

BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S. MANIKUMAR

Review Application No.22 of 2014

M.P.No.1 of 2014

Contempt Petition No.2625 of 2013

M/s.V.G.P.Housing Pvt. Ltd.,
No.6, Dharamaraja Koil Street,
Saidapet, Chennai 600 015.

.. Review Petitioner

Vs.

1. M/s.Nagarajan,
rep. By its Partner,
V.Sekar

.. Contempt Petitioner

2. Mr.L.Sitherasenan,
District Collector,
Kanchipuram District,
Kanchipuram.

.. 1st Respondent in
Cont.P.No.2625 of 2013

3. The Director of Town and Country Planning,
Anna Salai, Chennai 600 002.

4. The Chennai Metropolitan Development Authority,
Thalamuthu Natarajar Building,
Egmore, Chennai 600 008.

5. Mr.Rajendran,
Tahsildar,

Tambaram Taluk,
Tambaram.

.. 1st Respondent in
Cont.P.No.2625 of 2013

6. Hindustan Petroleum Corporation Ltd.,
Thalamuthu Natarajar Building,
Egmore, Chennai 600 008.

.. Respondents
in Rev.Appl.No.22 of 2014

Prayer in Review Application:- This review application has been filed under order XLVII Rule 1 r/w Section 114 of CPC to review the order of this Court made in W.P.No.34581 of 2004, dated 24.07.2012.

Prayer in Contempt Petition:- This Petition under Section 11 of the Contempt of Court Act, 70/71 to punish the respondents for having committed contempt of Court for disobeying the order, dated 24.07.2012, made in W.P.No.34581/2004.

For Review Petitioner : M/s.Shivakumar & Suresh

For Contempt Petitioner : Mr.K.Elangoo

For Contemnors : Mr.R.Vijayakumar,
Addl. Government Pleader

COMMON ORDER

Earlier, by a common order, dated 24.07.2012, two Writ Petition Nos.23141 and 34581 of 2004, were disposed of. In W.P.No.23141 of

2004, M/s.V.G.P. Housing (P) Ltd., represented by its Director, V.G.P.Rajadoss, has sought for a Writ of Certiorari, to quash the order of the District Collector, Kanchipuram District, Kanchipuram, dated 01.07.2004.

2. In W.P.No.34581 of 2004, M/s.Nagarajan, represented by its Partner, V.Sekar, has sought for a Mandamus, directing respondents 1 and 4 to remove the encroachments made by the 5th respondent in the 40 Feet V.G.P. Layout Road and Pusthuthi Road (located in between 40 Feet layout road and the East Coast Road), Injambakkam Village, Tambaram Taluk, Kancheepuram District.

3. Insofar as W.P.No.23141 of 2004, is concerned, there was no representation. The order impugned in the said writ petition, has been passed by the District Collector, Kanchipuram District, on 01.07.2004, wherein, he has ordered that there should not be any further construction in the land in Survey No.15/199, interference with the usage of the road, by the Public, till the disposal of the suit in O.S.No.142 of 2003, on the file of the District Munsif Court, Alandur. The above order

has been issued, subject to the outcome of the orders passed in C.M.P.No.15135 of 2003 in C.R.P.No.2050 of 2003, which was pending on the date of issuance of the order, dated 01.07.2004.

4. When the abovesaid writ petitions were heard, Mr.K.Elangoo, learned counsel for the petitioner in W.P.No.34581 of 2004, submitted that the suit in O.S.No.142 of 2003, on the file of the learned District Munsif, Alandur, was already disposed of. He further submitted that the suit in O.S.No.127 of 2003, filed by VGP Housing Pvt. Ltd., represented by the Director, Chennai, on the file of the District Munsif Court, Chengalput, which was later on transferred to the District Munsif Court, Alandur, was also disposed of. Suit in O.S.No.127 of 2003, were stated to be filed for bare injunction.

