

In the High Court of Judicature at Madras

Reserved on : 05.06.2015

Dated : **10.07.2015**

Coram:

The Hon'ble Mr.Justice **M.VENUGOPAL**

Review Application.No.123 of 2013
in A.S.No.807 of 2003

K.Munuswamy .. Petitioner

Vs.

- 1.The Special Tahsildar,
Land Acquisition,
SHAR, Ponneri.
- 2.Union of India
rep. by the Secretary to Government,
Department of Space,
Antakriksh Bhavan,
New Bel Road,
Bangalore-560 094.
- 3.The Chief Construction Engineer,
Department of Space,
Shriharikota-524 124.

.. Respondents

Prayer: Review Application filed under Order 47 Rule 1 r/w. Section 114 of the Civil Procedure Code, against the judgment and decree dated 01.11.2011 and made in A.S.No.807 of 2003 by the learned Judge of this Court.

For Petitioner : Mr.M.S.Subramanian

For Respondents : No Appearance

ORDER**M.VENUGOPAL, J.**

The Review Petitioner/First Respondent/Claimant has preferred the instant Review Application as against the judgment dated 01.11.2011 in A.S.No.807 of 2003 passed by this Court.

2.The Applicant/First Respondent/Claimant's Contentions:-

The Learned counsel for the Applicant contends that the judgment dated 01.11.2011 passed by this Court in A.S.No.807 of 2003 is contradict to Law and Weight of Evidence and the Probabilities of the case.

3.The Learned counsel for the Petitioner submits that the Appeal in A.S.No.807 of 2003 was filed against the decree in L.A.O.P.No.402 of 1985 dated 14.05.1993 on the file of the Sub Court, Tiruvallur and in fact, the said LAOP was a reference under Section 18 of the Land Acquisition Act in respect of Survey No.24/1 measuring 13.54 acres in Vairavankuppam Village, Hamlet of Pulicat, Ponneri Taluk. Furthermore, the said lands were acquired for rehabilitation of the displaced persons of Karimanal Village.

4.The Learned counsel for the Petitioner brings it to the notice of this Court that the land in 'Karimanal Village' was acquired for the purpose of Satelite Launching Station at Sriharikota and 4(1) information are different. That apart, the purpose of acquisition is different and also, the public purpose is different and the villages are different.

5.Besides this, it is represented on behalf of the Petitioner that the Land Acquisition Officer had determined the 'Market Value' of the lands in 'Karimanal Village' at Rs.10 per cent whereas the 'Market Value' of 'Vairavankuppam Village' was fixed at Rs.17% per cent.

6.The Learned counsel for the Petitioner proceeds to state that lands in Karimanal Village were valued at Rs.180/- per cent, Rs.160/- per cent, Rs.75/- per cent and Rs.400/- per cent respectively by the Sub Court, Tiruvallur and on the Appeals preferred by the Land Acquisition Officer, this Court was pleased to fix the rate at Rs.110/- per cent.

7.The Learned counsel for the Petitioner draws the attention of this Court that insofar as 'Vairavankuppam Village' is concerned, as against the award of Tahsildar at Rs.17/- per cent, the Sub Court has fixed at Rs.261.75 per cent and in the connected appeals preferred by the Land Acquisition Officer, this Court had reduced and determined the Market Value at Rs.150/- per cent by means of two separate judgments in A.S.Nos.654 to 656 of 1995 dated 30.11.2009 and A.S.No.667 of 1995 dated 26.07.2010.

8.The real grievance of the Petitioner is that an error had crept in by determining the value of 'Vairavankuppam Village' was that of 'Karimanal Village' was a mistake and an error apparent on the face of the records and as such, it is to be corrected and accordingly, the judgment and decree in A.S.No.807 of 2003 are to be modified.

9.The Learned counsel for the Petitioner submits that the review Petitioner is entitled to award interest on three components (market value+30% solatium+12% additional amount) and in para 35 of the judgment dated 01.11.2011, an error had crept and the Review Petitioner is entitled to statutory benefits as per the

Amended provisions of the Land Acquisition Act.

