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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.445 OF 2024

Subhash Baburao Biramane
(Since Deceased) Through Legal Heir ... Petitioner

V/s.

The State of Maharashtra Through
the Secretary & Ors ... Respondents

Mr. Girish S. Bodbole, Sr. Advocate a/w Mr. Siddharth
R. Karpe, for Petitioner.

Mrs. M. S. Srivastava, AGP for State/Respondent Nos.1
to 5.

Mr. Pandit Kasar, for Respondent No.6.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 29, 2024

P.C.:

1. Learned Advocate for the *respondent* seeks time to file affidavit-in-reply. Such request is made in number of matters where order passed either quasi judicial authority or other authority.

2. The quasi judicial order is the subject matter of challenge in the present writ petition. The law as regards to supply of reasons by way of affidavit-in-reply is well settled, in view of judgment of Apex Court in the case of **Commissioner of Police Bombay Vs.**

Gordhandas Bhanji, reported in 1951 SCC 1088, the Apex Court in paragraph 9 has observed as under :

“9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of the Government. We are clear that 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.”

3. The view in the case of **Commissioner of Police** (Supra) is thereafter approved by the five judges bench in the case of **Mohinder Singh Gill And Another vs. Chief Election Commissioner, New Delhi** reported in (1978) 1 SCC 405. The Constitution Bench in 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.”

4. Validity of the quasi judicial or judicial order needs to be tested in the light of obligation is cast on the authority to assign the reasons in support of the orders it has passed. The subsequent explanation furnished by the authorities or the authorities by the affidavit-in-reply are of no use for testing the validity of such orders. Therefore, in my opinion, the practice of filing affidavit-in-reply as a matter of course cannot be permitted unless in the peculiar facts of the case, the Court is satisfied that the affidavit-in-reply is necessary for the effectual adjudication on the subject matter of the writ petition.

5. Therefore, the request of the respondent No.6 seeking permission to file affidavit-in-reply is rejected. However, to prepare himself the writ petition is adjourned for period of two weeks with the understanding on the next date, the writ petition will be decided finally at admission stage.

6. Prima Facie the Revenue Authority in exercise of power under Section 149 and 150 of the Maharashtra Land Revenue Code, 1966 cannot sit over the judgment of the tenancy authorities in appeal under the power conferred under Section 149 and 150 of the said Code. Hence, until further orders, there shall be ad-interim relief in terms of prayer clause (c) as the certificate granted by the tenancy authority under the Bombay Tenancy and Agricultural Lands Act, 1948 in exercise of power under Section 32M of the Act has attained finality.

7. Stand over to **12 February 2024**.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 1st February 2024. Correction in paragraph 1 is shown italicize.