5. Learned counsel for the petitioner in W.P.No.34581 of 2004 also submitted that during the pendency of O.S.No.127 of 2003, filed by VGP Housing Pvt. Ltd., an interim order was granted. The petitioner in W.P.No.34581 of 2004, filed a Civil Miscellaneous Appeal before the District Court and that the same was dismissed. Being aggrieved by the

same, C.R.P.No.2050 of 2003 was filed in this Court, where interim injunction was suspended. He also submitted that both the suits have been disposed of. Based on the above submissions, this Court was of the view that the impugned order, dated 01.07.2004 in W.P.No.23141 of 2004, was to maintain status-quo, till the disposal of civil suit in O.S.No.127 of 2003, on the file of the District Munsif Court, Alandur and inasmuch as finality has been arrived at, in both the suits, the order, dated 01.07.2004, has to be implemented. Accordingly, having regard to the prayer made in W.P.No.34581 of 2004, a direction was issued to the official respondents therein, viz., the District Collector, Kanchipuram, Kanchipuram and the Tahsildar, Tambaram Taluk, Tambaram, to take action for removal of encroachment, as per law.

6. Contending inter alia that the respondents therein have not implemented the orders of this Court, Contempt Petition No.2625 of 2013, has been filed. Pending disposal of the contempt petition, M/s.V.G.P. Housing (P) Ltd., has filed Review Application No.22 of 2014, wherein, it has been contended that M/s.Nagarajan, represented by its Partner, V.Sekar, has filed a suit in O.S.No.142 of 2003, on the file of the

District Munsif Court, Alandur, seeking for the following reliefs,

“(a) for permanent injunction restraining the Defendants, their men, agents, servants and all other persons, acting on behalf of the Defendants under their instructions from interfering with the plaintiff’s peaceful possession and enjoyment of the suit schedule land of the front side road margin available to the suit schedule property or otherwise obstructing the frontage road margin provided in the layout Western side of the plaintiffs suit schedule properties in any manner whatsoever.

(b) for costs.”

7. According to M/s.V.G.P. Housing (P) Ltd., review petitioner, in the abovesaid suit, the lower Court has held that they are the absolute owner in possession of the strip of land lying in between the 20 feet feeder road and east coast road. The review petitioner has also contended that they had also filed a suit in O.S.No.123 of 2003, on the file of the Sub-Court, Chengalpattu, against M/s.Nagarajan, represented by its Partner, V.Sekar and others, seeking for a permanent injunction, restraining them from interfering with their peaceful possession and enjoyment of the suit property, i.e., the land, measuring 36 feet, East to

West and 640 feet, North to South, bearing Survey No.15/199 in Injambakkam Village, Tambaram Taluk. The said suit has been decreed ex parte.

8. It is the further contention of M/s.V.G.P. Housing (P) Ltd., that when both the writ petitions were heard on 24.07.2012, the learned counsel representing the Company, did not appear. The details of the disposal of O.S.No.142 of 2003, was not brought, to the notice of this Court, except to state that it was disposed of.

9. The review petitioner/M/s.V.G.P. Housing (P) Ltd., has also submitted that the learned Advocate Commissioner, appointed in O.S.No.142 of 2003, has submitted his report, in the said suit, marked as Ex.C1, along with a Sketch, marked as Ex.C2. Based on the said report, the learned District Munsif-cum-Judicial Magistrate, Alandur, has observed that the property of M/s.Nagarajan, represented by its Partner, V.Sekar, writ petitioner in W.P.No.34581 of 2004, was vacant. Beyond 20 Feet road, on the West, there is a compound wall put up by M/s.V.G.P. Housing (P) Ltd., and to the West of the same, there lies East Coast Road.

The learned Advocate Commissioner has also filed a report that the petitioner has constructed the compound wall, within its property and that the same is in existence for years together, in Survey No.15/199.

10. M/s.V.G.P. Housing (P) Ltd., has further contended that when the suit in O.S.No.142 of 2003, filed by M/s.Nagarajan, represented by its Partner, V.Sekar, was dismissed, he has failed to bring it to the notice of the Court, the details of the judgment and due to the absence of the learned counsel, representing the Company, this Court had directed the Official respondents to remove the alleged encroachment. According to the review petitioner, the compound wall has been constructed within its property and that there was no encroachment. In the abovesaid circumstances, the Company has filed this petition to review the order of this Court.