10. At this stage, the Learned counsel further so proceeds to add that Land Acquisition Act 1 of 1894 was amended by Act 68 of 1984 which came into effect from 24.09.1984 and Section 30 of Amendment Act provides for retrospective effects to the amended provisions and Section 30(2) provides for the enhanced solatium under Section 23(2) and enhanced interest under Section 28 also is applicable to the award passed by the Collector or by the Court after 30.04.1982.

11. In effect, the Learned counsel for the Petitioner projects an argument that the benefits of amended provisions of Land Acquisition Act are applicable only to the award made by the Collector between 30.04.1982 to 24.09.1984 as per decision of the Hon'ble Supreme Court in ***Union of India and another Vs. Raghubir Singh (dead) by LRs. etc., reported in 1989 (2) SCC 754 (Constitution Bench)***.

12. The other plea taken on behalf of the Petitioner is that in the decision of the Hon'ble Supreme Court in ***Sundar Vs. Union of***

India reported in 2001 (7) SCC 211, it is observed that the interest is payable on three components of compensation i.e., marker value + solatium + additional amount put together. Moreover, Review Petitioner is entitled to claim interest at 9% per annum for a period of one year from the date of taking possession and thereafter, at 15% p.a. till the date of deposit or payment under Section 28 of the Land Acquisition Act.

13.The Learned counsel for the Petitioner refers to the judgment of this Court in A.S.Nos.168 & 169 of 1996 [The Special Tahsildar (LA), SHAR Unit, Ponneri Vs. S.Kaalesha, M.Kalesha and others] dated 08.07.2009 whereby and whereunder in para 4 it is observed as follows:

"4.I have gone through the judgment and I find that the points raised by the appellant and the respondents are covered by the said judgment. I am also of the view that the market value as determined by the learned judge can be adopted for this case also. Accordingly, the appeal is allowed in part and the market value is determined at the rate of Rs.110/- per cent. All other benefits that are available under Section 23(1)(A), 23(2)

additional amount, solatium and interest will be payable as per the provisions of the Land Acquisition Act. The claimants are entitled for interest on solatium and additional amount under Section 28 of Land Acquisition Act, as per the judgment of our Honourable Apex Court made in (2001) Supp MLJ 122 [Sunder Vs. Union of India], which reads as follows:

"The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry." It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making

payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that Section was framed or enacted."

As per the aforesaid judgment and the ingredients of Section 28 of the Land Acquisition Act, it could be understood that the interest is payable on the entire compensation award amount and not merely on the market value. The word compensation referred in Section 28 of the Land Acquisition Act will include the entire compensation comprising solatium, additional value also.

Accordingly, these appeals are allowed in part as indicated above. No costs."

Also, the Learned counsel for the Petitioner refers to the modification of the decree dated 08.07.2009 in A.S.No.168 of 1996, which runs as under:

"1) That for clauses 1 to 3 of the decree of the Court below the following be substituted.

That in addition to the compensation awarded by the Land Acquisition Officer, the

appellant/Referring Officer do pay to the First Respondent herein/claimant the enhanced market value for 6.60 acres acquired at the rate of Rs.100/- per cent, solatium at 30% on the enhanced Market Value and additional amount under Section 23(A) of Land Acquisition Act at the rate of 12% per annum from 17.11.1982 (date of 4(1) Notification to 20.01.1985 (date of possession) together with interest at the rate of 9% per annum for a period of one year from the date of possession and thereafter, 15% per annum till date of payment on the Market value+ solatium + additional amount under Section 23(A) of the Land Acquisition Act.

2)That in other respects the decree of the Court below do stand.

3)That there be no costs in this Appeal suit."

14.Lastly, it is the submission of the Learned counsel for the Review Petitioner that since there is an error apparent on the face of record in the judgment as well as in the decree passed by this Court, the Petitioner has filed the present Review Application.

15. At this stage, it is to be borne in mind that an error in understanding the decision of higher forum is no ground for 'Review'. Furthermore, in 'Review', it is not open to a Court of Law to reconsider its decision on merits. Also that, in 'Review', the Court cannot rehear the matter *denovo*. In fact, 'Review' erases the previous judgment and operate as Law from the inception.

16. It is to be noted that in 'Review Petition', the Court cannot re-appreciate the evidence and arrive at a different conclusion on the questions of fact, different than the earlier conclusion recorded. In reality, 'Review' cannot be asked for fresh hearing/correction of an erroneous view taken earlier. Added further, an erroneous view of Law on debatable point or wrong exposition of Law or wrong application of Law cannot be a case for 'Review'.

