

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

Review Application No.42 of 2015 and M.P.No.1 of 2015
in W.P.No.10245 of 2014

M.A.C.Baseer Ali

...Petitioner

Vs

- 1.O.V.Nambiar
Managing Director,
Chemical Construction Company pvt., Ltd.,
No.956-957, Thiruvottiyur High Road,
Chennai – 600 019
2. The Secretary to Government,
Home Department,
Fort St.George,
Chennai – 600 009
3. The Director General of Police,
Kamarajar Salai, Chennai – 4
4. The Joint Commissioner of Police,
North Zone, Chennai
5. The Asst. Commissioner of Police,
Thiruvotriyur, Chennai
6. The Inspector of Police,
H-8, Thiruvotriyur Police Station,
Chennai – 600 019

7. Rathinaraj
 8. Kalidoss
 9. Nagarajan
 10. Balamurugan
 11. Suresh Solomon
 12. Rajeshkumar

... Respondents

Prayer :- Review Application filed to review the order dated 13.01.2015 in W.P.No.10245 of 2014.

For Petitioner :Mr.M.Venkatachalapathy
 Senior Counsel for
 Suganya & Duraisamy

For Respondents :Mr.R.Vijayakumar for R2 to R6
 Additional Government Pleader
 No Appearance for other respondents

ORDER

Heard Mr.M.Venkatachalapathy, learned senior counsel for M/s Suganya & Duraisamy for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader for 2nd to 6th respondents and perused the documents available on record.

2.This Review Application is filed to review the order dated 13.01.2015 in W.P.No.10245 of 2014.

3. The learned senior counsel for the petitioner submitted that the order suffers from error apparent on the face of record and in this regard reference was made to findings recorded by this Court in Paragraph No.15 of the order.

4. The contentions raised by the learned senior counsel for the petitioner was carefully considered and the findings recorded by this Court was perused and it is seen that this Court dealt with all the contentions and the order has been passed. The Paragraph Nos. 12 to 17 of the order deals with the factual and other contentions as well as the order passed by the Hon'ble Division Bench of this Court and the same is quoted hereunder:-

“.....12. The petitioner has sought for two relief in the Writ Petition namely to initiate action against the respondents 6 to 11 based on his complaint dated 06.04.2014, registered as crime No.578 of 2014. Due to subsequent developments, during the pendency of the writ petition, the prayer sought for to this extent has been virtually granted. Since the petitioner filed Crl.O.P.No.11989 of 2014, to transfer Crime No.578 of 2014, to be investigated by CBCID. The said Criminal Original Petition was disposed of by order dated 08.05.2014, directed the case to be transferred to CBCID. From the additional

report filed by the fifth respondent Police, dated 07.11.2014, it is seen that the case has been transferred to the Additional Director General of Police, CBCID through proper channel on 23.08.2014. Hence, to that extent, the prayer sought for in the writ petition does not any longer survive.

13. Further it is submitted that the private respondents have filed a petition to quash the F.I.R., in Crime No.578 of 2014, and all further proceedings have been stayed. However, the respondents have not placed the copy of the stay order before this Court in any event, the counsel for the Writ Petitioner does not dispute the position.

14. In the light of the above, the prayer sought for in the Writ Petition to direct the respondents 1 to 5 to initiate appropriate action against the respondent 6 to 11 based on the complaint given to the fifth respondent Police has virtually become infructuous in the light of the fact the F.I.R., has been transferred from the fifth respondent Police to the CBCID at the instance of the Writ Petitioner.

15. The second limb of the prayer is to grant Police protection. Elaborate submissions were made by the learned counsel for the petitioner as well as the learned counsel appearing for the private respondents and serious objections have been raised as regards the maintainability of the Writ Petition for such a prayer. It is further pointed out

that the Hon'ble Division Bench in W.A.No.1098 of 2013, in paragraphs 9 and 10 of its order dated 13.02.2014, has made an observation that the appellants therein who are the respondents 6, 7, 8, 11 and 9 have not stated any objection in respect of the possession of the land in question by the first respondent herein and that the Hon'ble Division Bench recorded this fact regarding the possession of the land in question by the first respondent (Writ Petitioner). Further, the Hon'ble Division Bench has observed that as it has been recorded that the possession is in favour of the writ petitioner, there is no need for passing further order in this regard. Further, the undertaking given by the learned counsel for the appellants therein that they will not disturb the workers who are working in the factory premises of the writ petitioner, was recorded and if there is any breach the undertaking given by the appellants (respondents 6 to 9 and 11 herein), it is open to the writ petitioner to approach the appropriate forum for appropriate relief. The case of the petitioner itself is that this undertaking given before the Hon'ble Division Bench and it was recorded in the order dated 13.02.2014, was violated and in utter breach of the said order, the private respondents engaged henchmen and demolished the petitioner's factory building and compound wall on 06.04.2014, and the group of persons who came to the premises also includes Advocates. The report filed by the fifth respondent Police dated 15.04.2014, also states the same version.

16. In the light of all the above, this Court is of the view that the issues now raised by the private respondents cannot be adjudicated in this Writ Petition, if according to the private respondents there were certain observations made by the Hon'ble Division Bench in their favour, it is for them to work out their rights in the manner known to law. Prima facie, it is clear that the Hon'ble Division Bench recorded an undertaking from the private respondents stating that they will not disturb the workers who are working in the petitioner's factory. Further the Hon'ble Division Bench observed that the appellants therein namely, the respondents 6 to 9 and 11 herein have not stated any objection with regard to the petitioner's possession of the land in question. In such view of the matter, the status-quo which prevailing as on date has to be necessarily maintained. It is seen from the additional report filed by the 5th respondent Police, dated 07.11.2014, that Police protection has been granted to the petitioner's factory pursuant to the orders passed by this Court in Crl.O.P.No.11988 of 2014, dated 08.05.2014 after hearing the Intervener. Therefore, the private respondents cannot now seek to undo the order in Crl O.P. No.11988 of 2014, dated 08.05.2014, in this Writ Petition.

17. In the light of the above discussion as stated above, the first limb of the prayer sought for in the Writ Petition to

direct the respondents 1 to 5 to initiate appropriate action against the respondents 6 to 11 based on the complaint given to the fifth respondent Police has virtually become infructuous in the light of the fact the F.I.R., has been transferred from the fifth respondent Police to the CBCID at the instance of the Writ Petitioner.....”

5.The grounds raised by the learned senior counsel for the petitioner in fact amounts to re-arguing the entire case once over again, which is not permissible in a Review Application. That apart, the grounds raised in the Review Application does not point out any any error apparent on the face of the order. The merits of the contentions raised by the petitioner were considered and order has been passed. Therefore, the Review Application cannot be entertained, when the grounds raised are in fact grounds of Writ Appeal. It is settled legal principle that a Review Application is not an appeal in disguise. Hence no grounds have been made out to review with the order and the Review Application fails and the same is dismissed. Consequently connected miscellaneous petition is closed. No costs.

18.03.2015

T.S.SIVAGNANAM,J.,

ssd

Index:Yes/No ; Internet:Yes/No

ssd

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