

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
05.12.2017,	21.12.2017

Coram

The Hon'ble Mr. Justice **T.S. SIVAGNANAM**

Review Application No.18 of 2017 &
W.M.P.Nos. 5910 & 5911 of 2017

- 1.Rani
- 2.Manjula
- 3.Akkaiyamma
- 4.Kemmamma
- 5.R.Padma
- 6.Krishnamma
- 7.Rammakka
- 8.Giriyamma
- 9.Chinnamma
- 10.Rammakka
- 11.Thippamma
- 12.Sembamma
- 13.Munithai
- 14.Devamma
- 15.Santha
- 16.Jayamma
- 17.Dhairamma
- 18.Munirathna
- 19.Periyamunirathnamma
- 20.Neelamma
- 21.Maramma
- 22.Jeyamma
- 23.Padma

.. Petitioners

Vs

- 1.Kempaiya (deceased)
- 2.Kary Ellappa

3.Timmakka
 4.Muniyammal
 5.Savithiramma
 6.K.Venkatesh

7.The District Collector,
 Dharmapuri,
 Dharmapuri District.

8.The Special Tashildar,
 ADW, Krishnagiri,
 Dharmapuri District.

.. Respondents

Prayer:-The Review Application filed under Article 226 of the Constitution of India read with Order 47 Rule (1) of CPC against the order dated 25.11.2015 passed in W.P.No.39709 of 2006.

For Petitioner .. Mr.K.C.Karlmarx

For Respondents .. Mr.D.Rajagopal for RR1to6
 Mr.R.Rajeswaran Spl.G.P.for RR7&8

ORDER

This Review Petition has been filed at the instance of third parties to the Writ Petition to review the order and direction issued in W.P.No.39709 of 2016, dated 25.11.2015.

2. The said Writ Petition was filed by the respondents 1 to 6 herein, who are all legal heirs of Kempaiya, challenging the land acquisition proceedings initiated by the respondents 7 & 8, herein under the provisions of the Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act, 1978 (Act).

3. The petitioners claim themselves to be the beneficiaries to whom free house site patta has been granted by the Government in the land acquired from the original land owner. The Writ Petition was heard by this Court and after perusing the records, the same was allowed by order dated 25.11.2015. As against the said order, the respondents 6&7 have filed Writ Appeal in W.A.No.1195 of 2017 and the same is pending wherein an observation has been made by the Hon'ble Division Bench that the pendency of the appeal would not stand in the way of this Court considering the Review Application filed by the beneficiaries bearing No.18 of 2017. This is how, this Court took up the matter for consideration.

4. The only ground on which, the Review Application has been filed is by contending that the petitioners have suppressed the earlier Writ Petition filed by the Kary Ellappa, who is none other than son of the original land owner Kempaiya and without disclosing the dismissal

of the said Writ Petition, the present Writ Petition has been filed and the same is liable to be dismissed on the ground of *res judicata*. Further, it is submitted that the petitioners being beneficiaries of the land in question ought to have been impleaded as respondent in the Writ Petition.

5. The learned counsel for the respondents 1 to 6/Writ Petitioners submitted that there is no suppression about the earlier litigation and this was specifically stated in the affidavit filed in support of the Writ Petition and dealt with by this Court while allowing the Writ Petition by order dated 25.11.2015. Further, it is submitted that the beneficiaries of acquisition of land is not necessary party to a Writ Petition challenging the Writ Petition as held in the case of ***S.Sannasi & Ors vs. District Collector, Pudukottai, [1999 (3) CTC 293]***. Further, it is submitted that no grounds have been made out for reviewing the order passed in the Writ Petition, as the petitioners have not pointed out any error apparent on the face of the record and unless there is an error, review petition is not maintainable. In support of such contention, reliance was placed on the decision of this Court in the case of ***K.A.Harikrishnan vs.Sri Bhuvaneswari Textiles Farm [2015-2-L.W.-262]***.

6. Heard Mr.K.C.Karlmarx, learned counsel for the petitioner, Mr.D.Rajagopal, learned counsel for the respondents 1 to 6 and Mr.R.Rajeswaran, learned Special Government Pleader for the respondents 7&8.

7. The short question, which falls for consideration is as to whether there is any error which is apparent on the face of the record, as could be seen in the order dated 25.11.2015, passed in the Writ Petition.

