

In the High Court of Judicature at Madras

Dated : 21.12.2015

Coram

The Honourable ***Mr.JUSTICE B.RAJENDRAN***

Review Application No.107 of 2015
in W.P.No.18277 of 2014

and Contempt Petition No.428 of 2015

and M.P.No.1 of 2015 in Rev.Application No.107 of 2015

Review Application No.107 of 2015:-

- 1.Union Territory of Pondicherry
Rep. by Chief Secretary [Puducherry]
Puducherry-605 001.
 - 2.District Collector
O/o.District Collector
Saram
Puducherry-605 013.
 - 3.Managing Director
Anglo French Textiles
A Unit of Pondicherry Textiles Corporation
Puducherry 13.
- Applicants

Vs.

- 1.L.Sundararajan
- 2.T.R.Balachandran
- 3.J.Damodaran
- 4.P.A.Janarthanan
- 5.M.Nachiappan N.Manickam
- 6.G.Selvaraj

7.K.Chokalingam

8.T.Subramanian

9.V.Mahaboob Alikhan

10.R.Chandrasekaran ... Respondents

Review Application filed under Order 47 Rule 1 CPC r/w. Section 114 of C.P.C., against the order passed by this Court in W.P.No.18277 of 2014, dated 16.09.2014.

For Applicants : Mr.A.Tamilvanan
Government Advocate
(Puducherry)

For Respondents : Mr.L.Sundararajan
1st respondent/Party-in-Person

Contempt Petition No.428 of 2015:-

1.L.Sundararajan

2.T.R.Balachandran

3.P.A.Janarthanan

4.M.Nachiappan

5.G.Selvaraj

6.K.Chockalingam

7.T.Subramanian

8.V.Mahaboob Alikhan

9.R.Chandrasekaran ... Petitioners

-Vs-

Mr.Chetan Bhushan Sanghi, I.A.S.,
 Union Territory of Pondicherry
 Represented by Chief Secretary
 Puducherry-605 001.

... Respondent

Contempt Petition filed under Section 11 of the Contempt of Courts Act, to punish the respondent for having violated the order of this Court in W.P.No. 18277 of 2014, dated 16.09.2014.

COMMON ORDER

Review Application No.107 of 2015 is filed by the Government of Puducherry and Pondicherry Textiles Corporation seeking to review the order passed by this Court in W.P.No.18277 of 2014, dated 16.09.2014.

2.Excepting the 3rd respondent in the Review viz., J.Damodaran, all the other respondents in the Review, who are the employees of the 3rd petitioner in the Review, viz., Anglo French Textiles, now called as Pondicherry Textiles Corporation, have filed the **Contempt Petition No.428 of 2015**, seeking to punish the respondent viz., Government of Puducherry for having disobeyed the order of this Court in W.P.No. 18277 of 2014, dated 16.09.2014.

3. The respondents in the Review, who are the employees of the Anglo French Textiles, now called as Pondicherry Textiles Corporation, have filed the W.P.No.18277 of 2014, alleging that though, they retired from service a long back, the gratuity amount has not been paid to them, inspite of their repeated reminders. The further grievance of the petitioners therein is that, though, the District Collector has directed to recover the amount from the Anglo French Textiles as per Section 8 of the Payment of Gratuity Act and pay the gratuity amount due to them, even then, it has not been paid to the petitioners so far. Hence, the said Writ Petition was filed by the employees seeking for a Mandamus, directing the second respondent therein, viz., District Collector, Puducherry, to proceed with the recovery proceedings in pursuance of the order Reference No.2853/LO(E)/AIL-I/P.G.Cases/2013-14, dated 10.03.2014 and recover the amount of gratuity as set out in the annexure to the said proceedings together with compound interest at 10% per annum from the date on which the amount became due till the amount is settled by the 3rd respondent therein, viz., Anglo French Textiles, as arrears of Land Revenue under Section 8 of the Payment of Gratuity Act, 1972, in respect of the petitioners. This Court, while disposing of the said Writ Petition, by order dated 16.09.2014, has fixed the time limit of four months to complete the Revenue Recovery proceedings and directed the Government to pay

the amount along with the interest at the rate of 10% per annum from the date on which the amount became due till the amount is settled. Alleging that the order of this Court dated 16.09.2014 passed by this Court in W.P.No.18277 of 2014 has not been complied with, the employees of the Anglo French Textiles – nine in number, have filed the Contempt Petition. The respondents in W.P.No. 18277 of 2014 have filed the Review Application No.107 of 2015, praying to review the order passed by this Court in W.P.No. 18277 of 2014, dated 16.09.2014.

