

In the High Court of Judicature at Madras

Dated: 25.04.2018

Coram:

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

Review Petition No.53 of 2018

B.Sumathi

... Review petitioner

vs.

1.R.S.Manogaran

2. The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai

3. The Executive Engineer,
Town Planning Section
Greater Chennai Corporation,
Ripon Building, Chennai

4. Chief Engineer
(Building, SWM and Mechanical Dept.)
Greater Chennai Corporation,
Ripon Building, Chennai

5. The Zonal Officer,
Zone XIII, Chennai Corporation,
L.B.Road, Dr.Muthulakshmi Salai,
Adyar, Chennai – 600 020

6. The Slum Clearance Board,
No.5, Kamaraj Salai,
Chennai - 5

...Respondents

Review Petition filed under Order 47 Rule 1 of CPC r/w Section 114 of C.P.C. praying to review the order dated 24.01.2018 made in W.P.No.34046 of 2017.

For Petitioner : Mr.S.Udhayakumar

For Respondents : Mr.A.Nagarajan for R1 to R4
Mr.S.Prabhu to R5

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ORDER

Aggrieved by the order dated 24.01.2018 made in W.P.No.34046 of 2017, the Review Petitioner / 6th Respondent in the writ petition has filed this Review petition seeking to review the same.

2. The writ petitioner, namely R.S.Manogaran, originally filed W.P.No.34046 of 2017 seeking a direction to the 3rd respondent therein to take action and remove the unauthorized structure situated at Door No.5/5, K.V.B.Garden, Raja Annamalaipuram, Mandaveli, Chennai – 600 028. This Court, on 24.01.2018, after considering the submissions made by the respective parties had disposed of the said writ petition by holding as under:-

“8. The property in question is certainly not a poramboke land, as it has been pointed out by the 2nd

Respondent/Corporation in their counter, that the land has been allotted to the 5th Respondent/Slum Clearance Board. Since it is stated that the 6th Respondent has no title to the property, she has no right to continue in the said place. Though, it is stated by the 2nd Respondent/Corporation that the 6th Respondent had closed the passage with a wooden door, the same will not hinder the 2nd Respondent/Corporation and the 5th Respondent/Slum Clearance Board to remove the encroachments.

9. At this stage, it is represented by the learned counsel for the 6th Respondent that not only the 6th Respondent, but several other persons have encroached the area in question. It is needless to point out that the 2nd Respondent/Corporation shall take steps to evict the encroachers, as the encroachers, cannot, as a matter of fact, continue to stay in the public road or in the place that does not belong to them.

10. The 2nd Respondent/Corporation and the 5th Respondent/Slum Clearance Board, shall jointly remove the encroachments in and around the area in question, with police protection, within a period of one month from the date of receipt of a copy of this order. The TANGEDCO/Electricity Board of that area/division must ensure that electricity is disconnected, if there is an intimation from the Corporation and/or from the Slum Clearance Board, that there is an encroachment in the subject matter of the area in question. The passage said to have been closed by the 6th Respondent herein, as pointed out in the counter of the 2nd Respondent/Corporation, shall

be removed within a period of one week from the date of receipt of a copy of this order.

The Writ Petition is disposed of with the above direction(s) and observation(s). No costs.”

3. The learned counsel for the review petitioner contended that the review petitioner is residing in the land in question for the past 45 years and she is doing business of selling flowers and that she does not have anybody to support her.

4. Further, it is the contention of the learned counsel for the petitioner that the petitioner has constructed a small thatched house which is behind preschool. The petitioner has not encroached upon the land earmarked for the school and that the writ petition was filed on account of a dispute between the petitioner and her neighbour, namely Purushothaman. Now, recently he has demolished the house and constructed a godown for business purposes.

5. It is contended by the learned counsel for the petitioner that unable to bear the trouble given by said Purushothaman, who attempted to encroach upon the passage, the petitioner lodged a complaint before the Abiramapuram police station, against Purushothaman on 12.05.2017

Purushothaman instigated the writ petitioner to file the said Writ Petition with a malafide intention of depriving her of the thatched house and snatch the land.

6. The learned counsel for the petitioner brings it to the notice of this Court that the writ petitioner, namely, Manogaran has got nothing to do with the property and he is residing in the different place. The Slum Clearance Board is aware of the petitioner's possession of the premises and they never disturbed her and now, the Slum Clearance Board is forced to take action on the strength of the order passed by this Court.

