



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2019

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

Review Application (MD)No.26 of 2017

and

W.M.P.[MD]No.8254 of 2017

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration and Water
Supply Department,
Secretariat,
Chennai-9.

2.The Commissioner,
Municipal Administration and Water
Supply Department,
Ezhilagam Anna Building,
Chepauk, Chennai-5.

3.The District Collector,
Karur District,
Karur.

4.The Commissioner,
Karur District,
Karur.

: Petitioners/Respondents

Vs.

P.Saravanan

: Respondent

PRAYER: Review Application is filed under Section 47 Rules 1 and 2 of the Civil Procedure Code read with Section 114 of the Civil Procedure Code and Article 226 of the Constitution of India praying to review the order passed by this Court in W.P.(MD)No.3449 of 2017, dated 28.02.2017.

Prayer in WP(MD). 3449/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to consider the petitioners representation dated 10.02.2017 to establish the new bus stand at Karur by implementing the Government order vide G.O.(MS) No. 87 dated 20.06.2013 passed by the 1st respondent.



For Petitioners : Mr.K.Chellapandian,
Additional Advocate General,
Assisted by
Mr.N.Shanmugaselvam,
Additional Government Pleader
For Respondent : Mr.V.Karthick,
Senior Counsel,
For Mr.V.Muthumani

O R D E R

[Order of the Court was made by **K.K.SASIDHARAN, J.**]

INTRODUCTORY:

The Government of Tamil Nadu succeeded in a Marathon Litigation challenging its order in G.O.Ms.No.87, Municipal Administration and Water Supply Department, dated 20 June, 2013, granting approval for the Karur Municipality to establish a bus stand at the place shortlisted by the Municipal Council. The common order dated 28 April, 2014, dismissing the Writ Petitions challenging the selection of site for the bus stand, has become final. Since follow-up action was not taken, the High Court, by order dated 28 February, 2017, in W.P.(MD)No.3449 of 2017, directed the Government and the Local Body to establish the new bus stand in pursuance of the order in G.O.Ms.No.87, Municipal Administration and Water Supply Department, dated 20 June, 2013. The State, in association with the Karur Municipality, now seeks review of the said order by conveniently ignoring the fundamental fact that it was the very same Government which issued the order for establishing the bus stand and chose to painstakingly stick to their stand that the establishment of the bus stand is in larger public interest and the selected place is the most suitable site for the same.

BACKGROUND FACTS:**2. (A) Earlier Litigation:**

(i) The common order passed by the Division Bench dated 28 April, 2014, in W.P.(MD)Nos.18881 and 19749 of 2013, etc., batch stands testimony to the falsity of the case now projected by the Government and the Karur Municipality. Mr.Justice V.Ramasubramanian, speaking for the Bench, narrated the entire episode behind the issuance of the Government Order sanctioning a bus stand at Karur. The following paragraphs of the order clearly show that a conscious decision was taken by the Government to establish a new bus stand at Karur, which is an industrial township:

"1. The town of Karur, which started developing fast in the past about 3 decades, as an industrial hub, for the manufacture and export of garments, has a central bus-stand, that was established a long time ago, with a parking facility only for about 55 buses. Therefore, from the 1990s, there was a huge demand for the establishment of a new bus-stand. When the public



started mounting pressure on the authorities for the establishment of a new bus-stand, the District Collector, Karur, sent a proposal, dated 28.01.2006, indicating that the lands available at three places, namely Sanappiratti Village, Athur Village and Thoranakalpatti Village, were examined and that the land of a total extent of Acres 8.01 in Thoranakalpatti Village, Thanthoni III-Grade Municipality, offered by the villagers free of cost for the construction of the bus-stand is suitable and that the Thanthoni III-Grade Municipality had also passed a resolution approving the location of the bus-stand in Thoranakalpatti village.

2. But, the recommendation of the District Collector was rejected by the elected council of Karur Municipality, by a resolution bearing No. 32, dated 31.01.2006. Therefore, the Government requested the Municipal commissioner of Karur to find out a new place and put up a proposal before the Municipal Council. In order to carry out the directives of the Government, the Municipal Commissioner of Karur first sent a communication to the Project Director of the National Highways Authority of India, on 27.01.2009, requesting him to send the Road Map for the National Highway that was coming up in Trichy-Coimbatore by-pass road, passing through Thanthoni Revenue Village, Achimangalam Revenue Village and Thoranakalpatti Revenue Village.

3. In the meantime, two Ward Councillors of Karur Municipality brought independent resolutions before the Karur Municipal Council on 29.01.2009. The proposal brought forth by one Ward Councillor by name R. Prabhu was for the location of the bus-stand in the land of an extent of 17 acres, situate at Sukkaliyoor Village. This land was actually a Government poramboke land. The other proposal was brought up by another Ward Councillor by name N. Maniraj, for the location of the bus-stand in a land belonging to a temple by name Shri Bala Thandayuthapani Temple, Thanimalai, Athur Village.

4. The proposal brought up by R. Prabhu received the support of the majority and a resolution was passed accepting his proposal.

