

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2018

PRONOUNCED ON : 09.03.2018

CORAM:

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

REVIEW APPLICATION (WRIT) NO.20 OF 2018

in

W.P.No.18437 of 2017

M.Malarvizhi

... Review petitioner

VS.

1. The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai 600 003.

2. The Zonal Officer,
Zone - VIII,
Corporation of Chennai,
No.36B, Pulla Avenue Road,
Shenoy Nagar,
Chennai 600 030.

3. S.K.Gopalakrishnan

... Respondents

Review Application filed under Order 47 Rule 1 C.P.C. r/w 114 C.P.C.
praying to review the order dated 12.01.2018 made in W.P.No.18437 of
2017.

For Review Petitioner : Mr.R.Sankara Subbbu

For Respondents 1 & 2 : Mr.A.Nagarajan

For 3rd Respondent : Mr.R.Raman Laal

ORDER**S.VAIDYANATHAN,J.**

Aggrieved by the dismissal order dated 12.01.2018 made in W.P.No.18437 of 2017, the Writ Petitioner has come up with this Review Petition, seeking to review the same.

2. According to the Review Petitioner, the 3rd Respondent has misled this Court that the property in possession and occupation of the Petitioner belongs to him, whereas, the Patta filed by the 3rd Respondent is only in respect of an extent of 755 sq. ft., which does not include the property of the Petitioner. It is the further case of the Review Petitioner that the 3rd Respondent has himself encroached a portion of the Government property and he has put up an unauthorized construction, without any approval or permission from the statutory authorities.

3. Heard the Learned Counsel on either side and perused the material documents available on record.

4. This Court, in the order under review, has opined that the Petitioner is an unauthorised occupant of the premises in question and that the premises is used only for residential purpose. The Review Petitioner has relied upon the observation made by this Court in the interim order dated 20.07.2017 made in W.P.No.18437 of 2017 and W.M.P.No.20004 of 2017 and

submitted that there is a prima facie case for grant of interim order. This Court, by means of the said order, directed the Respondents therein to de-seal the premises in question and made it clear that the Petitioner, under the guise of residing in the said premises, shall not run any Eatery/Mini Tiffin Centre or Hotel and shall use it only for residential purpose. Hence, in view of the said interim order of this Court, the Review Petitioner prays that she may not be disturbed from the premises in question.

5. On a reading of the said order, this Court is of the view that the order dated 20.07.2017 passed in W.P.No.18437 of 2017 and W.M.P.No.20004 of 2017, by no stretch of imagination, can be treated as a final order. In any event, a reading of paragraph 6 of the said interim order makes it very clear that the 2nd Respondent/Zonal Officer, Zone-VIII, Corporation of Chennai, shall also inspect the areas falling under its jurisdiction and file a Report as to how many Eateries/Mini Tiffin Centres are running without any authorization/licence/permission.

6. Pursuant thereto, when W.P.No.18437 of 2017 filed by the Review Petitioner was taken up for hearing on 12.01.2018, this Court, after hearing the Petitioner and the Respondents, passed a detailed order and the same is under review. For better understanding, relevant portion of the said order is extracted hereunder:

"7. Earlier, the 3rd respondent had filed a petition before the State Human Rights Commission in SHRC.No.537 of 2017 stating that the petitioner has encroached the platform in front of his house cum shop and built a shed running a tiffin centre and also that the 2 nd Respondent has not stated as to the result of the said petition. The 3 rd respondent submitted that the Human Rights Commission has directed the authorities viz., the Corporation to take appropriate action.

8. If the petitioner contends that she is residing there as a tenant and that she has got right to continue to run the business or to reside in the said place belonging to the 3 rd respondent, the writ petition is not an alternative remedy. The petitioner will have to workout the remedy before the appropriate forum. The relief sought for by the petitioner enabling this Court to give a helping hand for the petitioner to reside in the address mentioned supra on the ground that she will not run the tiffin centre without obtaining necessary licence from the Corporation, cannot be a ground to grant the same. By getting an order from this Court, the petitioner may try to run the tiffin centre and this Court cannot be a party to the illegality.

9. Therefore, the petitioner is directed to remove the canteen/tiffin centre within a period of 15 days from the date of receipt of a copy of this order, failing which, it is open to the respondent Corporation to remove the shed/tiffin centre with the assistance of the jurisdictional police."