17. It cannot be forgotten that 'Review' is not an 'Appeal' in disguise. The Review Court cannot sit in Appeal over its own order and rehearing of the matter is impermissible in Law. That apart, 'Review' is an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is to be

remembered that a 'mere error of Law' is not a ground for 'Review' but only a manifest error would be an error in the considered opinion of this Court. Apart from that, once a prayer for relief which was sought for during the arguments of the main case was refused by a Court of Law, no 'Review Petition' would lie which could convert rehearing of the original matter. In short, the power of 'Review' which cannot be confused with Appellate power which enables the Superior Court to correct of errors committed by the Sub-ordinate/Concerned Court. A repetition of an old overruled arguments is not a case to reopen the concluded adjudication. Suffice it for this Court to pertinently point out that the power of 'Review' can be exercised with extreme care, caution and circumspection only in exceptional cases.

18.Continuing further, just because a decision is erroneous on account of incorrect/wrong interpretation of Law is no ground for 'Review'. Even a judgment in ignorance of settled principle of Law is no ground for 'Review'. Further, an error which is not self evident and has to be deducted by a process of reasoning is not an error apparent on the face of record. Therefore, no 'Review' lies in such a case as opined by this Court. Also that, the contentions amounting

to 'Rehearing Of Appeals' would not be raised in 'Review' in the considered opinion of this Court.

19.Besides this, omission on the part of the Court of Law to follow an earlier decision of that Court either by mistake or inadvertence is not a ground for 'Review' as per decision of ***Nadubhagom N.S.Karyogam Vs. Gopalan Nair*** reported in ***1979 KLT 166***. A 'Review Of Judgment' cannot be granted in the garb of a clarification as per decision of the Hon'ble Supreme Court in ***Saurabh Chaudri (Dr.) and others Vs. Union of India and others*** reported in ***2004 (5) SCC 618***.

20.It is to be pertinently pointed out that when Review Application No.123 of 2013 was filed on behalf of the Petitioner, it was filed with original decree dated 01.11.2011 passed by this Court in A.S.No.807 of 2003. Further, when A.S.No.807 of 2003 was listed under the caption 'for being mentioned', this Court had directed the Registry to incorporate Clauses 1 to 3 of the order dated 27.07.2012 in the original decree and the same were incorporated and complied with.

21. On a careful consideration of the contentions advanced on behalf of the Review Petitioner, this Court is of the considered view that it cannot rehear the subject matter in issue *denovo*. Furthermore, this Court cannot re-appreciate the evidence and arrive at a different conclusion, than the one arrived by it on the earlier occasion. In fact, this Court on consideration of the entire gamut of the matter and attendant facts and circumstances of the case had ultimately determined the market value of the land in Survey.No.24/1 measuring an extent of 13.54 acres at Rs.110/- per cent etc. That apart, by virtue of the orders passed on 27.07.2012, clauses 1 to 3 were ordered to be incorporated in the original decree in addition to the clause already found in the decree in A.S.No.807 of 2003 dated 01.11.2011. In view of the fact that 'Review is not rehearing of the original matter' and since the power of 'Review' is to be exercised with utmost care, caution and circumspection only at exceptional cases, this Court comes to an inescapable and resultant conclusion that the Review Application No.123 of 2013 filed by the Petitioner is an 'Appeal' in disguise. Inasmuch as the Review Court cannot sit in an Appeal over its own order and rehearing the matter is impermissible in Law, the present

Review Application is per se not maintainable in the eye of Law. If at all, the Petitioner is aggrieved by the judgment and decree passed by this Court dated 01.11.2011, the right course/option for him is to prefer an Appeal before the Competent higher forum in the manner known to Law and in accordance with Law. Viewed in that perspective, the Review Application fails.

22.In the result, the Review Application is dismissed.
However, there shall be no orders as to costs.

10.07.2015

Index:Yes.
Internet:Yes.
DP

To

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rep. by the Secretary to Government,
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- 3.The Chief Construction Engineer,
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M.VENUGOPAL, J.

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Order made in

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in A.S.No.807 of 2003

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