

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	27.01.2017
Orders Pronounced on	03 .02.2017

CORAM:

The Hon'ble Mr.Justice M.VENUGOPAL
and
The Hon'ble Mr. Justice V.BHARATHIDASAN

W.M.P.No.34265 of 2016 in
Rev. Appln. No.SR69666 of 2016

R.Chandramohan

..Petitioner / 3rd Party

Vs.

1. M/s East Gate Apartment Flat Owners
Welfare Association,
rep. By their Secretary,
Tmt.S.Gowri,
Behind SPI Colony,
Vasan's Road,
Trichy – 1

2. Government of Tamilnadu,
Rep. By Secretary to Government,
Housing and Urban Development
Department,
Secretariat, Chennai – 9

3. Thiruchirapalli Town Planning
Authority rep. By its
Member secretary, Trichy
(R2 and R3 given up vide
Court order dated 19.01.2017)

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to grant leave to file the Review Application.

For Petitioner : Mr.Elephant G.Rajendran

For 1st Respondent : Ms.Y.Kavitha

ORDER

M.VENUGOPAL,J.,

The Petitioner / 3rd Party has filed the instant W.M.P.No.34265 of 2016 seeking grant of permission to him, to prefer Review Application, as against the order dated 15.04.2016 in W.P.No.13887 of 2016 passed by this Court.

2. According to the Petitioner, the 1st Respondent / Welfare Association had filed the Writ Petition impleading the Respondents 2 and 3 as party Respondents in the Writ Petition, seeking to dispose of an alleged Petition filed under Section 80 A of the Tamilnadu Town and Country Planning Act, 1971, before the 2nd Respondent.

3. The prime stand taken on behalf of the Petitioner is that the 1st Respondent / Flat Owners' Welfare Association is not entitled to maintain the main W.P.No.13887 of 2016. It is represented on behalf of the

Petitioner that the W.P.No.13887 of 2016 was filed in violation of Law and procedure and because of the order passed in the said Writ Petition, the Petitioner is affected by the order, in as much as the building in question is put up in his property pursuant to the joint venture agreement between him and the developer.

4. The Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner filed W.P.No.2966 of 2016 before this Court praying for passing of an order by this Court by directing the 1st and 2nd Respondents therein (1st Respondent – The Director, Town and Country Planning Authority, Chennai-2 and 2nd Respondent – Deputy Director / Member Secretary, Trichy Town Planning, Contonment, Trichy) to restore the property to its original state, since the construction was put up in a property, in total violation of the planning permission exercising power under Section 85 of the Town and Country Planning Act, 1971 by demolishing unauthorised construction put up in an extent of 9856 sq.ft., viz., the ownership plot in part bearing S.Nos.5/1A,5/2B, 5/2C and 5/2D of Contonment Area behind the SBI Colony, Tiruchirapalli in violation of 2nd Respondent's (therein) planning permission vide No.27/2010 dated 18.03.2010 in Ref.Na.Ka.No.308/2010 (in W.P.No.2966/2016) and to

direct the 1st and 2nd Respondents (therein) to lock and seal the building constructed in an extend of 9856 Sq.Ft., in violation of the planning permission vide No.27/2010 dated 18.03.2010 dated 18.03.2010 in Ref.Na.Ka.No.308/2010 in the ownership plot a part of S.No.5/1A, 5/2B, 5/2C and 5/2D of Contonment Area, behind the SBI Colony, Trichy till the (in W.M.P. No.2452 / 2016) disposal of this Writ Petition No.2966 of 2016 respectively and this Court on 11.04.2016 had passed the following order in W.P.No.2966 of 2016:

“ 3.It is the case of the petitioner that he is the owner of the plot in question and pursuant to the deed of memorandum of understanding entered into between the petitioner and the third respondent/builder, flats bearing Nos.1-A, 1-D, 2-B, 2-E, 3-B, 3-D and 3-E were allotted to the petitioner. According to the petitioner, two flats viz., 3-D and 3-E allotted to him were unapproved. Alleging that the third respondent builder cheated the petitioner by allotting the unapproved flats, the petitioner has filed the present writ petition.

