

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07.02.2018

Orders Pronounced on : 09.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Review Application No.14 of 2018
in
Writ Petition No.22058 of 2017
and
W.M.P.No.3303 of 2018 in Rev.Appln.No.14 of 2018

1. D.Rajappa
2. Tmt.R.Jayalakshmi .. Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, St.Fort George,
Chennai-600 009.

2. The Additional Secretary (Technical),
Housing and Urban Development Department,
Secretariat, St.Fort George,
Chennai-600 009.

3. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu-Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

4. The Executive Officer,
Naravarikuppam Town Panchayat,
Red Hills,
Chennai-600 052.

5. B.Dayalan

(The fifth respondent impleaded
as per order dated 13.10.2017 in
W.M.P.No.24667 of 2017 in
W.P.No.22058 of 2017)

.. Respondents

Review Application filed under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure to review the order dated 03.01.2018 in W.P.No.22058 of 2017 and W.M.P.No.23110 and 23111 of 2017 on the file of this Court.

For Petitioners : Mr.V.Prakash, Senior Counsel
for M/s.B.Gopalakrishnan

For respondents : Mr.A.N.Thambidurai, Spl.G.P. for RR-1 and 2
Mr.C.Johnson for R-3
Mr.P.S.Sivashanmugasundaram for R-4
Mr.C.V.Shailandhran for R-5

ORDER

S. VAIDYANATHAN, J

"The Review Petitioners who have utter disregard
to the orders of the Apex Court and this Court,
are before this Court by means of Review Application"

The petitioners are before this Court by way of Review Application seeking to review the order dated 03.01.2018 in Writ Petition No.22058 of 2017 and W.M.P.Nos.23110 and 23111 of 2017, on the file of this Court.

2. Heard both sides and perused the materials available on record.

3. The learned Senior Counsel appearing for the petitioners contended that the order that has been challenged upto the Supreme Court, was one passed under Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971 and that there is no bar for the authorities to entertain the application under Section 113-C of the said Act. It is the further contention of the petitioners that the present subject in issue is with regard to the regularisation of the building that has got to be considered by the authorities under Section 113-C of the said Act. Further, the petitioners drew the attention of this Court to the order passed by the Apex Court and stated that there cannot be any hurdle on the part of the authorities to deal with the issue on hand, more particularly in the light of G.O.Ms.No.111, Housing and Urban Development Department, dated 22.06.2017. The petitioners contended that the guidelines/regulations framed with regard to the transitory provisions, may apply for exemption under Section 113-C of the said Act, either by withdrawing the application preferred under Section 113-A and that the petitioners have got right to make an application under Section 113-C, even if there is refusal of the request of the petitioners under Section 113-A. For the sake of convenience, the relevant portion of the order of the Supreme Court in Petition(s) for Special Leave to Appeal (Civil) Nos.14415 and 14416 of 2008, dated 02.03.2012, reads as follows:

"In our considered view, the special leave petitions are wholly meritless and deserve to be dismissed because the finding recorded by the competent authority and the State Government that the petitioners had not completed the structural construction till 31.03.2002 is based on correct evaluation of the documents produced by the first authority.

The very fact that the petitioners had made application on 31.10.2000 for regularisation of the building despite the fact that as on that date the construction had not even commenced shows that by taking advantage of the Rules framed by the State Government under Section 122(2) of the Act, they wanted to have an advance certificate for future illegal construction of the commercial building and we have no hesitation to hold that the competent authority and the State Government did not commit any illegality by rejecting their application and the appeal and the High Court rightly declined their prayer for issue of a mandamus to the respondents to regularise the illegal construction of commercial building.

The special leave petitions are accordingly dismissed.

We hope and trust that in future the State Government will refrain from changing cut off date specified in Rule 3 because that will only encourage those who make illegal/unauthorised constructions with the hope that in future they will succeed in persuading the Government to regularise the illegal construction. Such an exercise has the pernicious effect of destroying the concept of planned development of the urban area which is the primary object of the Act."

4. It is the further contention of the learned Senior Counsel appearing for the petitioners that Section 113-C of the Act has been upheld by this Court in the decision reported in 2014 (2) CTC 225 (K.R.Ramaswamy alias Traffic Ramaswamy Vs. State). It is further contended that the guidelines framed under Section 113-C of the Act, are the subject matter of the writ petition and there was an interim order saying that the planning authority/authorities shall receive the application for regularisation of the unauthorised building and to proceed further and process the same, subject to the order that would be passed in the Writ Petition. According to the learned Senior Counsel appearing for the petitioners, final orders with regard to Section 113-C of the Act alone has got to be kept in abeyance as far as processing the application is concerned and

considering the same, it can be taken into account and that the petitioners have approximately paid regularisation fee of Rs.19 lakhs to the authorities and the online application has been duly filed and the same was accepted and entered in the regularisation database and file as maintained by the CMDA.