7. The contention of the Review Petitioner is that she had already approached this Court in W.P.No.7892 of 2017 seeking a direction to the Respondents therein to consider her representation dated 16.03.2017 to remove the lock and seal from the premises in question and the First Bench of this Court, by an order dated 04.04.2017, disposed of the said Writ Petition by directing the 1st Respondent/Commissioner, Corporation of

Chennai, to pass appropriate orders on her representation.

8. By then, much water has flown in the case and this Court, by an order dated 12.01.2018 in W.P.No.18437 of 2017, which is the subject matter of review, has held that if the Petitioner contends that she is residing in the premises in question as a tenant and that she has got every right to continue running the business or to reside in the said place belonging to the 3rd Respondent, the same cannot be countenanced, as, Writ Petition is not an alternative remedy. This Court has also directed the Petitioner to remove the Canteen/Tiffin Centre within a stipulated time, failing which, the Respondent/Corporation shall take steps to remove the shed/Tiffin Centre with the assistance of the jurisdictional Police.

9. To substantiate his stand, Learned Counsel for the Petitioner has relied on the following decisions:

(i) **Sri Hanuman Vahana Panchaparva Kattalai attached to Sri Venkatachalapathi Perumal Temple vs. B.P.Subramanian, 1994 (1) L.W. 467**

"5. We may also note that in *Manickavasagam v. The Board of Revenue*, 86 L. W. 661, a Division Bench of this Court has stated that it cannot be laid down as a general proposition that once there was a demand by the landlord for possession from the tenant whose lease had expired by efflux of time, the continued possession in the hands of the erstwhile tenant would be unlawful or that he would be considered as a trespasser. The continued possession in the hands of such a tenant is protected by law. Such possession is quite good against the entire

world except the landlord himself. The landlord will be entitled to evict him by the appropriate proceedings. Until then, the erstwhile tenant cannot be regarded as being in unlawful possession. His possession is wrongful, but not unlawful. It is wrongful, because the erstwhile tenant continues in possession beyond expiry of the period fixed in the lease. It is not unlawful, because the landlord cannot take the law into his own hands and evict him. He can evict him only by proper procedure and that being the case, it cannot be said that the erstwhile tenant is in unlawful possession. Therefore, for the purpose of the Madras Cinemas (Regulation) Act, 1955 particularly Rule 13 of the Rules, merely because the lease period had expired, the tenant who overstays cannot be considered to be in unlawful possession. In other words, even in such a situation, Rule 13 is satisfied and such a tenant will be entitled to a renewal. So, I find no merit in this civil revision petition."

(ii) **S.P.Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead)**
by L.Rs., 1994 (1) SCC 1

"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

10. The above cases relied on by the Petitioner arise out of the order passed by the Civil Court and the same are not applicable to the case on hand. In the present case, the Petitioner cannot invoke Writ jurisdiction of the Court to adjudicate the disputed questions of facts.

11. Learned counsel for the Petitioner has further relied on a decision in the case of **Meera Bhanja vs. Nirmala Kumari Choudhury** reported in (1995 (1) SCC 170), wherein, while considering the scope of the power of review of the High Court under Order 47, Rule 1, C.P.C., the Apex Court has held as under:

"8. It is well settled that 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, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [(1979) 4 SCC 389 : AIR 1979 SC 1047], speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

"It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* [AIR 1963 SC 1909] , there is nothing in Article 226 of the Constitution to preclude the 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 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 power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

15. In our view the aforesaid approach of the Division Bench dealing with the review proceedings clearly shows that it has over-stepped its jurisdiction under Order 47, Rule 1, C.P.C. by merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position indicated by us earlier. In substance, the review Bench has re-appreciated the entire evidence, sat almost as Court of appeal and has reversed the findings reached by the earlier Division Bench. Even if the earlier Division Bench findings regarding C.S. Plot No. 74 were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an appellate court. learned Counsel for the respondent was not in a position to point out how the reasoning adopted and conclusion reached by the Review Bench can be supported within the narrow and limited scope of Order 47, Rule 1, C.P.C. Right or wrong, the earlier Division Bench judgment had become final so far as the High Court was concerned. It would not have been reviewed by re-considering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers. Only on that short ground, therefore, this appeal is required to be allowed. The final decision dated 8th July, 1986 of the Division Bench dismissing the appeal from appellate decree No. 569 of 1973 insofar as C.S. Plot No. 74 is concerned as well as the review judgment dated 5th September, 1984. in connection with the very same plot, i.e. C.S. Plot No. 74, are set aside and the earlier judgment of the High Court dated 3rd August, 1978 allowing the Second

Appeal regarding suit plot No. 74 is restored. The appeal is accordingly allowed. In the facts and circumstances of the case, there will be no order as to costs.”