4.Pursuant to the notice issued by this Court, the second respondent has filed counter affidavit stating that the third respondent had obtained planning permission for construction of 12 dwelling units but he has constructed 15 dwelling units illegally. It is stated that the second respondent has issued a notice on 07 January 2015 directing the third

respondent to remove the unauthorised portion. It is further stated that the East Gate Apartment Flat Owners Welfare Association has filed a suit being O.S.No.129 of 2015 on the file of II Additional District Munsif, Tiruchirappalli and because of the pendency of the suit, the second respondent is not able to take action.

5.Now, it is submitted at the Bar that the suit being O.S.No.129 of 2015 on the file of II Additional District Munsif, Tiruchirappalli, was rejected on 30 March 2016.

6.Learned Special Government Pleader appearing for respondents 1 and 2 submits that action will be initiated forthwith in accordance with law and concluded within a period of four weeks.

7.In view of the above submission made by the learned Special Government Pleader appearing for respondents 1 and 2, it is ordered accordingly.

8.With the aforestated observation and direction, the writ petition stands disposed of. No costs.”

6. The grievance of the Petitioner is that the 1st Respondent / M/s East Gate Apartment Flat Owners' Welfare Association, rep. By their Secretary, Trichy, (as Petitioner), filed W.P.No.13887 of 2016 before this Court against the 2nd and 3rd Respondents (Respondents 1 and 2 in the Writ Petition) seeking issuance of direction to the 1st Respondent / Government of Tamilnadu, Chennai – 9 to consider and dispose of its Application dated

25.02.2016 under Sections 80 A and 80 (A) (3) of the Tamilnadu Town and Country Planning Act, 1971 and forbear the 2nd Respondent / Trichirapalli Town Planning Authority rep. By its Member Secretary, Trichy (2nd Respondent in the Writ Petition) from in any way interfering with the building particularly by way of locking and sealing and demolition of the same pending disposal of the Application by the 1st Respondent and this Court on 15.04.2016 at Paragraph No.7 had observed the following and disposed of the Writ Petition.

“ 7.In view of the fact that the application for interim relief dated 25.02.2016 filed under Section 80A(3) of the Act with the Government is pending as on date and also the application filed is pending before the first respondent, this Court, without traversing upon the merits of the matter, simpliciter in the interest of Justice, Fair play, Equity, Good conscience and even as a matter of prudence, directs the First Respondent to take up the application for interim relief dated 25.02.2016 and to dispose of the same within a period of two weeks from the date of receipt of a copy of this order and also dispose of the pending Appeal dated 25.02.2016, within the statutory period prescribed under the Act. It is needless to make a second mention that the First Respondent is to provide adequate/enough opportunity to the petitioner/Association and others concerned while arriving at a decision in the pending matter in stay/application and to pass a reasoned speaking

order in qualitative and quantitative terms, that too, in an objective and dispassionate manner. It is open to the petitioner to raise all factual and legal pleas before the First Respondent. Till the stay application is disposed of within a period of two weeks as adumbrated above, there shall be an order of status quo prevailing as on date.”

7. The Learned Counsel for the Petitioner contends that in W.P.No.13887 of 2016, the 1st Respondent / Welfare Association, who filed the said Writ Petition, as Petitioner had not included the Review Petitioner or the Builder as party Respondents and that apart the order passed by this Court on 11.04.2016 in W.P.No.2966 of 2016 was not brought to the notice of this Court when the W.P.No.13887 of 2016 came up for admission and in fact the 1st Respondent / Petitioner had obtained an order from this Court on 15.04.2016 in W.P.No.13887 of 2016 by practising deception and fraud.

8. The Learned Counsel for the Petitioner projects an argument that in fact W.P.No.13887 of 2016 was filed on 16.09.2015 and that the 1st Respondent / Flat Owners Association filed a suit in O.S.No.129 of 2015 on the file of Learned District Munsif, Trichy against the notice issued under Sections 56 and 57 of the Town and Country Planning Authority and the said suit was rejected on 30.03.2016.