5. Learned Senior Counsel appearing for the petitioners drew the attention of this Court to the said decision reported in 2014 (2) CTC 225 (cited supra) passed by the Division Bench of this Court, and paragraph 55 therein reads as follows:

"55. In the result,--

(a) W.P.No.16786/2013, challenging the *vires* of Section 113-C of the Town and Country Planning (Amendment) Act, 2012 is dismissed. No costs.

(b) W.P.Nos.1664/2013 & 16787/2013, challenging the *vires* of G.O.Ms.No.234, Housing and Urban Development [UD4(1)] Department dated 30.10.2012 are allowed and consequently, the said Government Order is quashed. No costs.

(c) As a result of allowing W.P.Nos.1664/2013 & 16787/2013, W.P.No.16785/2013, challenging the *vires* of G.O.Ms.No.235, Housing and Urban Development (UD4(1)] Department, dated 30.10.2012, is also allowed and it is quashed. No costs.

(d) This Court while upholding the challenge made to G.O.Ms.No.234 & 235 dated 30.10.2012, is granting liberty to the State Government to refer the issues pointed out by this Court in the earlier paragraphs or any other matter, the Government may deem it fit and appropriate, to the very same Committee constituted under G.O.Ms.No.190, Housing and Urban Development Department, dated 1.6.2007 or to a different Committee, and based on the recommendations to be given can frame appropriate Guidelines and Rules for proper and effective implementation of Section 113-C of the TCP Act.

(e) It is needless to point out once again that but for lackadaisical attitude on the part of the concerned Authorities, such an alarming and mushrooming growth of unauthorised and illegal constructions would not have come into place and the State Government and the concerned Statutory Authorities are required to act diligently and prevent recurrence of such kind of unlawful activities in future and deal with the violators with an

iron hand. This Court also hopes and trusts that no further extension of cut-off date, will be granted in future, by the State Government.

Consequently, the connected Miscellaneous Petitions are closed."

6. The issue is pending for nearly 18 years, namely from the date of application for regularisation. Moreover, the Supreme Court, in the above extracted decision, had categorically found that even though the cut-off date specified in the relevant Rule, has been periodically extended, the building has not been constructed before the cut-off date, namely 31.03.2002 as per the Regularisation Rules. The deviations/violations have been extracted by this Court in the order dated 03.01.2018 in W.P.No.22058 of 2017. The request of the petitioners for regularisation has been duly rejected. The petitioners are trying to take everyone for a ride including this Court and the Apex Court. From the decision of this Court reported in 2014 (2) CTC 225 (cited supra), it is clear that there has been alarming and mushrooming growth of unauthorised and illegal constructions which would not have come into place and the State Government and the concerned statutory authorities are required to act diligently and prevent recurrence of such kind of unlawful activities in future and deal with the violators with an iron hand. This Court also hopes and trusts that no further extension of cut-off date, will be granted in future by the State Government.

7. Though it is stated by the learned Senior Counsel appearing for the petitioners that G.O.Ms.No.111, Housing and Urban Development, dated 22.06.2017 is questioned before this Court, the entire construction is in violation.

Payment of fine amount cannot justify the regularisation. If the place meant for car parking and other places are going to be occupied by means of illegal construction, by compounding it, the place cannot be restored. The building must have to be in accordance with the plan and imposition of fine would not make "no car parking" as "legal" and by payment of fine amount, the car parking cannot be dispensed with. According to the petitioners, it is a contiguous one and the authorities have identified 37 violations and the building had been constructed violating many of the development regulations and parameters. The petitioners have repeatedly approached this Court and litigate on the very same issue that has already been concluded. It is very unfortunate that the violator is trying to justify the act. The Supreme Court and this Court have repeatedly held that everyone should follow law. De-hors the law, the observation of the Supreme Court in the decision reported in 2002 (2) SCC 244 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma) that adherence to and obedience of law should be obvious and necessary in a system governed by rule of law, is the need of the hour. If illegality like the present one on hand is going to be regularised or accepted, the law abiding citizens will be driven to an extent that the best method is to violate the law and take advantage of the situation. Moral and ethical values are bleak in the present days. We do not understand as to how the violators can inculcate the values to the children and the family members.

8. Though this Court would not have adverted to the facts mentioned *supra*, as the petitioners need to have canvassed all these points before the Apex

Court by filing Special Leave Petition and that the present review application is not maintainable, as detailed arguments have been advanced and we have been forced to hear the arguments. This Court has dealt with the facts mentioned supra in the Writ Petition itself.

9. In *Priyanka Estates International Pvt. Ltd. Vs. State of Assam* (2010 (2) SCC 27), the Supreme Court declined the appellant's prayer for directing the respondents to regularize the illegal construction and observed as follows:

"It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."

