

In the High Court of Judicature at Madras

Reserved on : 28.03.2018

Pronounced on : 06.04.2018

Coram:

The Hon'ble Mr.Justice **M.VENUGOPAL**
and
The Hon'ble Mr.Justice **S.VAIDYANATHAN**

Review Petition No.52 of 2018 and
WMP Nos.9268 and 9269 of 2018

T.R.Ganesan

...Petitioner

Vs

1.The Assistant Divisional Engineer
The Tamil Nadu Highways Department,
Ambattur Sub Division,
Avadi, Chennai – 600 054

2. The Divisional Engineer,
Tiruvallur (H) C&M Division,
The Tamil Nadu Highways Department,
Tiruvallur

..Respondents

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Prayer: Review Petition filed under 47 Rule 1 of CPC r/w Section 114 of Civil Procedure Code to review the Order passed in W.P.No.34224 of 2017 dated 02.03.2018.

For Petitioner : Mr.M.Vijayakumar

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

ORDER

The Petitioner has preferred the instant Review Petition [as an aggrieved person] as against the Order dated 02.03.2018 in W.P.No.34224 of 2017 passed by this Court.

2. Earlier, this Court while passing orders in W.P.No.34224 of 2017 filed by the Review Petitioner, as Writ Petitioner, at Paragraph Nos.8 to 13 had observed the following and dismissed the Writ Petition.

“8. Since no action was taken by the Official of the Greater Chennai Corporation, viz., the Assistant Executive Engineer, Zone - XI, Greater Chennai Corporation, a Letter was addressed to the Tamil Nadu Urban Local Bodies, Ombudsman Saidapet, Chennai-2, vide Lr.No.Encroachment/2016/ODR/dated 28.03.2017, requesting to apply for necessary instructions being issued to the Assistant Executive Engineer, Zone - XI, Greater Chennai Corporation, to take action in regard to the clearances of encroachments in issue. Based on the Representation from the First Respondent Department, the

first Ombudsman, Tamil Nadu Local Bodies, Saidapet, Chennai, has ordered the Assistant Executive Engineer, Zone - XI, Greater Chennai Corporation, to explain the reason for delay in taking appropriate action on the objections of the petitioner and instructed him to attend his Office on 21.11.2017 for an Enquiry in regard to the delay in clearing the encroachment in respect of the property comprised in S.No.239/2. After a detailed Enquiry, that took place on 21.11.2017, at the Ombudsman Office with the Assistant Engineer (H) C & M, Poonamallee and Assistant Executive Engineer, Zone - XI, Greater Chennai Corporation, the first Ombudsman passed an Order that the Greater Chennai Corporation along with Highways Department should jointly clear the encroachment immediately from S.No.239/2 along with Bharathi Salai. Based on the Order of the Tamil Nadu Local Body, dated 21.11.2017, a Final Notice for eviction was served to all the encroachers on 12.12.2017, (which includes the petitioner herein) for whom, Show Cause Notices, dated 24.09.2016 were already issued.

9. Apart from perusal of the documents, the Respondents orally enquired with the said parties/encroachers at the site in Bharathi Salai and facts gathered clearly show that the Petitioner has no valid claim or right over the property, in question, and that, it belongs to the Government. Therefore, Notice issued to the Petitioner is maintainable both on facts and law. Also that, no Patta is

granted to the Petitioner and the mere pendency of the Application for Patta before the concerned Authority, per se, will not confer any right/title on him. Similarly, no reliance can be placed, curtailing the Government from taking necessary steps to remove the encroachments.