7. Lastly, the learned counsel for the review petitioner submits that the passage mentioned by the Slum Clearance Board is used only by the review petitioner and the passage is leading to the petitioner's premises only. No other person in the area require the passage for access and it is closed at the other end. The review petitioner has not encroached upon the pre school land, as alleged by the Slum Clearance Board, but occupying the Slum Clearance Board.

8. To maintain a review application, the review petitioner must satisfy the three requirements of Order 47 Rule 1 of C.P.C. i.e.

- (i) From discovery of new and important

matter or evidence which after exercise of due diligence was not within his knowledge (or) could not be produced by him at the time when the decree was passed (or) order made;

(ii) There is some mistake (or) error apparent on the face of the record in the judgment under review; and

(iii) or any other sufficient reasons.

9. The basic principle to entertain the review 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 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.

9. 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.

10. In "***Shanmuga Sundara Nadar vs. Tamil Nadu Housing Board, rep. by its Chairman, Madras and others***", reported in **1988 (2) L.W. 57 (MAD.)**, this Court held as under:

"The power to review is a restricted power which authorises the Court to look through the judgment not in order to substitute a fresh or second judgment but in order to correct it or improve it, because some material which it ought to have considered has escaped consideration or failed to be placed before it for any other reason or because it suffers from a patent error which cannot be sustained by any process of reasoning. The Court cannot under cover of review arrogate to itself the power to decide the case over again because it feels then that the assessment of evidence, etc., done formerly was faulty or even incorrect. An erroneous view of evidence of law is not a ground for review. A wrong exposition of the

law, a wrong application of the law and failure to apply the correct law have been held to be not a ground for review."

11. In "**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 long drawn 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."

12. Having regard to the above, this Court does not find any error apparent on the face of the order in order to entertain the present review application.

Accordingly, this Review Petition is dismissed.

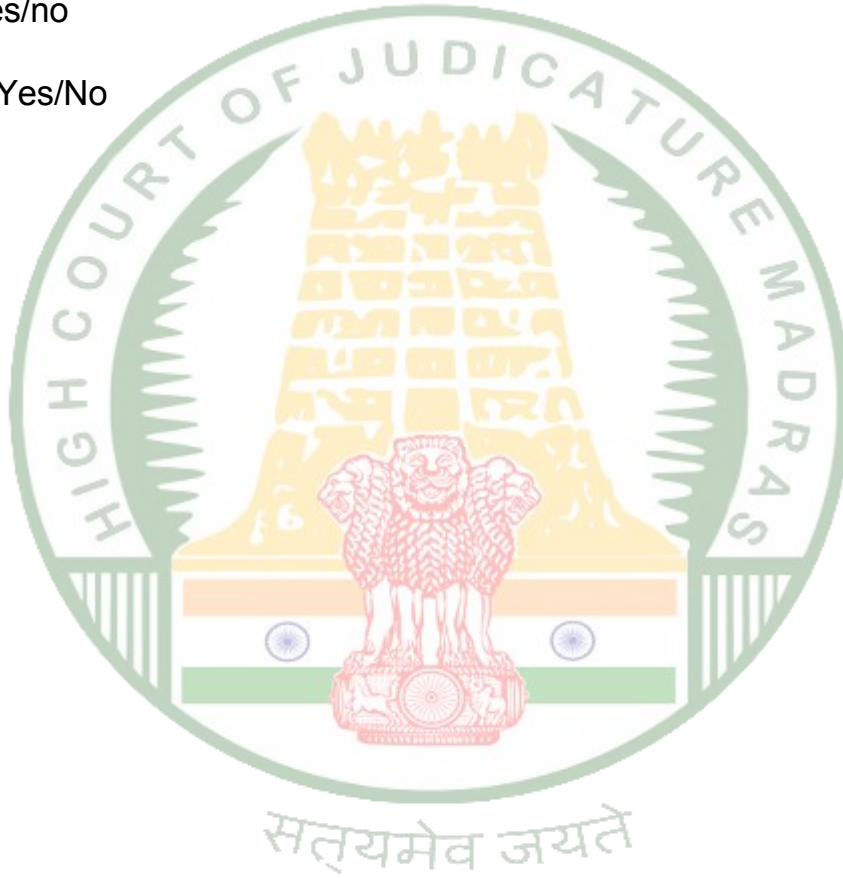
[M.V.J.,] [S.V.N.J]

25.04.2018

Index: Yes/no

Internet: Yes/No

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**M.VENUGOPAL,J.,
and
S.VAIDYANATHAN, J.,**

ssd



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