

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.03.2015

Delivered on : 31.03.2015

**THE HON'BLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.M.SUNDRESH**

**Review Application Nos.177 to 183, 188 to 193, 313, 314, 322
and 324 of 2014 in W.A.Nos.2815, 2817, 2820, 2821, 2823 to
2825, 1247, 1248, 1251, 1252, 1254 and 1256 of 2012 and
W.P.Nos.28415, 28142 and 28389 of 2013 and Miscellaneous
Petitions.**

Review Application No.177 of 2014:

P.Muthuswamy

... Petitioner

Vs.

1. The Government of Tamil Nadu,
rep.by the Secretary to Government,
Department of Housing and Urban
Development, Fort St.George,
Chennai – 600 009,

2. The Tamil Nadu Housing Board,
rep.by its Executive Engineer
and Administrative Officer,
493, Anna Salai, Nandanam,
Chennai – 600 035

.... Respondents

Prayer: Review Application No.177 of 2014 is filed
against the Order dated 25.07.2014 made in
W.A.No.2815 of 2012 on the file of this Court.

For Petitioner : Mr.P.Wilson, Sr.Counsel
in Rev.A.Nos.177 for M/s.P.Wilson Associates
to 183 of 2014

For Petitioner : Mrs.G.Hema
in Rev.A.Nos.188
to 193 of 2014

For Petitioner : Mr.R.Sureshkumar for
in Rev.A.Nos.313, Mr.P.Devendran
314, 322 of 2014

For Petitioner in : Mrs.D.Sujatha
Rev.A.No.324 of
2014

For 2nd Respondent : Mr.A.L.Somayaji,
in Rev.A.Nos.177 to Advocate General assisted by
183, 188 to 193, Mr.C.Kasirajan
313, 314 &
324 of 2014 and
3rd respondent in Rev.
A.No.322 of 2014

For 1st respondent in : Mr.P.S.Shivashanmughasundaram
Rev.A.Nos.177 to Special Govt.Pleader
183, 188 to 193,
313, 314, 322
and 324 of 2014

For respondents 3 to : No appearance
7 Rev.A.No.313 of
2014

COMMON ORDER

By a common order dated 25.7.2014, after hearing the learned counsel appearing on either side at length we passed the final orders

dismissing the writ appeals and writ petitions filed. Seeking to review the said orders passed, these petitions have been filed before us.

2. Learned counsel appearing for the petitioners submitted that only some of the petitioners are sought to be removed and similarly placed persons have been given allotments just prior to the orders passed. The Government Orders passed in G.O.Ms.No.1854 Revenue Department dated 3.5.1957 and G.O.Ms.No.1348 Revenue Department dated 3.4.1958 have been misinterpreted. There was no consent given to vacate the tenanted portions in the occupation by the petitioners. Though the order passed states about the change of policy, no such decision has been produced and relied upon. Sufficient opportunities have not been given to the petitioners to put forth their case in a proper perspective. Under Section 84 of the Tamil Nadu Housing Board Act, an authorised tenant can only be evicted on the three grounds mentioned thereunder. To buttress their submissions, the following judgments are relied upon by the learned counsel for petitioners:

"(1) Board of Control for Cricket in India and another Vs. Netaji Cricket Club and others, ((2005) 4 SCC 741);

(2) Rajendar Singh Vs. Lt.Governor, Andaman & Nicobar Islands and others, ((2005) 13 SCC 289);

(3) Shivdev Singh & Others Vs. State of Punjab & Others, (AIR 1963 SC 1909);

(4) A.Durairaj Vs. The Chairman, Tamil Nadu Housing Board, ((2001 (4) CTC 620);

(5) Municipal Corporation of Greater Mumbai Vs. State of Maharashtra (2014 SCC Online Bom 666);

(6) Zubair Malik Vs. Municipal Corporation of Greater Mumbai (2014 SCC Online Bom 1539)"

3. Learned Advocate General appearing for the respondents submitted that the petitions filed are misuse of process of law. Learned counsel for the petitioners after the conclusion of the arguments and to a query put forth by the Court sought for six months time. The condition of the building is not in dispute. The decision to demolish qua the condition of the building is based upon report submitted by the experts from various fields including Anna University. The Government Orders passed in G.O.Ms.No.1854 Revenue Department dated

3.5.1957 and G.O.Ms.No.1348 Revenue Department dated 3.4.1958 cannot be construed as submitted by the petitioners. The earlier decision of hire purchase was made on case to case basis as discussed by the Court in the common order passed. It is only this policy, which has been given up from the year 2007 onwards. In pursuant to the said policy adopted from the year 2007 onwards, a further policy decision has been taken on the utilisation of the area as per the Government Orders passed in G.O.(Ms) No.51 Housing and Urban Development (HB4(1)) Department dated 5.3.2012 and G.O.(Ms) No.52 Housing and Urban Development (HB4(1)) Department dated 5.3.2012. The 19 sale deeds relied upon by the petitioners are with respect to allotment of Slum Clearance Board and therefore they stand on a totally different footing. In the guise of review, the petitioners seek a re-hearing of the decision made after hearing the parties at length. It is totally incorrect to state that the petitioners have not been given sufficient opportunities. In fact, the hearing went on for several days followed by written submissions. In support of his submissions, the learned Advocate General relied upon a decision of the Supreme Court in **Kamlesh Verama Vs. Mayawathi and Others, (2013) 8 SCC 320.**