11. In the counter affidavit to the Review Application, the Tahsildar, Shozhanganallur, has stated that the learned District Munsif, Alandur, in O.S.No.142 of 2003, has observed that the strip of land between ECR and 20 Feet road, belongs to the review petitioner and that

the same has to be treated as private property, owned by them. The review petitioner has applied for separate patta for the above strip of land, after surrendering the lands, let out for public use, as per layout. As per R.Dis.8A/106/1420, dated 30.07.2010, the strip in between 20 Feet road and ECR has been registered in the name of the review petitioner, M/s.V.G.P. Housing (P) Ltd., with a new notation Survey Nos.15/199B and 15/199C of Injampakkam Village, Sholinganallur Taluk. In view of the observation of the learned District Munsif, Alandur, made in O.S.No.142 of 2003, eviction was not resorted. The Tahsildar, Shozhanganallur, has submitted that there is no wilful disobedience of the order of this Court.

Heard the learned counsel for the parties and perused the materials available on record.

12. Before adverting to the aspect, as to whether, the official respondents have committed any act of contempt, this Court deems it fit to consider, as to whether, the review petitioner, M/s.V.G.P. Housing (P) Ltd., has made out any case for review of the common order made in W.P.Nos.23141 and 34581 of 2004, dated 24.07.2012.

13. When the abovesaid writ petitions were disposed of, there

was no representation, on behalf of the review petitioner. Writ Petitions were disposed of, on the submission made by the learned counsel for the petitioner, M/s.Nagarajan, represented by its Partner, V.Sekar that both the suits were disposed of. Suit in O.S.No.142 of 2003, has been filed by Mr.S.V.Rajagopal and two others, against the review petitioner and one Mr.Santhosam, on the file of the learned District Munsif cum Judicial Magistrate, Alandur, for a permanent injunction, restraining the defendants therein, their men, agents, servants and all other persons, acting on behalf of the defendants therein, viz., the review petitioner and one Mr.Santhosam, under their instructions from interfering with their peaceful possession and enjoyment of the suit schedule land of the front side road margin available to the suit schedule property or otherwise, obstructing the frontage road margin provided in the layout Western side of their suit schedule properties. The suit has been contested. Three witnesses have been examined on behalf of the plaintiffs therein. Nineteen documents have been marked on the side of the plaintiffs therein. Defendants therein examined one witness and marked three documents. Court documents, viz., C1 - Advocate Commissioner's Report, Ex.C2 - Sketch and Ex.C3 - Photos, have been

marked. After considering the oral and documentary evidence and in particular, Exs.C1 and C2 - Advocate Commissioner's Report and Sketch respectively, the learned District Munsif cum Judicial Magistrate, Alandur, has observed as follows:

“On perusal of Exs.C1, C2, the report and the plan of the Advocate Commissioner, it is evident that the plaintiff suit property is vacant and beyond the 20 feet road on the west there is a pucca compound wall put up by the defendant and also there is some basement raised for construction beyond, which is there is a drainage channel and to the West of the same, there is East Coast Road and the report has been filed, as early as 20.12.2010. When it is the case of the plaintiff that the plaintiff has right in the Western portion beyond the 20 feet road given in the layout and when there is a super structure available in the said road margin and when it is the case of the defendant that it is their absolute property the plaintiff has not chosen to amend the suit for the relief of declaration and recovery of possession.”

The Court below has further observed as follows:

“When the plaintiff himself has admitted that the defendants had not interfered with the use of 20 feet road and that there was no interference in 2003 and had not filed the police complaint and had admitted the existence of compound wall on the west of the 20 feet road even though it is according to plaintiff subsequent to filing of the suit and the plaintiff further admitting the filing of suit already by the defendants as against the plaintiffs in O.S.No.127 of 2003 and obtaining order of injunction, this Court feels that plaintiff have not proved the cause of action for the suit. Further, on perusal of the evidence of PW.2 and PW.3, it is contrary to the pleadings found in the plaint, since it is their statement that they worked in the petrol bunk which has not been proved by the plaintiffs. On perusal of Ex.B1, it is the typed set of papers filed by the plaintiffs against the defendant in the appeal preferred before the Hon'ble High Court and it reveals that already suit in O.S.No.127 of 2003, has been filed by the defendant as against the plaintiffs before the District Court and injunction has been granted in I.A.No.300 of 2003 as early as on 30.04.2003 as against the plaintiffs in respect of the property west of 20 feet road and subsequently, confirmed in CMA.27/03 on the ground that the present plaintiffs, who are defendants in the said suit have no iota of right in the property belonging to the present defendants and the property of defendants is a strip of land in S.No.15/4 and 15/5 lying in between ECR road and 20 Feet