10. *Considering the fact that the Petitioner has no right over the property in S.No.239/2 and on perusal of his objections, dated 25.10.2016,, wherein, he had categorically mentioned that, he is occupying Eri Poramboke, viz., the property in S.No.239/2 and that, he had paid necessary House Tax, Electricity Charges, etc., this Court is of the considered view that, in respect of a Government Poramboke Land, and especially, encroachments being on the Eri Poramboke Land, in S.No.239/2, then, the Petitioner cannot claim any right over the same, and in this regard, the Petitioner also cannot place reliance or fall back upon the sale effected to and in his favour or his earlier vendor.*

11. *It is to be noted that the payment of Electricity charges, water charges, property tax and possession of Aadhar Card, Ration Card, Voter Identity Card, by no stretch of imagination, will confer any right/title to and in favour of the petitioner, who reside or occupy or made an encroachment in the property, which does not belong to him, and that too, when he is an encroacher in the 'Eri Poramboke Land' or Government Poramboke Land and fittingly, he can be termed as an "Encroacher" in law.*

12. *It cannot be gainsaid that the Writ Petitioner's*

father Mr.Ramayya, was issued with an Eviction Notice earlier by the Authorities and the Writ Petitioner, being his son, had responded to the Notice by receiving the Notice addressed to his father (since deceased) and take part in the Eviction Proceedings. Also that, the representation made on behalf of the respondents that the present Writ Petitioner had not informed about the death of his father to them.

13. *Thus, only after satisfying all the requirements of Law, and after issuance of Show Cause Notice to the Petitioner by the First Respondent, the Authorities had taken necessary action for eviction, and when it comes to light that the Petitioner has no manner of right, whatsoever, in the Government Eri Poramboke Land, then, there is no basis for him to challenge the Eviction Notice, and it is always open to the Authorities concerned to remove the encroachment made by the Petitioner in S.No.293/2, by putting up house or running a commercial Fast Food Shop, which will not enure to his benefit, any further."*

3. Apart from the above, this Court while dismissing the said W.P.No.34224 of 2017 on 02.03.2018 at Paragraph No.15 had observed the following:

"15. In fine, the Writ Petition is dismissed, leaving the parties to bear their own costs. It is open to the Officials of the Respondent/High Ways Department to take necessary steps to remove the encroachment in Eri Poramboke Land,

in S.No.239/2, where, the petitioner and his family resides and such exercise shall be done within a period of two weeks from the date of receipt of a copy of this order. It is made quite clear that, liberty is granted to the Authorities to seek assistance of the Police for removal of the encroachment or eviction of the petitioner, only if situation so warrants/if need be. No costs. Consequently, connected Miscellaneous Petition is closed.”

4. Challenging the order of dismissal dated 02.03.2018 in W.P.No.34224 of 2017 passed by this Court, the Learned Counsel for the Petitioner submits that the Petitioner is permanently residing in the ancestral house property measuring an extent of 1400 square feet (70X20) bearing Survey No.239/2 along with his family members for the past 40 years. Further, the Petitioner is paying property tax regularly and in fact, the Chennai Corporation had collected the property tax for the period till March 2018. सत्यमेव जयते

5. The Learned Counsel for the Petitioner brings it to the notice of this Court that the Tamil Nadu Slum Clearance Board through its proceedings dated 21.01.2005 addressed to the District Collector, Tiruvallur District had categorically pointed out that the 24 persons in Survey No.239/2 at Bharathi Salai in an extent of 0.40.00 hectare land

were residing for more than 20 years and in the aforesaid Survey Number, two places at Thirumalainagar(v) and Bharathi Salai for carrying out the work in an extent of 2.83.00 hectares [Eri Poramboke] land permission was sought to enter upon the same and thereafter, a recommendation was requested to be made for transferring the land title right. Therefore, it is the stand of the Petitioner that he comes under the afore stated Tamilnadu Slum Clearance Board Scheme and his property rights are recommended by the Government for all purpose and this aspect was not considered in the Impugned Order dated 02.03.2018 in W.P.No.34224 of 2017 by this Court and consequently, the Impugned Order in the Writ Petition is liable to be set aside.