9. The Learned Counsel for the Petitioner submits that the 1st Respondent / Association represented through Secretary had stated in her affidavit in W.P.No.13887 of 2016 that no notice under Sections 56 and 57 of the Town and Country Planning Act, was issued to any of the members of the association prior to the issuance of notice dated 23.02.2016 and in fact with a view to obtain a favourable order, the true facts of records were suppressed.

10. The Learned Counsel for the Petitioner urges before this Court that from the proceedings dated 23.02.2016, it is clear that notice under Sections 56 and 57 of the Tamilnadu Town and Country planning Act was issued as early as on 24.11.2014 and no petition was filed for retention of building under Section 49 of the Town and Country Planning Act. Therefore, it is contended on behalf of the Petitioner that an order dated 23.02.2016 had become final and therefore, a notice dated 23.02.2016 was issued to seal the building for the purpose of demolition only and as such, no Appeal or Revision is maintainable. That apart, a Petition filed under Section 80 A of the Town and Country Planning Act before the Government is bad in Law.

11. The Learned Counsel for the Petitioner refers to the averments made by the 1st Respondent / Association's Secretary (as Petitioner) in W.P.No.13887 of 2016, which runs as under :-

“7. That the 2nd respondent being persuaded by the said R.Chandra Mohan, said to have issued a notice to the said R.Chandra Mohan and the developer on 24.11.2014 and 07.01.2015 under Sections 56 and 57 of the Town and Country Planning Act. However, the 2nd Respondent had conveniently omitted to issue the said notice to any of the members of the Petitioners Association who are the actual owners and occupy 2013.”

12. A forceful contention is placed on behalf of the Petitioner that the 1st Respondent / Association filed O.S.No.129 of 2015 on the file of the Learned 2nd District Munsif, Trichy against notice dated 07.01.2015 issued by the 3rd Respondent / Trichirapalli Town Planning Authority (2nd Respondent in W.P.No.13887 of 2016) and at Paragraph No.8 of the Complaint it is averred that “the defendants 3 and 4 motivated them to issue a communication dated 07.01.2015 to some members of the plaintiff Association. On receipt of the same, the members of the plaintiff Association are put to great mental shock and agony”, further, at Paragraph no.10 it was mentioned as “In any event, the defendants 3 and 4 are

making hectic attempts to implement their impugned notice dated 07.01.2015. if the notice is given effect, then the innocent purchasers who are the members of the plaintiff Association would be put to irreparable loss and hardship” and at Paragraph No.11 it was mentioned as “Further, on the receipt of the earlier communication dated 24.11.2014 issued by the fourth defendant, the plaintiffs' members had sent a notice to the fifth defendant stating the above facts and represented with third and fourth defendants.”

13. In effect, an emphatic submission of the Learned Counsel for the Petitioner is that the 1st Respondent / Association suppressed the aforesaid facts before this Court and obtained an order on 15.04.2016 in W.P.No.13887 of 2016 and therefore, the Petitioner, as an aggrieved person, is seeking Leave to file the Review Application in W.M.P.No.34265 of 2016 in Rev.Appl.No.SR69666 of 2016.

14. The Learned Counsel for the 1st Respondent / Association submits that the Review Petitioner has filed the present Review Petition without any ground and only with an intend to drag the proceedings before the 2nd Respondent.

15. Advancing her arguments, the Learned Counsel for the 1st Respondent / Association proceeds to state that the 1st Respondent / Association was registered under the Tamil Nadu Society Registration Act, 1975 (vide Sl.No.3/2015 dated 06.01.2015) and consists of owners of respective flats in East Gate Apartments for the purpose of common cause for its members and further the members of the Association had purchased their respective flat together with undivided share of the land in Town Survey Nos.5/1, Part, 2a, 2b.2c and 2d in approved layout at TVTK No.6 of 2009 in Ponmali Division, Ward AB, Block-1, Tiruchirapalli District from the Review Petitioner represented through his Power Agent, Ravichandran and that the building was constructed by developer during the year 2012-2013.