12. Reliance placed on by the Learned Counsel for the Petitioner in the case of **Meera Bhanja** (*cited supra*) is not in favour of the Petitioner, as the Apex Court has clearly held therein that the parties cannot be permitted to re-argue a case and that the High Court ought not to have reviewed the order.

13. An error on the face of record must be such an error which must strike one or mere looking at the record and would not require any long drawn process of reasoning. The power of Review is not to be confused with an Appeal in disguise, which enables an Appellate Court to correct an erroneous decision by the process of "Rehearsing and Corrected". Review and Appeal cannot go together and Re-arguments in a case are not permissible in Review.

14. At this juncture, it is worth referring to the observation made by the Apex Court in the case of **Padma Sundara Rao v. State of Tamil Nadu** reported in (2002) 3 SCC 533, which is reiterated hereunder:

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be

remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board*. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

15. In view of the above decision rendered by the Apex Court in **Padma Sundara Rao's** case, the decisions relied on by the Learned Counsel for the Petitioner are not applicable to the facts of the present case and they are distinguishable on facts.

16. Coming to the issue on hand with regard to the maintainability of the review application, it is worth referring to the decision of the Apex Court in the case of **Kamlesh Verma vs. Mayawati**, reported in **2013 (8) SCC 320**, wherein, the Apex Court has 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."

17. 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.

18. Moreover, a Review Application cannot be entertained merely, as the Apex Court in the case of **Tamil Nadu Electricity Board Vs. N.Raju Reddiar**, reported in **1997 (9) SCC 736**, has observed as under:

"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. ... "

19. It is settled law that 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 under 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.

20. Having regard to the above, this Court does not find any error apparent on the face of the order under review in order to entertain the present Review Application. Accordingly, this Review Application is

dismissed. No costs. Consequently, connected W.M.P.Nos.4733 and 4734 of 2018 are closed.

(M.V.,J.) (S.V.N.,J.)

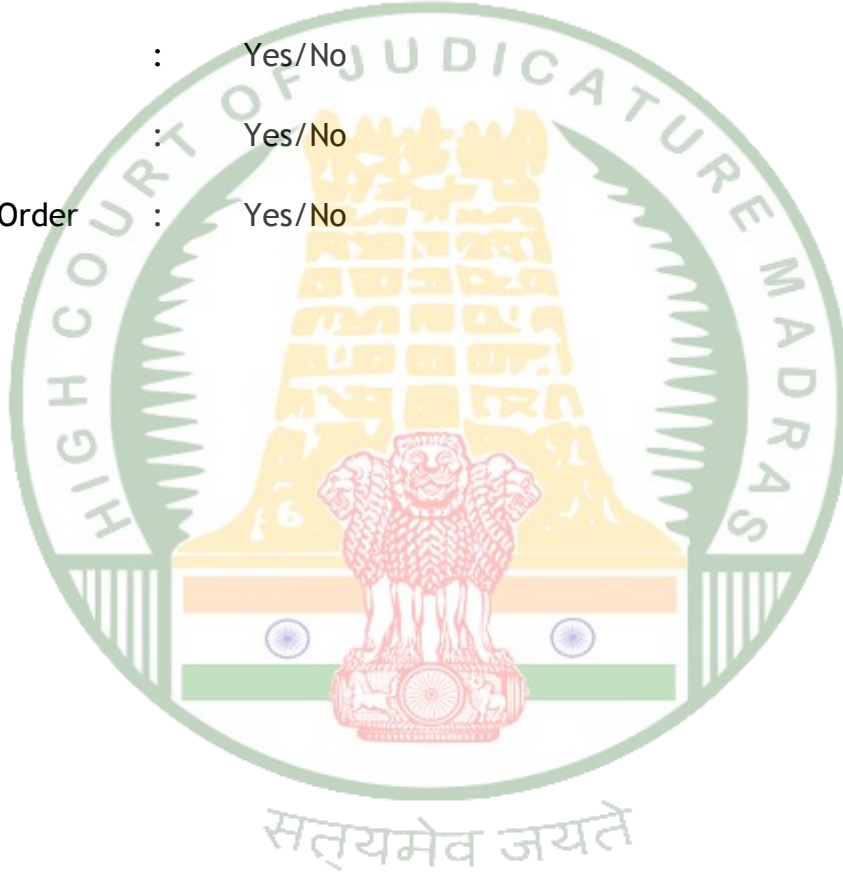
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S.VAIDYANATHAN,J.

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Pre-delivery Order
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