8. The petitioner has raised two grounds for contending that there is an error, which is apparent on the face of the record. Firstly, on the ground that the respondents 1 to 6, suppressed the fact of the earlier Writ Petition being filed by the son of the original owner, which was dismissed namely, W.P.No.2800 of 2000, dated 26.06.2000. The second ground raised is that the petitioners being beneficiaries, ought to have been impleaded as respondents in the Writ Petition.

8. So far as the first ground is concerned, it is seen that the fact that one of the sons of the original land owner had filed Writ Petition in W.P.No.2800 of 2000 was mentioned in the affidavit filed in support of the Writ Petition and under what circumstance, the present Writ Petition was filed and this contention was noted by the Court in paragraph 3 of the order and thus, there is no suppression of fact as alleged by the petitioners. The second aspect is with regard to the non-impleadment of the petitioners herein as respondents to the Writ Petition.

9. In the case of **S.Sannasi & Ors**(supra), it has been held that the beneficiaries are neither necessary nor proper parties to a Writ Petition, which has been filed challenging the acquisition proceedings.

10. Above all, it has to be seen as to whether these two grounds would be sufficient to exercise review jurisdiction by this Court. The settled legal principle is that the review is not an appeal in disguise and it can be entertained only, when there is an error apparent on the face of the record. No such error has been made out by the petitioners.

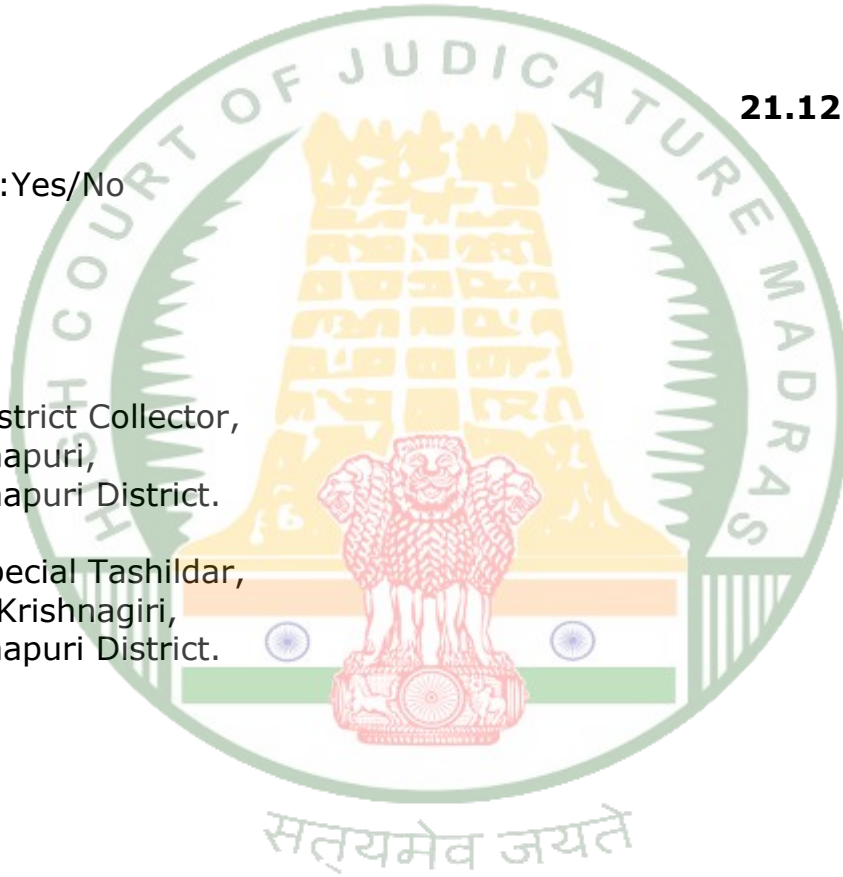
11. Thus, for the above reasons, the Petitioners have not made out any case for reviewing the order passed in the Writ Petition and accordingly, the Review Application fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.12.2017

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Index :Yes/No

To

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Dharmapuri District.
- 2.The Special Tashildar,
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T.S.SIVAGNANAM J.
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Pre-Delivery Order in
Review Application No.18 of 2017 &
W.M.P.Nos. 5910 & 5911 of 2017

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