

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2017

PRONOUNCED ON : 03.01.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

Review Application Nos.26, 50 to 57 & 82 of 2017

Koya Moideen

Amina

Katheeja

Ayisha

Imbichi Beevi

Moosa

Siddique

[Above appellants are represented
by Power of Attorney Markkar]

Marakkar

Applicants in Rev.A.
Nos.26 & 82/17

P.Balagandaran Nair (Died)

P.Valasala

P.Rajeni

P.Radhika

P.Rekha

P.Ramesh

P.Rajesh

Applicants in Rev.A.
50 & 52/17

Kunjutti Amma [rep. by Power Agent P.S.Seбан] ..

P.S.Seбан

Applicant in
Rev.A.No.51/17

Sasi Sundaram

Applicant in
Rev.A.No.53/17

Dr.Sivanand

Applicant in
Rev.A.No.54/17

Dr.L.Sundaram	..	Applicant in Rev.A.No.55/17
M.P.Philip	..	Applicant in Rev.A.No.56/17
Susamma Zachariaiah	..	Applicant in Rev.A.No.57/17

Vs.

The District Forest Officer Gudalur Division Gudalur The Nilgiris.	..	R1 in Rev.A.Nos. 26, 50/17 R3 in Rev.A.Nos.53, 54, 55, 56, 57
The Assistant Settlement Officer Dharapuram	..	R2 in Rev.A.Nos. 26, 50, 52 & 82/17
The State of Tamil Nadu rep. by the District Collector Nilgiris District Nilgiris.	..	R1 in Rev.A. Nos.51, 52, 53, 54, 55, 56, 57 & 82/17
The Settlement Officer Gudalur Jenman Lands Udhagamandalam	..	R2 in Rev.A. Nos.51, 53, 54, 55, 56, 57 & 82/17
The Tahsildhar Gudalur Tamil Nadu	..	R4 in Rev.A.No. 53, 54, 55, 56, 57/17
The Joint Receiver T.N.Godavarman, Thirumalpad Nilambur Kovilagam	..	R5 in Rev.A.No. 53, 54, 55, 56, 57 /17

Application under Order XLVII, Rule 1, CPC, to review the order dated 28.5.2015 made in STA Nos.2, 4 of 2009, 3 of 2006, 5 of 2009, 1 of 2011, 2

of 2011, 3 of 2011, 4 of 2011, 5 of 2011 & 3 of 2009 respectively.

For Applicants in
Rev.A.Nos.26, 50 to 52 & 82 of 2017 : Mr.M.Ravindran, S.C.
: For Mr.Haja Mohideen Gisthi

For Applicants in
Rev.A.Nos.53 to 57 of 2017 : Mr.S.Thirumavalavan

For Respondents : Mr.V.Ayyadurai
Addl. Advocate General
Assisted by
Mr.M.Santhanaraman, Addl.G.P.

ORDER

HULUVADI G.RAMESH,J

The above review applications have been filed seeking to review the common order dated 28.5.2015 passed in STA Nos.3 of 2006, 2 to 5 of 2009 and 1 to 5 of 2011.

2. According to Mr.M.Ravindran, learned senior counsel for the applicants who have been granted patta by the Settlement Officer, the applicants have been granted ryotwari patta only after finding that they were in possession and enjoyment of the lands in question based on material evidence and the same was not taken note of by this Court. Further, the High Court has failed to take note of the fact that the Tribunal had not considered the detailed discussion of the Assistant Settlement Officer before setting

aside the order granting ryotwari patta to the applicants. Therefore, the learned senior counsel contended that the order of this Court rejecting the case of the applicants on the ground that the lands belong to forest department, without considering the documents produced by the applicants to prove that they were in possession and enjoyment of the lands in question, has to be reviewed.

3. Mr.M.Ravindran, learned senior counsel appearing for some of the applicants who have not been granted by the Assistant Settlement Officer, contended that this Court has dismissed the appeals preferred by the applicants on the ground that the lands belong to Forest Department, without considering the case of the applicants individually and without taking note of the material documents adduced on behalf of the appellants for proving their possession and enjoyment, is an error apparent on the face of the record and therefore, he seeks intervention of this Court for reviewing the order.

4. The main contention of Mr.S.Thirumavalavan, learned counsel appearing for some of the applicants whose case for patta has been rejected, is that the Assistant Settlement Officer has failed to consider the documents produced by the applicants relating to payment of tax, statutory dues to the Revenue Department, etc., to prove their leasehold rights and rejected the claim of the applicants for patta. However, the Assistant Settlement Officer

has granted patta to some of the persons who acquired leasehold rights from the person from whom the applicants herein also have acquired leasehold rights and therefore, the discrimination of the Assistant Settlement Officer in rejecting patta for the applicants, which was not taken note of by this Court, is an error apparent on the face of the record and therefore, he seeks to review the order of this Court.

