



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO. 12319 OF 2022**

Smt. Prabhalaxmi Chhotalal Yoganand	]	
Age : 77 years, Occ. : Business,	]	
R/at. House No. C-15/99, Surajvav Chowk, Diu.	]	
Through Power of Attorney Holder,	]	
Shri. Agravat Balvantrai T.	]	
Age : 66 years, Occ. : Business,	]	
R/at. House No. C-15/100, Surajvav Chowk, Diu.	]	... Petitioner

**V/s.**

1. Chief Officer,		
Diu Municipal Council, Diu.	]	
2. Nayankumar Pradipkumar	]	
Age : Adult, Occ. : Nil,	]	
R/at. H.No.210, Jethibai Marg, Diu.	]	... Respondents

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Mr. Aumkar V. Joshi for Petitioner.

Mr. Harsh Dedhia h/f. Mr. Hiten Venegavkar for Respondent No.1.

Mr. Mehul Shah a/w. Mr. Abhishek Nikharge for Respondent No.2.

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**CORAM : A. S. GADKARI AND  
KAMAL KHATA, JJ.**

**DATE : 7<sup>th</sup> February 2025.**

**JUDGMENT ( Per : A. S. GADKARI, J.) :-**

1) Rule. Rule made returnable forthwith and with the consent of learned Advocates for the respective parties, the Petition is taken up for final

hearing.

2) By the present Petition under Article 226 of the Constitution of India, the Petitioner has impugned Order dated 1<sup>st</sup> September 2022 passed by the Respondent No.1, cancelling the license to conduct business from the suit property bearing 'Licence No.153' (the said License) issued by Respondent No.1.

3) Heard Mr. Joshi, learned Advocate for Petitioner, Mr. Dedhia, learned Advocate for Respondent No.1 & Mr. Shah, learned Advocate for Respondent No.2. Perused record produced before us.

4) According to us, present Petition is a proxy litigation instituted by Shri. Agravat Balvantrai T., who claims to be Power of Attorney Holder of Petitioner Smt. Prabhalaxmi Chhotalal Yoganand, who is approximately aged 80 years as of today.

5) Smt. Prabhalaxmi Chhotalal Yoganand was tenant of Shop No.1, Dudhful Zampa, Diu, measuring 23.66 sq.mtrs. which is owned by Respondent No.2. Previously, Smt. Prabhalaxmi Chhotalal Yoganand operated a farsan shop namely a food preparing and selling business under the name and style of M/s. Shri Krishna Farshan Gruh / M/s. Krishna Farshan Gruh from the suit shop. The said license was initially issued in the name of Mr. Chhotalal Yoganand, the Petitioner's late husband. Following his passing, the license was transferred to the Petitioner as his widow. Apparently, through a Deed of Release dated 10<sup>th</sup> December 2015, executed between the Petitioner and Mr.

Pradipcumar Aridas the father of Respondent No.2, the Petitioner voluntarily released and relinquished all her rights over the suit property. But the License continued.

5.1) Thus, on 10<sup>th</sup> December 2015 the Petitioner had ceased to be a tenant of the Respondent No.2 under the prevalent laws.

5.2) In this brief background, in the name of the Petitioner her purported Power of Attorney Holder is instituting and pursuing this litigation to obtain a license for preparing / manufacturing of food articles and other necessary permits.

6) It is the case of the Power of Attorney Holder of the Petitioner that, despite the Petitioner relinquishing her tenancy rights in favour of Respondent No.2, she remained in possession of the suit shop. The Petitioner's Advocate contends that the Respondent No.2's complaint with the Deputy Commissioner of Respondent No.1 seeking action against the Petitioner itself indicates that the Petitioner was lawfully in possession of the suit shop, despite having relinquished her tenancy rights. However, we do not agree with the submission made by the learned Advocate for Petitioner.

7) Perusal of the said complaint particularly paragraph 2 thereof clearly reveals that, a categorical averment is made in the said complaint that the Petitioner surrendered her tenancy rights in respect of the suit shop by executing Deed of Release dated 10<sup>th</sup> December 2015. According to us, once a tenant surrenders the tenancy in respect of the suit premises, possession is

deemed to have been surrendered. No prudent landlord will again permit the same tenant to occupy the suit premises without executing necessary documents in that behalf, namely, a new Tenancy Agreement and/or issuance of fresh rent receipts.

8) Admittedly, there is no Tenancy Agreement executed between the Petitioner and the Respondent No.2 subsequent to execution of Deed of Release dated 10<sup>th</sup> December 2015. There is also no communication from the landlord to permit occupation. The Respondent No.2 categorically asserts that, taking undue advantage of the situation, Shri. Agravat Balvantrai T. has surreptitiously and clandestinely entered into the suit shop under the guise of being a Power of Attorney holder of Smt. Prabhalaxmi Chhotalal Yoganand, and continued to conduct the business of preparation of sweet and farsan food articles under the name of M/s. Shri Krishna Farshan Gruh / M/s. Krishna Farshan Gruh using the Petitioner's license. Aggrieved by the acts of the Power of Attorney Holder of the Petitioner, the Respondent No.2 lodged a complaint with the Competent Authority-Respondent No.2. The concerned Authority having considered the grievance have rightly cancelled the license issued in favour of the Petitioner.

9) A bare perusal of Petition reveals that, there is no averment stating as to how and under whose authority Shri. Agravat Balvantrai T. (PoA holder) came into and continued to be in possession of suit shop, after Smt. Prabhalaxmi Chhotalal Yoganand executed the Deed of Release of her rights in

favour of Respondent No.2.

10) Record also indicates that, the Respondent No.2 has already instituted a suit being Special Civil Suit No. 2 of 2023 in the Court of Civil Judge, Senior Division at Diu for eviction of Shri. Agravat Balvantrai T., who claims to be Power of Attorney Holder of Smt. Prabhalaxmi Chhotalal Yoganand and the same is *subjudiced*.

11) In this background, having perused the entire record produced before us, we are of the considered view that the Respondent No.1 has not committed any error either in law or on facts, while passing the impugned Order dated 1<sup>st</sup> September 2022.

11.1) There are no merits in the Petition and is accordingly dismissed.

11.2) Rule is accordingly discharged.

( KAMAL KHATA, J. )

( A.S. GADKARI, J. )

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