4.Mr.A.Tamilvanan, the learned Government Advocate (Puducherry) would bring to the notice of this Court that as per Section 8 of the Payment of Gratuity Act, when the amount of gratuity payable under the said Act has not been paid within the prescribed time, on an application made by the person concerned, the Competent Authority shall issue a Certificate for the amount to the Collector to recover the amount, therefore, the actual payment has to be made by the 3rd respondent, viz., Anglo French Textiles, now called as Pondicherry Textiles Corporation, who is the employer, and infact, under the said Act, now the actual employer is only Pondicherry Textiles Corporation, therefore, it is the liability of the said Corporation to pay the amount and obviously, the Government has no role to play as to the collection and payment

under the said Act to the erstwhile employees, therefore, he seeks to Review the order dated 16.09.2014 insofar as to the direction, directing the Government to pay the amount alone in the event of non-payment by the employer, as according to the Government Advocate, it is only the employer, who has got necessary wherewithal, materials and lands, which could be sold and from that, it can always be paid to the erstwhile employees. The order directing the Government to pay the amount will affect the very right of the Government. He would further add that the Government will supervise the employer and will help the authorities concerned for the early disbursement of the gratuity amount to all the erstwhile employees, therefore, they seek for review only to the limited extent stating that the Government need not be directed to pay the gratuity amount, instead the employer may be directed to sell the land and other materials, so as to enable them to pay the gratuity amount due to all the employees. He would further submit that insofar as to the Contempt Petition is concerned, it is filed by nine employees and that already 35% of the amount payable to the Contempt Petitioners has been deposited and only the balance 65% is required to be deposited, which will be deposited within a period of four weeks and therefore, he only request that the Review may be allowed and the Contempt Petition may be closed, as it is apparent on the face of the record that the

employer is the proper and correct person to pay the gratuity amount due to the employees.

5. At this juncture, the learned Government Advocate (Puducherry) would rely upon an unreported judgment of the Division Bench of this Court in ***W.P.No.13430 of 2014, dated 08.05.2014***, for the proposition that insofar as to the sale of land is concerned, they need not seek the permission of the Central Government, as the land is situated within the territory of Government of Puducherry, it can very well sell the property. In the case on hand, the properties are owned only by the Pondicherry Textiles Corporation, which is within the province of the Government of Puducherry and therefore, it has got the legal right to sell the property, of course, under the supervision of the competent authority, viz., here in this case, the District Collector is the competent person to supervise and sell the property in public auction, and ultimately, disburse the amount to all the erstwhile employees of the Corporation.

6. In an unreported judgment cited supra, viz., ***W.P.No.13430 of 2014, dated 08.05.2014***, a reliance was placed upon the judgment of the Hon'ble Apex Court reported in ***(2009) 7 SCC 561, Villianur Iyarkkai Padukappu Maiyam vs.***

Union of India, wherein, the issue regarding the power of the Government of Puducherry to deal with the land came up for consideration and the Hon'ble Apex Court by referring to the provisions of the Pondicherry Administrative Regulation Act held that the Union Territory Government has the power over its properties and assets in Pondicherry. Hence, referring the said decision, the learned counsel would pray for the Review.

7. I have heard Mr.A.Tamilvanan, learned Government Advocate (Puducherry) appearing for the Government of Puducherry and Pondicherry Textiles Corporation and the first respondent/Party-in-Person, who has appeared on behalf of the employees, who has no objection for allowing of the Review and closing the Contempt Petition.

8. I have perused the order of this Court in **W.P.No. 18277 of 2014, dated 16.09.2014**, in which, I have categorically held in paragraph Nos. 4 and 5 as follows:-

"4. The learned Government Pleader (Puducherry) would submit that even as early as on 10.07.2014, the proceedings under the Revenue Recovery has been initiated and now that the Revenue Recovery Proceedings are over, the gratuity amount will be paid, but, he only requests for

sometime for the proceedings to culminate in payment.

5. The pathetic situation of the employees, who have been retired from service in 2011/2012 without even gratuity amount has to be taken note of. Now that the learned Government Pleader (Puducherry) has stated that the proceedings under the Revenue Recovery Proceedings has been initiated and it is likely to be completed, it is for the first respondent/Government to take necessary action in accordance with law. But the fact remains that the gratuity amount has to be paid to the petitioners in time and therefore, this Court is inclined to fix only the time limit. Accordingly, this Court only fixes the time limit of four months from today, without waiting for the order copy, so that the Revenue Recovery proceedings can be completed and whether they recover or not, the Government shall pay the amount, as the third respondent/Anglo French Textiles itself has been taken over by the Government along with interest at the rate of 10% per annum from the date on which the amount became due till the amount is settled. It is also made clear that if the amount is able to be recovered early, the Government shall not wait for the outer time limit of four months and the gratuity amount shall be disbursed to the petitioners as expeditiously as possible."