10. In yet another decision pertaining to construction of buildings in violation of the Rules, in the case of *Shanti Sports Club Vs. Union of India* (2009 (15) SCC 705), the Supreme Court has held as under:

"This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has

spent substantial amount on construction of the buildings, etc.

Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

सत्यमेव जयते

11. Coming to the issue on hand with regard to the maintainability of the review application, it is worthwhile to notice the decision of the Supreme Court reported in 2013 (8) SCC 320 (Kamlesh Verma Vs. Mayawati), wherein the Apex Court considered the scope of the review jurisdiction and summarised the factors as to when the review will be maintainable and when the review will not be maintainable and the same reads as follows:

"Summary of the principles

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 Vs. Neki* ((1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112) and approved by this Court in *Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulouse Athanasius* (AIR 1954 SC 526 : (1955) 1 SCR 520) 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 Vs. Sandur Manganese & Iron Ores Ltd.* ((2013) 8 SCC 337 : JT (2013) 8 SC 275).

20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

12. Further, in the case on hand, there is no error apparent on the face of

record to review the order passed in the Writ Petition. The basic principle to entertain a Review Application under Order 47 Rule 1 C.P.C. is to correct the errors, but not to substitute a view. The judgment under review cannot be reversed (or) altered taking away the rights declared and conferred by the Court under the said judgment; once a judgment is rendered, the Court becomes "functus-officio " and it cannot set aside its judgment or the decree; no inherent powers of review were conferred on the Court; the review Court cannot look into the trial Court's judgment; it can look into its own judgment for limited purpose to correct any error or mistake in the judgment pointed out by the review petitioner without altering or substituting its view in the judgment under review; the review Court cannot entertain the arguments touching the merits and demerits of the case and cannot take a different view disturbing the finality of the judgment; the review cannot be treated as appeal in disguise, as the object behind review is ultimately to see that there should not be miscarriage of justice and shall do justice for the sake of justice only and review on the ground that the judgment is erroneous, cannot be sustained.

13. Further, in the case of Meera Bhanja Vs. Nirmala Kumari Choudhury, reported in 1995 (1) SCC 170, the Supreme Court, while considering the scope of the power of review of the High Court under Order 47, Rule 1, C.P.C., held as under:

"The 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 C.P.C. The review petition of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the

record and would not require any longdrawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers on court under Order 47, Rule 1, C.P.C. is similar to jurisdiction available to the High Court while seeking review of the orders under Article 226."

14. Moreover, a Review Application cannot be entertained merely, as the Supreme Court in the decision reported in 1997 (9) SCC 736 (Tamil Nadu Electricity Board Vs. N.Raju Reddiar), has observed as follows:

"1. ... When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on-Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. ... "

15. Further, in another decision of the Supreme Court reported in 2014 (5) SCC 75 (Subramanian Swamy Vs. State of T.N), it has been observed in paragraph 52 as follows:

"52. ... Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed. (Vide - Rajender Kumar Vs. Rambhai - 2007 (15) SCC 513 : 2010 (3) SCC (Cri) 584 : AIR 2003 SC 2095)."

16. Moreover, in this case, there are more deviations of the planning permission and in this regard, in the decision of the Supreme Court reported in 2016 (3) SCALE 206 = AIR 2016 SC 1460 (Babita Badasaria and others Vs. Patna Municipal Corporation and others), the issue relating to unauthorised construction by compounding of the illegal construction by paying compounding fee, came up for consideration and the Supreme Court had taken note of the fact that there was enormous deviation from the sanctioned plan in construction of multi-storeyed building and found no reason to change their mind and allow to keep the illegal construction which is contrary to law.

17. In view of all the above settled principles of law, and the discussion made above, the Review Application is dismissed. However, there shall be no order as to costs. Consequently, W.M.P.No.3303 of 2018 is closed.

सत्यमेव जयते

(M.V.J)

(S.V.N.J)

09.03.2018

Index: Yes

Internet: Yes

Speaking Order

CS

WEB COPY

To

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, St.Fort George,
Chennai-600 009.
2. The Additional Secretary (Technical),
Housing and Urban Development Department,
Secretariat, St.Fort George,
Chennai-600 009.
3. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu-Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.
4. The Executive Officer,
Naravarikuppam Town Panchayat,
Red Hills,
Chennai-600 052.

The seal of the Government of Tamil Nadu is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The lion capital is set against a background of the Indian national flag's saffron, white, and green horizontal stripes. The entire emblem is encircled by a green border containing the text 'GOVERNMENT OF TAMIL NADU' at the top and 'சென்னை மதுராசபுரம்' at the bottom. Below the seal, the motto 'सत्यमेव जयते' is written in Devanagari script.

WEB COPY

M.VENUGOPAL, J

and

S.VAIDYANATHAN, J

CS



Order in
Review Application No.14 of 2018
in
Writ Petition No.22058 of 2017

WEB COPY

09.03.2018