

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2017

CORAM :

The Hon'ble Mr.Justice M.M.SUNDRESH

AND

The Hon'ble Mr.Justice M.SUNDAR

Review Application No.680 of 2017

and

W.M.P.No.29997 of 2017

1.P.Manivannan
2.R.Loganathan
3.Rani
4.Karuppannan
5.N.Ganesan
6.E.Ponnusamy
7.B.Rajendran
8.Govindammal
9.Lakshmi Rajendran
10.Shanthi
11.Pushpa
12.M.Perumal

.. Petitioners

Vs.

1.The Revenue Divisional Officer,
Attur, Salem District.

2.The Tahsildar,
Attur Taluk,
Salem District.

3.T.Jayamala

.. Respondents

This Review Application has been filed under Order 47 Rule 1 of C.P.C.
Read with Section 114 of C.P.C. to review the order made in W.P.No.43742
of 2016 dated 20.12.2016.

For Applicants : Mr.S.Prabakaran, SC
for Mr.A.C.Manibharathi

For Respondents: Mr.T.N.Rajagopalan, GP (In-charge)
for RR1 and 2

ORDER

(Order of the Court was made by M.M.Sundresh, J.)

Seeking to review the order passed by this Court dated 20.12.2016, the present review application has been filed by the applicants, who were admittedly not parties in the writ petition.

2 Admittedly, the applicants were encroachers. On a complaint made, an enquiry was conducted by the Revenue Divisional Officer. After issuing notices to all the encroachers, an order was passed in and by proceedings dated 18.6.2014 in Na.Ka.1773/2010/Aa2, holding the applicants among others as encroachers and the land in Survey No.122/8 in Narasingampuram village, having been classified as "*Mayana poramboke*" (Burial ground), as recorded in the prohibitory order book, they are not entitled for any patta and directions were issued to evict them. Accordingly, notices were issued. These notices were put into challenge without disclosing the order dated 18.6.2014 on the premise that they were not issued any show cause notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. Accordingly, the writ petition stand disposed of by order dated

Section 6 as the notices issued under Section 7.

3 In the meanwhile, the third respondent in this review application, has filed a writ petition in W.P.No.43742 of 2016. The aforesaid writ petition was disposed of by an order dated 20.12.2016 by taking note of the order dated 18.6.2014 passed by the Revenue Divisional Officer and recording the statement made by the Additional Government Pleader that of the 40 encroachers, 20 are eligible for rehabilitation and alternative sites have been located and therefore, all the encroachers would be removed while undertaking such exercise. The following is the order dated 20.12.2016 passed by this court:

“3.The learned Additional Government Pleader states that there are 40 encroachers at site, but only 20 are eligible for rehabilitation and alternative sites have been located. It is thus submitted that one month time may be given to shift the eligible encroachers to rehabilitate them at another site and one month beyond that may be given to remove all the encroachers from the site.

4.The aforesaid statement is taken on record on behalf of the respondents and the respondents will remain bound by the same.

5.The writ petition, accordingly, stands disposed of. No costs.

6.List for compliance on 24.02.2017. The compliance report be filed three days prior to the next date of hearing.”

4 As this order was given effect according to the respondents, it was recorded by this court that no further orders were required. Accordingly,

by an order dated 24.3.2017, by considering the report filed by the respondents, the writ petition was closed. The order dated 24.3.2017 passed by this court reads as under :

“2.A report is filed on behalf of the respondents, wherein it is submitted that in furtherance to the orders of this Court action has already been taken for removal of the encroachments and almost all the encroachments have been removed, except for one and that the same would also be removed in due course. The respondents request four weeks time to remove the said encroachment to comply with this Court's order.

3.From the report it is evident that there is substantial compliance of the order. Therefore, there would be no necessity to keep this writ petition on board. Therefore, this writ petition is closed. However, it is needless to state that the State Government shall take all earnest efforts to comply with the order in letter and spirit by removing the balance of encroachments within the time sought for.”

5 To review the order dated 20.12.2016, the present review application has been filed by 12 of the 40 encroachers on the premise that they have been in occupation for quite a number of years and the order was passed behind their back. It has also been brought to our notice that eviction has been carried out though belatedly, which resulted the order passed by this court on 24.3.2017.

6 The learned Senior Counsel appearing for the review applicants would submit that there was suppression of facts involved. The applicants having been in occupation for quite a number of years, the order has been

passed behind their back. Their request for consideration of patta is pending consideration as seen from the communication of the respondent No.1 dated 5.8.2016 to respondent No.2.

7 The learned Government Pleader (In-charge) appearing for respondent Nos.1 and 2 would submit that at the time of passing the order in W.P.No.19027 of 2014 dated 18.7.2014, the earlier proceedings of the Revenue Divisional Officer dated 18.6.2014 was not brought to the notice. Even otherwise, the said order has been complied with by issuing a fresh notice under Section 7 followed by notice under Section 6. Unfortunately, despite the same, the encroachers did not vacate the encroached portions. Therefore, they have been asked to vacate through 'Tom Tom' with the help of revenue officials on 27.6.2017 and 7.7.2017. Ultimately, evictions were carried out on 26.10.2017. It is not as if all the encroachers were landless persons. A few of them have been identified as recorded in the earlier order passed and they have been put on notice. Subsequently, the order passed by this court was also complied with. Since the land is classified as 'Burial ground', there is no question of considering the request for issuance of patta.

8 From the above, we do not find any reason to review the order passed on 20.12.2016. As rightly submitted by the learned Government Pleader, the applicants were parties to the first order dated 18.7.2014 which stands as of now. Even subsequent order passed by this court has been complied with as seen from the records produced by the learned Government Pleader. Therefore, looking from any perspective, we do not find any error apparent warranting interference. More over, evictions have already been

carried out. The question as to whether they have been carried out earlier or during the pendency of the review application is irrelevant, as we are concerned with giving effect to the order passed by this court on two occasions, which is inclusive of one filed at the instance of the applicants.

9 Accordingly, the review application stands dismissed. However, taking into consideration of the pendency of the memo issued by the respondent No.1 to respondent No.2, dated 5.8.2016 with respect to the request made by the applicants for assigning of patta, we direct the respondent No.2 to pass appropriate orders on the same within a period of eight weeks from the date of receipt of a copy of this order, if not disposed of already. While passing appropriate order, it is open to respondent No.2 to consider as to whether the request of the applicants is pertaining to Survey No.122/8 or 122/1, as the case may be. We make it clear that we have not expressed anything on the merits of the case. No costs. Consequently, connected miscellaneous petition is closed.

(M.M.S., J.) (M.S., J.)
31.10.2017

Index : Yes/No

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To

1.The Revenue Divisional Officer,
Attur, Salem District.

2.The Tahsildar,
Attur Taluk,
Salem District.

M.M.Sundresh, J.
and
M.Sundar, J.

vvk



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