5. On the contrary, Mr.V.Ayyadurai, learned Additional Advocate General, appearing for the official respondents contended that though the applicants contended that their cases have not been considered individually, since the issue involved in all the cases is identical, this Court has passed a common order and therefore, the same cannot be taken as a ground for seeking review of the order. He further contended that the lands in question are Forest lands and therefore, this Court rightly confirmed the order of the Tribunal rejecting the claim of the applicants for grant of patta on the ground that the lands belong to Forest Department and that the applicants have not proved their possession and enjoyment and hence, the learned Additional Advocate General submitted that the order of this Court may not be reviewed.

6. Heard the learned senior counsel and counsel appearing for the applicants and the learned Additional Advocate General appearing for the

official respondents.

7. Before going into the contentions made on behalf of both sides, it would be apt to refer to the ratio laid down by the Apex Court as to when an order can be reviewed.

8. In **Aribam Tuleshwar Sharma v. Aibam Pishak Sharma [(1979) 4 SCC 389]**, the Apex Court, following its decision in the case of **Shivdeo Singh v. State of Punjab [AIR 1963 SC 1009]**, held as under:

"There is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. 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 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."

9. Thus, an application for review of judgment may be made when new and important matters of evidence have been discovered or when there is a mistake or error apparent on the face of the record or for say any other sufficient reason.

10. The first ground of review is the discovery of new and important matters of evidence. This means that the person is considering himself aggrieved by the order of the judgment on the discovery of new and important matter of evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the judgment was delivered, may apply for review of the judgment of the Court which passed the judgment or order. When the review is sought on the ground of discovery of new evidence, the evidence must be relevant, clear and conclusive. Further when a judgment is passed, must not lightly be reopened. There must be strong evidence that the party when he brought the proceeding had been diligent and procured all evidence that were forthcoming and hand taken care to put them before the Court.

11. The second ground of review is the mistake or error apparent on the face of the record. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be

determined judicially on the facts of each case. The word 'error' in this clause is not necessarily limited to errors of fact. Errors of law may also come within the meaning of the rule. Erroneous view of law on a controversial matter or a wrong exposition of law or a wrong application of law or failure to apply correct law has never been treated as a mistake or error apparent on the face of the record. It is well known that the court having jurisdiction to decide a matter may decide it either wrongly or rightly. Correction of such mistaken conclusion does not come within the ambit or purview of review.

12. The third ground is 'for other sufficient ground'. It is well settled that the expression "other sufficient cause" should be under *ejusdem generis* with the two grounds immediately preceding them, namely it must have some connection or nexus with discovery of new and important matters of evidence and mistake or error apparent on the face of the record.

13. In ***Kamlesh Verma v. Mayawati [(2013) 8 SCC 320]***, the Supreme Court considered the scope of review and held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC and that in review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same and as long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in

the guise that an alternative view is possible under the review jurisdiction.

Thereafter, it summarised the principles as under:

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason.*

The words 'any other sufficient reason' have been interpreted in Chhajju Ram v. Neki [AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [AIR 1954 SC 526] to mean 'a reason sufficient on grounds at least analogous to those specified in the rule'. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337]"

सत्यमेव जयते

14. Now, let us come to the case on hand. According to the learned senior counsel and counsel for the applicants, while passing the order sought to be reviewed now, the Division Bench had not taken note of the documents produced by the applicants to prove that they were in possession and enjoyment of the lands for which they sought patta.

15. We find some force in the arguments advanced on behalf of the review applicants. Also we find that the applicants herein have produced several documents in support of their claim that they were in possession and enjoyment of the lands in question, which they acquired by way of lease.

16. Further, we are of the considered opinion that the certain facts have not been taken note of before passing the order sought to be reviewed and therefore, there is an error apparent on the face of the record.

17. In view of the above, the review applications are allowed. Consequently, the appeals are restored on board for hearing.

Index : Yes/No
Internet: Yes/No

(H.G.R.J.) (T.K.R.J.)
03.01.2018.

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To

1. The District Forest Officer
Gudalur Division
Gudalur, The Nilgiris.
2. The Assistant Settlement Officer
Dharapuram
3. The District Collector
Nilgiris District, Niligiris.
4. The Settlement Officer
Gudalur Jenman Lands
Udhagamandalam
5. The Tahsildhar
Gudalur, Tamil Nadu

HULUVADI G.RAMESH,J,
and
RMT. TEEKAA RAMAN,J.

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Order in
Rev.A.Nos.26, 50 to 57 & 82 of 2017.

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