feeder road in front of the plaintiffs property”

The learned District Munsif, Alandur, has held that when the Court has already been decided in I.A.No.300 of 2003 in O.S.No.127 of 2003, confirmed in C.M.A.No.27 of 2003, the defendants therein, viz., the review petitioner and one Mr.Santhosam, are the absolute owners in possession of the strip of land lying in between the 20 feet feeder road and east coast road. The learned District Munsif, Alandur, has also observed that admittedly, there was a compound wall to the West of the 20 feet road in between the ECR road and the 20 feet road and therefore, the suit for bare injunction would not lie. For the abovesaid reasons, inter alia, suit in O.S.No.142 of 2003, filed by Mr.S.V.Rajagopal and two others, against the review petitioner and another, for a permanent injunction, has been dismissed, holding that the plaintiffs therein have not established their right beyond the 20 feet road.

14. Suit in O.S.No.127 of 2003, filed by M/s.V.G.P. Housing (P) Ltd., represented by its Director, V.G.P.Rajadoss, against Mr.S.V.Rajagopal, Mr.V.Sekar and Mrs.Geetha, transferred and re-numbered as O.S.No.267 of 2004, on the file of Principal District Munsif,

Alandur, has been disposed of on 17.04.2012. This suit has been decreed against the defendants therein, viz., Mr.S.V.Rajagopal, Mr.V.Sekar and Mrs.Geetha. In the said suit, the learned Principal District Munsif, Alandur, has observed that,

“The suit property is a portion of land in the property comprised under Ex.A2. The defendants being the owners of plot No.3 do not have any right over the suit property. Suit property is abutting the East Coast Road on the Western side. When the defendants have clear access to reach the East Coast Road, through the 20 ft., road which situates immediately on the Western side of Plot No.3 and Eastern side of the suit property, they don't have any manner of right over the suit property. Thus, the plaintiff has proved its claim over the suit property and entitled for the relief as prayed for.”

15. Thus, it could be seen from the above, suit in O.S.No.142 of 2003, filed by Mr.S.V.Rajagopal and two others, against M/s.V.G.P. Housing (P) Ltd., and another, for a permanent injunction, has been dismissed on 10.08.2011. Suit in O.S.No.127 of 2003, filed by M/s.V.G.P. Housing (P) Ltd., represented by its Director, V.G.P.Rajadoss, against Mr.S.V.Rajagopal, Mr.V.Sekar and Mrs.Geetha, transferred and re-

numbered as O.S.No.267 of 2004, has been decreed on 17.04.2014, in favour of M/s.V.G.P.Housing Pvt. Ltd.

16. As stated supra, when W.P.Nos.23141 and 34581 of 2004, were disposed of, on 24.07.2012, there was no representation, on behalf of the review petitioner, viz., M/s.V.G.P. Housing (P) Ltd., represented by its Director, V.G.P.Rajadoss. The petitioners in W.P.No.23141 of 2004, have not furnished the exact details of the disposal of both the suits, excepting to state that they were disposed of.

17. In the impugned order, dated 01.07.2004, the District Collector, Kanchipuram District, Kanchipuram, has ordered that in the objectionable portion, there shall not be any construction, inconvenience to the general public, till the disposal of the suit in O.S.No.142 of 2003 and status quo has to be maintained. C.R.P.No.2050 of 2003 has been filed against C.M.A.No.27 of 2003, on the file of the learned Principal District Judge, Chengalpattu, by which, the said appellate authority has confirmed order made in I.A.No.300 of 2003 in O.S.No.127 of 2003, dated 30.04.2003, filed by M/s.V.G.P. Housing (P) Ltd., represented by its

Managing Director and another. After hearing the learned counsel for the parties and the materials on record, this Court directed the trial Judge, to dispose of the suit, as expeditiously as possible. The abovesaid suit has been subsequently transferred and re-numbered as O.S.No.267 of 2004, on the file of the Principal District Munsif, Alandur and that a decree for permanent injunction has been granted in favour of the review petitioner, viz., M/s.V.G.P. Housing (P) Ltd.

