

VRJ

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

WRIT PETITION NO.712 OF 2016

VAIBHAV
RAMESH
JADHAV
Digitally signed by
VAIBHAV RAMESH
Date: 2024.01.29
17:35:51 +0530

Ghanshyam Kalidas Patel & Anr. ... Petitioners

V/s.

The State of Maharashtra Through
Secretary Revenue & Forest Department
& Ors. ... Respondents

Mr. Vasudeo A. Gangal for the petitioners.

Mr. S. D. Rayrikar, AGP for the State/respondent Nos.1
to 3.

Ms. S. T. Pandey with Ms. Anima Mishra, Mr. Ashif
Husain i/by SBG Law for respondent Nos. 4 & 5.

Mr. Yogesh Panchal with Mr. Mayur Panchal for
respondent Nos.6(a)(b)(c) & 9(a)(b).

CORAM : AMIT BORKAR, J.

DATED : JANUARY 29, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The petitioners are challenging order dated 27th November 2015 passed by the Desk Officer, State of Maharashtra cancelling permission granted under section 36 and section 36A of the Maharashtra Land Revenue Code, 1966 subject to conditions stated in order dated 12th September 2013.
- 3.** Respondent No.4 filed an application on 4th September 2015

alleging that the petitioners breached condition Nos.1, 4 and other conditions in order dated 12th September 2013. By the impugned order, the Desk Officer, State of Maharashtra had cancelled order dated 12th September 2013.

4. On perusal of order dated 27th November 2015, the Desk Officer has passed an order without assigning any reason. The Apex Court in the case of **Kranti Associates Private Limited And Another vs. Masood Ahmed Khan & Others** reported in (2010) 9 SCC 496 held that supplying of reasons for a quasi-judicial order is mandatory and the orders affecting civil rights of the parties without assigning reasons has been deprecated. Paragraph 47 of the said judgment reads thus:

“47. Summarizing the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a

component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k). If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l). Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* (1987) 100 Harward Law Review

731-37).

(n). Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain* (1994) 19 EHRR 553, at 562 para 29 and *Anyia vs. University of Oxford*, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o). In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

5. On perusal of the order, it appears that the power of the State Government is exercised by the State Government. Under the business rules, power to adjudicate under the provisions of the Maharashtra Land Revenue Code, 1966 is assigned either to the concerned Minister or to the Secretary depending on the delegation of power. The Desk Officer has no authority to pass such order unless such order is issued in the name of Governor of the State Government which is the mandate of Article 166 of the Constitution of India. In the absence of impugned order being supported by reasons or being passed in the name of the Governor of State, the Desk Officer in his own name has no power to pass such order.

6. The State Government has filed affidavit-in-reply justifying cancellation of order. However, in view of judgment of the Apex Court in the case of **Mohinder Singh Gill And Another vs. Chief**

Election Commissioner, New Delhi reported in (1978) 1 SCC 405.

Paragraph 8 reads thus:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) :

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

7. The quasi-judicial order needs to be supported based on reasons in the order and not by way of affidavit. Therefore, the reasons assigned in affidavit-in-reply cannot be considered for the purpose of confirming validity of the impugned order. Hence, impugned order cannot be sustained.

8. Hence, following order:

a) The impugned order dated 27th November 2015

annexed to this writ petition as Exhibit-M is quashed and set aside.

- b) The application of respondent No.4 dated 4th September 2015 shall be decided by the person having power to decide such matter under the business rules and such authority shall pass appropriate orders after giving opportunity of hearing to both sides and after passing reasoned order.
9. Rule is made absolute in above terms.
10. With this, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)