9. Infact, in the order dated 16.09.2014, I have fixed the time limit so that the Revenue Recovery proceedings shall be completed and the Government shall take necessary action in accordance with law to sell the property. That was stated, because, the then Government Advocate has categorically stated that the Revenue Recovery proceedings has been initiated and the Revenue Recovery proceedings are likely to be completed and that the gratuity amount will be paid.

10. On 16.12.2015, when the Review Application and Contempt Petition were taken up, three Contempt Petitioners were present before this Court viz., L.Sundararajan, T.R.Balachandran and P.A.Janarthanan. The Managing Director of Anglo French Textiles, a Unit of Pondicherry Textiles Corporation, Puducherry-13, who is the 3rd petitioner in the Review Application is also present and he has identified the three Contempt Petitioners. The three Contempt Petitioners have made an endorsement in the Review stating that the Review may be allowed, though, they have earlier filed objections to the memo. Insofar as the Contempt Petition is concerned, it may be closed, since, it is represented by the learned Government Advocate [Crl.Side] that already 35% of the amount payable to the Contempt Petitioners has been deposited and only the balance 65% is required to be deposited, which will be

deposited within a period of four weeks. Insofar as to the other employees are concerned, the employer has to take necessary steps to sell the properties morefully detailed in the Government Memo, which reads as follows:-

<i>Sl.No.</i>	<i>Description of Property</i>	<i>Area (In Hectares)</i>	<i>Area (In Sq.Ft)</i>	<i>Value of Land (Rs.in Crores)</i>
1.	Pattanur Land – RS No.47/3 to 171/pt Idle Land	22.51.56	24,23,582	71.70
2	Thengathittu – TS No.P/7/23 Idle Land	0.10.83	11,657	1.05
3	Thirubuvanai – RS No.116/1A Idle Land	0.73.50	79,114	0.63
	TOTAL VALUE			73.38

11. Since, it is now brought to the notice of this Court that if it is under the Revenue Recovery Act, it will take more time, especially, when the properties are situated within the province of Government of Puducherry, it is simple and better that the Pondicherry Textile Corporation, which is earlier called as Anglo French Textiles, is the competent person to sell the properties morefully described in the Government Memo.

12. At this juncture, it is relevant to place reliance on the judgment of the Division Bench of this Court in ***W.P.No. 13430 of 2014, dated 08.05.2014***, wherein, this Court has placed reliance

upon the judgment of the Hon'ble Apex Court reported in **(2009) 7 SCC 561, Villianur Iyarkkai Padukappu Maiyam vs. Union of India**, wherein, the issue regarding the power of the Government of Pondicherry to deal with its land came up for consideration before the Supreme Court and the Supreme Court by referring to the provisions of the Pondicherry Administrative Regulation Act held that the Union Territory Government has the power over its properties and assets in Pondicherry. In the said judgment, the Division Bench of this Court in paragraph Nos.10 to 12 has held as under:-

“10. The issue regarding the power of the Government of Pondicherry to deal with its land came up for consideration before the Supreme Court in **Villianur Iyarkkai Padukappu Maiyam v. Union of India, (2009) 7 SCC 561**. The Supreme Court by referring to the provisions of the Pondicherry Administrative Regulation Act held that the Union Territory Government has the power over its properties and assets in Pondicherry. The Supreme Court said:

"190. An attempt was made to demonstrate that in terms of Section 5 of the Pondicherry (Administration) Act, 1962 all properties and assets in the State of

Pondicherry vest with the Union and, therefore, the Government of Pondicherry has no right to deal with the same in any manner.

191. *It is relevant to notice that the Union Territory of Pondicherry gained its freedom in the year 1962. Therefore, several laws were passed by Parliament for its integration with the Union of India. One such law was Pondicherry Administration Regulation Act, 1963. Article 240 of the Constitution deals with power of the President to make regulations for certain Union territories.*

192. *The first proviso to Article 240, inter alia, provides that when any body is created under Article 239-A to function as a legislature for the Union Territory of Puducherry [substituted by Section 4 of the Pondicherry (Alteration of Name) Act, 2006 for Pondicherry], the President shall not make any regulation for the peace, progress and good government of that Union Territory with effect from the date appointed for the first meeting of the Legislature. Therefore, the Pondicherry Administration Regulation Act, 1963 will have to be regarded as a transitional legislation.*

193. *Moreover, the primary reason for*

enacting Section 3 of the Pondicherry Administration Regulation Act, 1963 was to extend all the laws enacted by the Union of India under the Union List to Pondicherry. It is only an Act akin to adaptation Act by which the laws of the Union of India were extended to this Union Territory, which was incorporated with India after partition. The extension of laws of the Union of India shall only mean that those laws would be applicable as they are applicable to any other State of India.