5. Thereafter, the Revenue Divisional Officer, Karur, addressed a communication to the District Collector, recommending the



reclassification of the land from "manthaiveli poramboke" (waste land meant for grazing), so that a bus-stand could be located therein. The Revenue Divisional Officer also proposed that an equivalent extent of land can be made available as "manthaiveli poramboke", so that the cattle of the village could have grazing ground.

6. The Revenue Divisional Officer also wrote a letter to the Karur Municipality, requesting the Commissioner to obtain consent letters from private land owners whose lands are located in-between or adjoining the Government land, for preparing a detailed plan. Upon receipt of the said proposal, the Commissioner of Karur Municipality approached the Commissioner for Municipal Administration, for obtaining approval of the Government. This was in view of the fact that the land in which the bus-stand was proposed to be located was situate in Thanthoni Municipality, lying outside the jurisdictional limits of Karur Municipality.

7. But when the above proposal was pending, the Government issued an order in G.O.Ms. No. 19, Municipal Administration and Water Supply Department, dated 14.11.2011 extending the local limits of Karur Municipality so as to include within Karur Municipality, the entire areas comprised in Inam-Karur Municipality, Thanthoni Municipality and Senapiratti Village Panchayat. The requisite notification was also published in terms of Section 4(3) of the Tamil Nadu District Municipalities Act, 1920.

8. In view of this new development, the District Collector, Karur again sent a letter dated 31.01.2011 to the Commissioner for Municipal Administration as well as the Government, seeking a fresh approval for the location of the new bus stand at Thorankalpatti revenue village in the Government poramboke lands available there. By a separate letter dated 24.02.2011, the District Collector also sought the reclassification of the land.

9. However, by a communication dated 22.12.2011, the Commissioner for Municipal Administration requested the Commissioner of Karur Municipality to have a fresh resolution passed in the Municipal council, in view of the inclusion of several areas within the municipal limits and the extension of the limits of the municipality.



12. Therefore, the offers made by the parties as well as the minutes of the meeting held on 27.12.2012, were placed before the Municipal Council in its meeting held on 28.12.2012. By a resolution, number 1079, passed on 28.12.2012, the Municipal Council decided to accept the offer made by M. Nachimuthu and N. Senthil Prasad. It appears that the resolution was carried by a majority of 47 out of 48 members present. Therefore, the resolution was communicated by the Commissioner of Karur Municipality to the Commissioner for Municipal



Administration. The Commissioner of Municipal Administration, in turn, issued a publication in the Newspapers on 07.11.2013, containing "Request For Proposal (RFP) For Invitation of Consulting Services For Appointment of a Consultant For Preparation of Detailed Project Report For Establishment of Integrated Bus-stand For Karur Municipality".

13. Immediately upon publication of the "Request for Proposal" in the Newspapers on 07.11.2013, one of the elected councillors, by name R. Eakamparam, filed a writ petition in W.P.(MD) No. 18881/2013. The prayer in the said writ petition was for the issue of a writ of certiorari to quash the "Request For Proposal", published on 07.11.2013. The said writ petition came up for admission, for the first time, on 25.11.2013. Though what was challenged in the writ petition was only the "Request For Proposal" for consultancy services just to prepare a project report, a Division Bench of this Court ordered notice in the writ petition and granted interim order not to finalise the tender for the award of consultancy services.

14. It is interesting to note that the petitioner in this writ petition in W.P.(MD) No. 18881/2013, represented Ward No. 42 of the Karur Municipal Council and his was the only vote that went against the proposal, in the meeting of the Municipal Council held on 28.12.2012. Therefore, what this lone dissenting member could not achieve in the meeting of the Municipal Council, as against a vociferous majority of 47 members, was achieved by him through this writ petition in W.P.(MD) No. 18881 of 2013.

15. Even before the filing of W.P.(MD) No. 18881 of 2013, the Municipality passed yet another resolution on 23.05.2013, for seeking the approval of the Government, in terms of Section 152 of the Tamil Nadu District Municipalities Act, 1920 (in short "the Act"). This is, in view of the fact that the proposed bus stand was to be located in a land outside the municipal limits of Karur and hence the approval of the Government was statutorily required. Based upon the said resolution, dated 23.05.2013 and the recommendation made by the Commissioner, the Government had also issued an order (much before the filing of the first writ petition) in G.O.Ms. No. 87, Municipal Administration and Water Supply Department, dated 20.06.2013, granting approval under Section 152



of the Act, for the Karur Municipality to undertake the work of establishment of a bus-stand at the place accepted by the Municipal Council.

16. Therefore, the very same dissenting Ward Councillor R. Eakamparam came up with a second writ petition in W.P.(MD) No. 19749 of 2013, challenging the said Government Order, dated 20.06.2013. This writ petition was admitted on 05.12.2013. Thereafter, three more writ petitions came to be filed in W.P. (MD) Nos. 536, 2746 and 5774 of 2014, challenging the very same Government Order in G.O.Ms. No. 87, M.A. & W.S. Department, dated 20.06.2013."