6. Expatiating his submission, the Learned Counsel for the Petitioner contends that the Respondents nowhere had stated that the land was declared or classified as 'Highways' under Section 3 of the Tamil Nadu High Ways Act, 2001.

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7. The Learned Counsel for the Petitioner proceeds to point out that the Tamilnadu Local Bodies Ombudsman Act, 2014 is only for conducting an enquiry in respect of allegation against the elected members of Local Bodies and the Officers and Employees serving

under the Local Bodies in the State of Tamilnadu, pertaining to Corruption or Maladministration and in short, the Ombudsman had passed an order of eviction against the Petitioner without hearing him and also not having any jurisdiction in this regard.

8. The Learned Counsel for the Petitioner forcibly takes a plea that a Show Cause Notice dated 24.09.2016 was served upon the Petitioner on 17.10.2016 and the Respondents received the Petitioner's objection on 25.10.2016. As a matter of fact, the Respondents had not considered the objections of the Petitioner, therefore, the Respondents had not acted as per Section 28(2)(ii) of the Tamilnadu Highways Act, 2007 and consequently, the Impugned Final Order of Eviction passed against the Petitioner is an unlawful one.

9. The Learned Counsel for the Petitioner proceeds to point out that the distance of 'Bharathi Salai' is nearly 1/8 Kilometer and the impugned final notice of eviction dated 24.09.2016 refers to the distance of ¼ Kilometer on the right side in Survey No.239/2 [beginning from 1/8 Kms K.S.Salai to M.P.Salai via Valluvar Nagar to Ramapuram] wherein the house and shops were constructed in the Highways road.

10. The Learned Counsel for the Petitioner contends that the Greater Chennai Corporation had already constructed rain water drainage on both sides of entire stretch of Bharathi Salai and that the Respondents cannot extend the road beyond 66 feet in entire Bharathi Salai because of the fact both sides of the said Salai is beyond the existing 66 feet road and that the land belongs to an individual is a patta Land.

11. The Learned Counsel for the Petitioner submits that the SRM University is situated on the Bharathi Salai within 66 feet road and in fact the said University's compound wall and part of the building are put up in the very same Survey No.239/2. Furthermore, the final notice was issued to facilitate the full view of the entire SRM University Colleges elevation from the main road of the Valluvar Salai Junction and free vehicle movement for the college buses and their heavy vehicles. In fact, the act of the Respondents is a highly motivated and an illegal one.

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12. The Learned Counsel for the Petitioner also submits that the final notice / eviction was issued by the Respondents at the instigation of the Management of SRM University. Moreover, in Survey No.239/2, patta was given except the 24 persons, who are affected with the final

Impugned Order of Eviction.

13. It is represented on behalf of the Petitioner that the Petitioner had submitted his objection on 25.10.2016 and that was not taken into account by the authority concerned and also that there was a violation of 'Principles of Natural Justice' at the time of passing the Impugned Order dated 12.12.2017.

14. At this stage, this Court relevantly points out that the Petitioner in his Objection dated 25.10.2016 addressed to the 1st Respondent [for the Notice dated 24.09.2016] had categorically stated that the property in Survey No.239/2 was enlisted by the Revenue Authority as 'Poramboke' and his family is in possession of the property for the past 50 years. Moreover, he is paying the tax under 'B Memo', as per the Tamilnadu Panchayat Act, 1994 without any default. Apart from the above, the Petitioner at Paragraph No.5 of his Objection dated 25.10.2016 addressed to the 1st Respondent had proceeded to state that the site was enlisted as 'Poramboke' and it does not fall under the land controlled by the National Highways etc.,

15. It comes to be known that on 21.11.2017, Ombudsman of

Tamilnadu passed an order inter alia stating that the Greater Chennai Corporation together with the Highways Department should jointly clear the encroachment without any laxity in Survey No.239/2 along the Bharathi Salai.