16. The Learned Counsel for the 1st Respondent brings it to the notice of this Court that the Review Petitioner had obtained sanction for construction of stilt floor + 2 floors and 3rd floor consisting of 12 dwelling units vide P.P.No.27/2010 dated 18.03.2010. But the developer, P.Jayakumar has put up construction of stilt +2 floor of 5 dwelling units each and 3rd floor with 5 dwelling units as instructed by the Review Petitioner. Furthermore, it is represented on behalf of the 1st Respondent that the three unauthorised dwelling units were constructed by the Developer with the consent of the Review Petitioner and the members of

the 1st Respondent / Association became owners and occupied respective approved dwelling units only at a later point.

17. The Learned Counsel for the 1st Respondent submits that the dispute arose between the Review Petitioner and the Developer in regard to payments due and allotment of apartments and because of the numerous complaint submitted by the Petitioner to the 3rd Respondent / Trichirapalli Town Planning Authority against unauthorised construction of three dwelling units in the 3rd floor, with an intention to demolish the entire building for his personal gains and in fact, the 1st Respondent / Association had learnt that the unauthorised dwelling units have already been sold by the Review Petitioner to the 3rd Parties. At this juncture, it is projected on the side of the 1st Respondent that pursuant to the complaint submitted by the Review Petitioner, the 3rd Respondent issued notices dated 24.11.2014 and 07.01.2015 under Sections 56 and 57 of Town and Country Planning Act, 1971 and that the 3rd Respondent / Trichy Town Planning Authority had omitted to issue the said notices to any of the members of the Association who are actual owners and occupiers of the building ever since 2013.

18. The Learned Counsel for the 1st Respondent submits that the 3rd Respondent had issued Lock and Seal Notice under Section 56(2)(a) of

the Town and Country Planning Act to all the occupiers of the building including some of the members of the 1st Respondent / Association was called upon to vacate their respective premises within a period of seven days and that the 1st Respondent / Association had filed an Application under Section 80(A) of Town and Country Planning Act together with an Application for stay of further proceedings of the 3rd Respondent under Section 80(A)(3) of the said Act and the same is pending till date and since no action was taken, the 1st Respondent / Association, as Petitioner, filed W.P.No.13887 of 2016 to consider his application dated 25.02.2016 filed under Sections 80 A and 80 (A) (3) of the Town and Country Planning Act.

19. The Learned Counsel for the 1st Respondent refers to the Order of this Court dated 15.04.2016 in W.P.No.13887 of 2016 wherein this Court had directed the 2nd Respondent to dispose of the Appeal dated 25.02.2016 within a statutory period prescribed under the Act.

20. Continuing further, the Learned Counsel for the 1st Respondent draws the attention of this Court to the fact that the Review Petitioner filed W.P.No.2966 of 2016 seeking for a Writ of Mandamus by

directing the 1st and 2nd Respondents therein to restore the property to its original state etc., and in fact the Review Petitioner had impleaded only the builder as 3rd Respondent in the said Writ Petition and failed to implead the 1st Respondent / Association, who represent the owner of the apartments. Further the said Writ Petition was disposed of on 11.04.2016 by this Court at Paragraph Nos. 5 and 8 had observed the following:

“ 5.Now, it is submitted at the Bar that the suit being O.S.No.129 of 2015 on the file of II Additional District Munsif, Tiruchirappalli, was rejected on 30 March 2016.

6.Learned Special Government Pleader appearing for respondents 1 and 2 submits that action will be initiated forthwith in accordance with law and concluded within a period of four weeks.

7.In view of the above submission made by the learned Special Government Pleader appearing for respondents 1 and 2, it is ordered accordingly.

8.With the aforestated observation and direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.”

21. In pith and substance, the stand taken on behalf of the 1st Respondent / Association is that the Petitioner has not made out any ground to Review the said order and since the present W.M.P.No.34265 of 2016 seeking Leave to prefer Review Petition lacks bonafide and the same

is to be dismissed in the interest of justice.