(ii) The justification given by the Government in its counter-affidavit for establishing the bus stand and selecting the site in question is found in Paragraph Nos.31 and 32 of the order, which read thus:

"13.E. The site proposed in 2009 in Thoranakalpatty was then outside the municipal limits of Karur Municipality, which was subsequently annexed to Karur Municipality. The distance from Karur Town is 10 KM. Some portion of the 21.4 Acres of the lands belonged to private individuals and they had not transferred the lands to Karur Municipality. Moreover, the Karur Municipality had financial difficulties in getting the lands. The present site in Thirumanilaiyur, even though outside municipal limits of Karur Municipality, is within 4 KM. from Karur Town and is easily approachable. Moreover, the lands had been donated by its owners vide Gift Deed dated 07.10.2013 registered as Document No. 6741/2013 on the file of Sub-Registrar, Karur West, and thereby no cost has been involved in the acquiring of the lands."

"(iii) The present site is situated in the middle of the expanded limits, even though the site is outside the territorial jurisdiction of Karur Municipality. Hence, the Government had taken decision as per Section 152 of the District Municipalities Act, 1920.

(iv) The present site is more convenient to reach nearby places, such as Railway Station, Old Bus Stand, Collectorate, District Court, National Highway, etc., without any traffic congestion in the Town the location of the place is easily approachable from all other parts of the City within 10 minute. It is situated within



4 KM. Corporation Bus Depot is situated within 250 meters from the proposed New Bus Stand and Mofussil Buses can easily approach the highways without causing any traffic congestion. It is very safe to the public to reach their place. Moreover, the place has been donated by public without cost. Inter-alia, considering these aspects, the Karur Municipal Council had passed resolutions and had sent proposal to the Government for appropriate order. The Government had considered the same and had obtained opinions from the relevant authorities and had finally passed orders."

(iii) The Division Bench, while dismissing the Writ Petitions, imposed costs on the Ward Councillor, who filed the Writ Petitions, after failing in his attempt to defeat the resolution moved by the Local Body.

PRESENT LITIGATION:

3. The failure on the part of the Karur Municipality to establish the bus stand, even after upholding the decision by the High Court made the respondent to file a Writ Petition for a Mandamus. The Writ Petition was disposed of with notice to the State and Local Body. According to the respondent, the State has taken a 'U Turn' now and is opposing the establishment of bus stand purely on political consideration rather than financial or public interest.

THE REVIEW:

4. The State along with the Karur Municipality filed this Review Application by taking a stand contrary to its earlier position. According to the learned Senior Counsel for the respondent, the Review Application was filed only to settle political scores.

NO GROUND MADE OUT FOR REVIEW:

5. The Writ Petition in question was disposed of after issuing notice to the petitioners herein. It is not the case of the petitioners that a request was made by the Government Pleader for adjournment and the order was passed without giving them reasonable opportunity.

LEGAL POSITION:

6. In **Aribam Tuleshwar Sharma v. Aibam Pishak Sharma [1979(4) SCC 389]**, the Supreme Court indicated the limits to the exercise of the power of judicial review in the following words:

<https://hcservices.ecourts.gov.in/hcservices/> "But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and



important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

7. The Supreme Court in **Sivakami vs. State of T.N. [2018(4) Scale 266]** observed that the power of review should not be confused with the appellate power. The Supreme Court said :

"20. The scope of the appellate powers and the review powers are well defined. The power of review under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is very limited and it may be exercised only if there is a mistake or an error apparent on the face of the record. The power of review is not to be confused with the appellate power. The review petition/application cannot be decided like a regular intra court appeal. On the other hand, the scope of appeal is much wider wherein all the issues raised by the parties are open for examination by the Appellate Court."

8. The Supreme Court in **Arikala Narasa Reddy vs. Venkat Ram Reddy Reddygari [2014(5) Scale 187]** observed that it would not be possible to take a contrary view in exercise of the review jurisdiction.

9. In **Parsion Devi & Ors. vs. Sumitri Devi & Ors [1997(8) SCC 715]**, the Hon'ble Supreme Court indicated that an error, which is not self-evident, is not liable to be corrected in exercise of review jurisdiction under order 47 Rule 1 of the Code of Civil Procedure. The Supreme Court observed:

"9. Under Order 47 Rule 1 CPC a judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard



and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

10. None of the grounds taken by the petitioners in the Review Application would constitute valid grounds for exercising the review jurisdiction under Order 47 Rule 1 of the Code of Civil Procedure.

11. The Review Application is dismissed without liability to pay costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar (CS-III)

To

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration and Water
Supply Department,
Secretariat,
Chennai-9.

2.The Commissioner,
Municipal Administration and Water
Supply Department,
Ezhilagam Anna Building,
Chepauk, Chennai-5.

3.The District Collector,
Karur District,
Karur.

4.The Commissioner,
Karur District,
Karur.

+1 CC to M/s.J.SENTHIL KUMARAI AH, Advocate (SR-40181[F] dated 03/01/2019)

+1 CC to M/s.V.MUTHUMANI, Advocate (SR-40326[F] dated 04/01/2019)
SML

Order made in

Review Application (MD) No.26 of 2017

Dated: 03.01.2019