16. Coming to the aspect of the 'Review Jurisdiction', this Court significantly points out that 'Review' is not an 'Appeal' in disguise. Moreover, 'Re-arguments' in a case are not permissible in 'Review'. Suffice it for this Court to point out that a 'Review Petition' has a restricted and limited purpose and the 'Power of Review' is not to be confused with an 'Appellate Power', which may enable the Appellate Court to correct the erroneous decision by Process of 'Reheard and Corrected'. The position of Review in Law is that 'Review' erases the previous Judgment operates as Law from the beginning. Only a 'Manifest Error' can be a ground for 'Review', if there is no error apparent on the face of record in the Order / Judgment assailed, then, 'Review Petition', is not maintainable in Law. The 'Review' of an Order cannot be asked for even under the grab of a clarification, as opined by this Court.

17. In a Review Petition, a Court of Law cannot re-appreciate

evidence and come to a different conclusion on the questions of fact different than earlier conclusion arrived at in this regard. An error on the face of record ought to be an error which should strike on the mere looking at the record and may not require any along drawn process of reasoning.

18. At this juncture, this Court, aptly points out the Division Bench decision of this Court in **K.K.Pudur Residents' Welfare Association rep. By its President, 5/6, Bhavani Street, Kaveri Nagar, K.K.Pudur, Coimbatore V. 1. The District Collector, Coimbatore and four others reported in 2017 [1] CWC at Page 646**, wherein it is observed that once it is not in dispute that road is a public road vesting with Local Authority, occupation / encroachment for any length of time cannot confer any kind of indestructible right to encroachers. Further, it is held that just because Slum Clearance Board had spent money for basic amenities, it cannot be said that the encroachers have indestructible right and added further, it was observed that the State in General and Revenue Authorities in particular have Sanctus duty to ensure that the public roads are not encroached.

19. It is stand of the 1st Respondent / Assistant Division Engineer,

Tamilnadu Highways Department, Ambattur, Chennai in the main Writ Petition that the property in Survey No.239/2 is classified as 'Eri', as per Revenue Records, which fact was admitted by the Petitioner's representation / objection dated 25.10.2016. As such, the plea of the Petitioner that his objection dated 25.10.2016 was not taken into account by the authority concerned and further that, there was a violation of 'Principles of Natural Justice' at the time of passing the Impugned Order are Otiose and Futile one. Further, in respect of the property located in the Government Land, patta will never be issued by the Revenue Officials. Furthermore, the Petitioner has no semblance of right whatsoever in the 'Eri Poramboke' Land. Viewed in that perspective, there is no impediment in Law for the concerned authorities to remove the encroachment in Survey No.239/2 [Eri Poramboke Land] where the Petitioner and his family resides, in the considered opinion of this Court.

20. In the light of aforestated detailed qualitative and quantitative discussions and also this Court, taking note of the surrounding facts and circumstances of the present case in a wholesome manner comes to an inescapable conclusion that the Petitioner has not made out a case for 'Review' because of the reason the order dated 02.03.2018 in

W.P.No.34224 of 2017 passed by this Court does not suffer from any mistake or an 'Error Apparent on the Face of Record'. Looking at from any angle, this Review Petition fails.

In fine, the Review Petition stands dismissed. Consequently connected Miscellaneous Petitions stand closed.

[M.V.J.]

[S.V.N.J.]

06.04.2018

Index:Yes/No.

Internet:Yes/No.

Speaking Order / Non speaking order

ssd

To

1.The Assistant Divisional Engineer,
The Tamil Nadu Highways Department,
Ambattur Sub Division,
Avadi, Chennai – 600 054

2. The Divisional Engineer,
Tiruvallur (H) C&M Division,
The Tamil Nadu Highways Department,
Tiruvallur

M.VENUGOPAL,J.,

and

S.VAIDYANATHAN,J.,

ssd



Pre-delivery order made in
Review Petition No.52 of 2018 and
WMP Nos.9268 and 9269 of 2018

06.04.2018

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