22. At this stage, this Court pertinently points out that a 'Review' lies only on the ground of mistake or error apparent on the face of record or for any other sufficient reason. In the absence of error apparent on the face of record, an order cannot be disturbed. Moreover, if an order was passed in a real and correct perspective, there is no ground for 'Review'. Suffice it for this Court to point out that a 'Review Petition' has a limited purpose and cannot be permitted to act as an 'Appeal in Disguise'

23. At the risk of repetition in W.P.No. 13887 of 2016 filed by the 1st Respondent as Writ Petitioner against the 2nd and 3rd Respondents (1st and 2nd Respondents in W.P.No.13887 of 2016), this Court on 15.04.2016 relevantly points out that at Paragraph No.7 had only observed that without traversing upon the merits of the matter, simpliciter in the interest of Justice, Fair Play, Equity, etc., directed the 1st Respondent / Government of Tamilnadu rep. By Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai to take up the application for interim relief dated 25.02.2016 filed under Section 80(a) (3) of the Tamilnadu Town and Country Planning Act, 1971 and dispose of the same

within a period of two weeks from the date of receipt of copy of this Order and also to dispose of the pending appeal dated 25.02.2016 within a statutory period prescribed under the Act. Also that the 1st Respondent / Government of Tamilnadu therein was directed to provide adequate / relevant opportunity to the 1st Respondent / Writ Petitioner and Others concerned while arriving at a decision in the matter in stay / application and to pass a reasoned speaking order in qualitative and quantitative terms etc., Moreover, the 1st Respondent (Writ Petitioner / Association) also given liberty to raise all factual and legal pleas before the 1st Respondent / Government of Tamilnadu, Chennai – 9 (2nd Respondent in W.M.P.No.34265 of 2016) and that the said application was directed to dispose of within a period of three weeks and also this Court granted an order of status quo prevailing as on that date and disposed of the Writ Petition with the aforesaid observation and direction.

24. It may not be out of place for this Court to make a significant mention that an order of 'Review' or 'Modification' for a Judgment should not ordinarily be passed at the behest of applicants who were not parties to the Writ Petition as per decision of Hon'ble Supreme Court **reported in (2004) 5 Supreme Court Cases 618 (Saurabh Chaudri (Dr.) and Others**

V. Union of India and Others). Even a 'Review' of the judgment cannot be granted in the garb of a clarification.

25. Be that as it may, in the upshot of detailed qualitative and quantitative discussions and also this Court taking note of the entire attendant facts and circumstances of the present case in an encircling fashion comes to an inevitable and inescapable conclusion that this Court passed Orders on 15.04.2016 in W.P.No.13877 of 2016 without traversing upon the merits of the matter and simpliciter issued directions therein. Viewed in that perspective, it is held that the Petitioner has not made out a sufficient cause for the Grant of Leave to file the 'Review Petition'.

25. In fine, the W.M.P.No.34265 of 2016 is dismissed. It is made quite clear that the dismissal of present Writ Miscellaneous Petition will not preclude the Petitioner to air his grievances by filing necessary Petition before the Government of Tamilnadu rep. By Secretary to Government, Housing and Urban Development Department, Chennai – 9 (1st Respondent in Writ Petition) (if he so desires / chooses) and if such a Petition is filed, the same shall be entertained and after providing necessary opportunities to the 1st Respondent / Association and others concerned, by adhering to the principles of natural justice, is directed to

dispose of the said Petition along with the already pending Stay Application (For Interim Relief under Section 80A(3) of the Tamilnadu Town and country Planning Act) and the Appeal, as expeditiously as possible. Liberty is granted to the respective parties to raise all factual and legal pleas in the subject matter in issue. Further, a reasoned speaking order is to be passed in a fair, free, objective and in a dispassionate manner by the Government of Tamilnadu, rep. By Secretary to Government, Housing and Urban Development Department, Chennai – 9 uninfluenced with any of the observations made by this Court in this Writ Miscellaneous Petition.

M.V.J., V.B.D.J.,

.02.2017

Index: Yes/ No

Internet: Yes/ No

ssd

To

1. M/s East Gate Apartment Flat Owners
Welfare Association,
rep. By their Secretary,
Tmt.S.Gowri,
Behind SPI Colony,
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2. Government of Tamilnadu,
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M.VENUGOPAL,J.,

and

V.BHARATHIDASAN,J.,

ssd

**Per Delivery Order in
W.M.P.No.34265 of 2016 in**

Rev. Appln. No.SR69666 of 2016

03.02.2017

<http://www.judis.nic.in>