...Respondents

Ms.Samiksha Kanani for the Petitioner.

Mr.Hiten Venegavkar for the Respondent.

CORAM : R.D. DHANUKA &

M.M. SATHAYE , JJ.

DATE : 20TH JANUARY, 2023.

P.C. :-

1. By this Petition filed under Article 226 of the Constitution of India, the Petitioner has impugned the order dated 16th January, 2023 passed by the Respondent No.1 to demolish illegal construction situated at New CTS Plot No.PTS 61/35, Bunder Chowk, Diu as per Section 180, Clause 8(iv) of The Dadra & Nagar Haveli & Daman & Diu Municipal Council, Regulation 2004 as amended by, The Dadra & Nagar Haveli & Daman & Diu Municipal Council (Amendment) Regulation, 2018.

2. It is the case of the Petitioner that she is running a restaurant in the writ property. The Petitioner claims to be a tenant of

the Respondent No.2 and has entered into a lease agreement on 5th January, 2021 for carrying out business of the Respondent No.2 for the period of 30 years.

3. The Respondent No.1 initiated an action for demolition of the offending structure on 1st November, 2022 and called upon the Petitioner to demolish the offending structure. The said notice was subject matter of Writ Petition No.13179 of 2022 filed by the Petitioner in this Court. By an order dated 14th November, 2022, the Division Bench of this Court disposed of the said Writ Petition and directed the Respondent No.1 – Council to give an opportunity to the Petitioner and further directed that the said order dated 1st November, 2022 shall be treated as show cause notice to the Petitioner. By virtue of said order, the Petitioner was granted an opportunity to put forth her say in respect of the said notice and also permitted the Municipal Council to take necessary action as per law after giving an opportunity to the Petitioner and the Respondent Nos.2 and 3.

4. In pursuance of the said order, the Petitioner filed her say before the Chief Officer on 17th October, 2022 and 28th November, 2022. The Petitioner applied for certified copies of the documents.

5. The Respondent Nos.2 and 3 as well as the Petitioner appeared before the Chief Officer. The matter was heard. There was hearing rendered by the Chief Officer on the said notice. The Chief

Officer passed an order on 16th January, 2023 after hearing the parties and after considering the documents and held that no permission was granted on the site at New CTS Plot No.PTS 61/35, Bunder Chowk, Diu for construction of offending structure.

6. Learned counsel for the Petitioner vehemently urged that the Chief Officer relied upon the site report however, no copy of the said site report was furnished to the Petitioner. She submitted that the Petitioner is only the lessee in respect the offending structure. The Petitioner has not carried out any construction. The entire action is initiated on the basis of the false complaint filed by the Respondent Nos.2 and 3. She submitted that the impugned order is in violation of principles of natural justice. In support of this submission, learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of **Deepak Ananda Patil vs. State of Maharashtra & Ors., 2023 SCC OnLine SC 34** and in particular paragraph 20.

7. Mr.Venegaonkar, learned counsel for the Respondent, on the other hand supported the findings rendered by the Chief Officer in the impugned order and submitted that though various opportunities were granted by the Chief Officer to the Petitioner, to produce the permission obtained, if any, for carrying out any construction of the offending structure, no such documents / permissions were produced.

8. We have perused the documents annexed to the Petition

and also the copy of the lease agreement entered into between the Respondent No.2 and the Petitioner. A perusal of the lease agreement read with the show cause notice and the impugned order would clearly indicate that, the construction which is put up, which is the subject matter of the show cause notice and the impugned order are not reflected in the lease agreement entered into between the Petitioner and the Respondent No.2. On the contrary, the Respondent No.2 appeared before the Chief Officer and made his position clear that they have not carried out any such construction, which was the subject matter of the show cause notice.

9. Though repeatedly we have called upon the learned counsel for the Petitioner to produce the permission if any, obtained by her client for carrying out such construction from the Respondent No.1, learned counsel for the Petitioner was unable to produce any documents. Though this Court granted an opportunity to the Petitioner to produce the documents while disposing of the Writ Petition No.13179 of 2022 on 14th November, 2022, no permission could be produced by the Petitioner before the Respondent No.1 for carrying out construction of the offending structure.

10. Insofar as the judgment of the Supreme Court in case of **Deepak Ananda Patil** (supra) relied upon by the Petitioner is concerned, in our view the said judgment would not advance the case

of the Petitioner on the ground that in this case, sufficient opportunity was given to the Petitioner by the Chief Officer to produce the permission granted by the Chief Officer, if any, before carrying out the construction of the offending structure, however, the Petitioner failed to produce any such permission. The said judgment is clearly distinguishable on facts.

11. The Chief Officer in the impugned order has clearly referred to the opportunities granted to the Petitioner to produce the copy of the permission for carrying out the construction of the offending structure, but copy of such permission was not produced by the Petitioner. In the impugned order, the Chief Officer recorded that all the concerned parties were informed to remain present with the approved plan, completion certificate, ownership documents etc. on 10th January, 2023 at 11:00 a.m. for hearing regarding removal of the illegal construction at the site, however no concrete proof for legal construction was found during the hearing as per their written representation. The Petitioner did not produce any documents to prove the legality of the construction as per the documents submitted by them. While rendering such findings, the Chief Officer also placed reliance on the report of the Junior Engineer and Municipal Engineer of Diu Municipal Council dated 31st October, 2022. The order is passed not on the basis of the report submitted by the Junior

Engineer and Municipal Engineer of Diu Municipal Council only. The Petitioner failed to satisfy this Court by producing any permission for carrying out such construction even at this stage. We do not find any infirmity with the impugned order passed by the Chief Officer. The Writ Petition is devoid of any merits and is accordingly dismissed. No order as to costs.

(M.M. SATHAYE , J.)

(R.D. DHANUKA, J.)