4. Considering the scope of review, the Supreme Court in **Kamlesh Verama Vs. Mayawathi and Others, ((2013) 8 SCC 320)** summarised the following principles:

"**20.** Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in *Chhajju Ram V. Neki*, (AIR 1922 PC 112) and approved by this Court in *Moran Mar Basselios Catholicos V. Most Rev. Mar Poullose Athanasius & Ors.*, (1955) 1 SCR 520 : (AIR 1954 SC 526), to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India V. Sandur Manganese & Iron Ores Ltd. & Ors.*, JT 2013 (8) SC 275 : (2013) 8 SCC 337).

20.2. When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

5. In the light of the principle enunciated by the Apex Court, the legal position is rather clear that a review cannot be sought to re-hear

an adjudication, that too, when it is passed on merits after hearing the parties and after considering the materials available on record. In this matter, we have heard the learned counsel appearing on either side at length and only thereafter a common speaking order has been passed. The Government Orders passed in G.O.Ms.No.1854 Revenue Department dated 3.5.1957 and G.O.Ms.No.1348 Revenue Department dated 3.4.1958 have been considered while passing the Order. If the petitioners are aggrieved by the same, the only remedy open to them is to challenge the said Order. The earlier decision was made on hire purchase was based upon case to case. The said decision was given up from the year 2007 onwards. It was indeed a policy decision, for which, no separate order is required. As submitted by the learned Advocate General, thereafter decision was made in G.O.(Ms) No.51 Housing and Urban Development (HB4(1)) Department dated 5.3.2012 and G.O.(Ms) No.52 Housing and Urban Development (HB4(1)) Department dated 5.3.2012 for utilisation of the land. The decision to demolish the existing structure was also made based upon empirical material viz., the report of the experts. It is to be seen that the petitioners did not make any efforts in seeking execution of sale deeds and they continued to be the tenants. On the other hand, they have filed writ petitions challenging the Government Orders and the

orders passed by the Tamil Nadu Housing Board to evict them only in the year 2011 and thereafter.

6. The learned Advocate General submitted that the eviction notices have been given in a phased manner. In our view, there is no discrimination involved since all the tenants are to be evicted. Therefore, the submission made on the ground of selective discrimination cannot be accepted in the absence of any material to support the same. We do not find any merit in the submission that 19 documents have been executed by the respondent just prior to the common order passed. As submitted by the learned Advocate General, those 19 flats are not similar to the case of the petitioners and they are in respect of allotment by the Slum Clearance Board. Therefore, we do not see any parity between them.

7. We did ask the learned counsel for the petitioners at the time of concluding the arguments on the question of requisite time for vacating the respective tenanted portions. Thereafter, a factual recording was made on the submission made by the learned counsels. When such recording has been made by a court of record, the petitioners cannot contend to the contra. Even otherwise, we have

heard the submissions made by the petitioners on merit. Thus, the submissions made by the learned counsel for the petitioners do not merit acceptance.

8. Yet another submission has been made by the learned counsel for the petitioners basing reliance upon Section 84(1) of the Tamil Nadu Housing Board Act. We have already considered the said submission and rejected it on merit holding that the reliance made does not have any application to the facts of the cases before us. Therefore, the decision relied upon by the learned counsel for the petitioners in **A.Durairaj Vs. The Chairman, Tamil Nadu Housing Board, ((2001 (4) CTC 620)** is not a case in point. The other judgments relied upon by the learned counsel for the petitioners do not require any discussion as there is no quibble over the settled position of law on the scope of review jurisdiction.

9. For the fore-going reasons, the review applications are dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

Index:Yes/No

(S.K.A.,J.) (M.M.S., J.)
31.03.2015

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Rev.A.Nos. 177 to 183, 188 to 193, 313, 314, 322 and 324 of 2014 in
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SATISH K. AGNIHOTRI,J.,
and
M.M.SUNDRESH,J.,

These matters are taken up today under the caption "for being mentioned".

2 Learned Senior Counsel appearing for the review petitioners submits that having regard to the ensuing examination of the children, the review petitioners may be granted some time to vacate the premises under an undertaking to vacate it within the specified time.

3 Having considered the facts of the cases, we are of the considered view that the petitioners be permitted to continue in the premises till 30.4.2015. We further make it clear that no further extension of time for vacating the premises shall be granted.

(S.K.A.J.) (M.M.S.,J.)
01.04.2015

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Note: The Registry is directed to issue
the corrected order copy

**SATISH K. AGNIHOTRI,J.
AND
M.M.SUNDRESH,J.**

(usk/ra)

Pre-Delivery Order in
Review Application No.177 of
2014 etc., batch.,

31..03..2015 and

01.04.2015