18. Thus, it could be seen from the above, claiming possession and enjoyment of the schedule mentioned property, in O.S.No.142 of 2003, on the file of the District Munsif Court, Alandur, permanent injunction has been sought for, against M/s.V.G.P. Housing (P) Ltd. The suit has been dismissed. Suit in O.S.No.267 of 2004, was decreed in favour of the review petitioner, viz., M/s.V.G.P. Housing (P) Ltd.

19. Suit in O.S.No.142 of 2003, has not been filed in any representative capacity. It has been filed only in the individual capacity. Encroachment has been alleged. But after detailed consideration of the evidence adduced, the trial Judge, in O.S.No.142 of 2003, has recorded

that the plaintiffs, viz., Mr.S.V.Rajagopal and two others, have not substantiated their case.

20. The impugned order, dated 01.07.2004, in W.P.No.23141 of 2004, has been passed, only as temporary measure, to the effect that no construction should be made, in the objectionable portion and that it should not cause traffic disturbance to the general public. Had the review petitioner, represented by its Manager, brought to the notice of this Court, the details of the decisions rendered in both the suits, this Court would not have issued any directions to remove the encroachments, while passing the common order, in the abovesaid writ petitions. The petitioner in W.P.No.34581 of 2004, also did not place the correct facts to this Court. According to the review petitioner, at the time of disposal of both the writ petitions, certified copies of the judgments were not available and thus, they could not appraise the said facts of this Court.

21. In **Aribam Tuleshwar Sharma v. Aibam Pishak Sharma** reported in **AIR 1979 SC 1047**, the Supreme Court held that,

"there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review

which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

22. In yet another decision in **RAJINDERSINGH Vs. Lt. GOVERNOR** reported in **2005 (13) SCC 289**, at paragraph Nos.15 and 16, the Supreme Court held that law is well settled that the power of judicial review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent miscarriage of justice. Power of judicial review extends to correct all errors to prevent miscarriage of justice. It

was further held that Courts should not hesitate to review their own earlier order, when there exists an error on the face of record and the interest of justice so demands in appropriate cases.

23. In **Union of India v. Kamal Sengupta** reported in **2008 (8) SCC 612**, the Supreme Court, at Paragraphs 14 and 15, held that,

"14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

15. The term 'mistake or error apparent' by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the

face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision."

24. In the light of the above decisions, the common order made in W.P.Nos.23141 and 34581 of 2004, dated 24.07.2012, requires to be reviewed. W.P.No.34581 of 2004 is dismissed. As the impugned order, dated 01.07.2004 was only temporary in nature, subject to the disposal of suit in O.S.No.142 of 2003 and the outcome of the order passed in C.R.P.No.2050 of 2003, the impugned order loses its effect, after the trial of the suits, which ended in favour of M/s.V.G.P. Housing (P) Ltd., as stated supra. Directions issued in W.P.No.23141 of 2004, to remove the alleged encroachment, is withdrawn. In view of the above, the present review petition is allowed.

25. As stated supra, it is the contention of the Tahsildar,

Sholinganallur, on the application made by the review petitioner for separate patta, pattas have been issued in Survey Nos.15/199B and 15/199C of Injampakkam Village, Sholinganallur Taluk and that there is no wilful disobedience of the order of this Court. Accepting the statement, the present Contempt Petition is closed.

06.02.2015

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To

1. The Director of Town and Country Planning,
Anna Salai, Chennai 600 002.
4. The Chennai Metropolitan Development Authority,
Thalamuthu Natarajar Building,
Egmore, Chennai 600 008.

S. MANIKUMAR, J.

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