194. *As noticed earlier, the Port in question is admittedly a minor port and, therefore, not covered by the provisions of the Major Ports Act, 1908. The extension of law to the Major Ports Act, 1908 would only mean that a particular law is prevalent but its applicability would be dependent upon as to whether facts and circumstances warrant its invocation. Had the Port in question been a major port, the Indian Ports Act, 1908 would have applied. In this case as the Port in question is a minor port, the Indian Major Ports Act, 1908 would not apply-*

195. *This Court finds that Section 5 is the provision by which all properties and assets,*

which earlier vested in the French Republic, stood transferred to the Union i.e. Union of States (India). In other words, Section 5 was enacted for the purpose of transfer of properties from one sovereign State to another sovereign State. It has no power on the right (sic) of the Government of Pondicherry over the properties and assets in Pondicherry. The vesting of land from French Republic to the Republic of India can have no bearing on the powers of the Government of Pondicherry to dispose of land in accordance with the provisions of the Constitution."

11. Even though a decision was taken by the Government of Pondicherry to request the Government of India to confer ownership on the present occupiers of the land in R.S.No.29/16, at Mahe, the fact remains that the matter is still pending with the Pondicherry Administration. It is for the Union Territory Government now to take a decision to confer ownership right on the petitioner and other occupants in the light of the Law laid down by the Supreme Court.

(emphasis supplied)

12. In the result, a Writ of Mandamus is issued directing the respondent to consider and dispose of the application submitted by the petitioner for conferment of JEMN (ownership) right in respect of her land in R.S.No.29/16 (Old Suvey No.183) in Mahe Region on the basis of the decision taken by the Government of Pondicherry on 29 October 2010 and in the light of the law declared by the Honourable Supreme Court in ***Villianur Iyarkkai Padukappu Maiyam v. Union of India, (2009) 7 SCC 561.*** Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.”

13. From a reading of the judgment cited supra, it is seen that the Division Bench has clearly held in paragraph No.11 to the effect that even though a decision was taken by the Government of Pondicherry to request the Government of India to confer ownership on the present occupiers of the land in dispute, however, the fact remains that the matter is still pending with the Pondicherry Administration. Hence, the Division Bench has ultimately held that it is for the Union Territory Government now to take a decision to confer ownership right on the petitioner and other occupants in the light of the Law laid down by the Supreme Court. Thus, in the case on hand, it is evident that there is no need to get the Central

Government permission. Since, the competent authority is the District Collector for the payment of gratuity under the Payment of Gratuity Act, the Pondicherry Textiles Corporation shall sell the properties detailed in the Government Memo as stated supra, under the supervision of the District Collector. Therefore, the Review is allowed to the limited extent, viz., instead of the words in paragraph No.5 of the order dated 16.09.2014, "*the Government shall pay the amount*", the review shall be to the extent that **"the 3rd respondent/Anglo French Textiles, now called as Pondicherry Textile Corporation, shall take steps immediately to sell the properties in public auction under the supervision of the District Collector and disburse the gratuity amount through the District Collector, who is the competent authority under the Payment of Gratuity Act, to all the employees"** and also in paragraph No.5 of the order dated 16.09.2014, instead of the words **"the Government shall not wait"**, the review shall be to the extent that **"the 3rd respondent/Anglo French Textiles, now called as Pondicherry Textiles Corporation shall not wait"**. The Review Application is allowed to the limited extent as indicated above. Consequently, the order passed in the main Writ Petition No.18277 of 2014, dated 16.09.2014, stands modified to the same effect. In the result, the Writ Petition is allowed with the modification to the

limited extent as stated above. Consequently, connected Miscellaneous Petition is closed. No costs.

14. Insofar as to the Contempt Petition is concerned, it is filed by nine employees. It is now represented by the learned Government Advocate (Puducherry) that already 35% of the amount payable to the Contempt Petitioners has been deposited and only the balance 65% is required to be deposited, which will be deposited within a period of four weeks. Recording the above said submission, the Contempt Petition is closed. For reporting compliance, call on 21.01.2016.

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21.12.2015

Index: Yes/No

Internet: Yes/No

**Note: Issue order copy
on 08.01.2016.**

B.RAJENDRAN,J

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