

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.56 of 2018 and
WMP No.10179 of 2018

G.Vivek Kumar ... Review petitioner

Vs.

1. The District Collector,
Collectorate Building,
Coimbatore – 641 018

2. The Commissioner,
Corporation of Coimbatore,
Coimbatore – 641 001

3. The Member Secretary,
Coimbatore Local Planning Authority,
Sivananda Colony, Tatabad,
Coimbatore – 641 012.

4. Mrs.Kiran Bai ... Respondents

Review Petition filed under Order 47 Rule I CPC r/w Section 114
C.P.C. praying to review the order dated 07.02.2018 made in
W.P.No.6516 of 2017.

For Petitioner : Mr.Om Prakash, Senior Counsel
M/s Ramalingam & Associates

For Respondents : Mr.A.N.Thambidurai for R1 to R3

Special Government Pleader

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ORDER

[Order of the Court was made by S.VAIDYANATHAN,J.,]

Aggrieved by the order dated 09.01.2018 made in W.P.No.14520 of 2017, the Review Petitioner / 4th Respondent in the writ petition, has filed this Review petition seeking to review the same.

2. The writ petitioner, namely, Kiran Bai, originally filed W.P.No.14520 of 2017 seeking a direction to the respondents 1 to 3 to take immediate action by removing the illegal / unauthorised construction being put up by the Review Petitioner / 4th Respondent at No.212, T.V.Swamy Road, R.S.Puram, Coimbatore, which adjoins the 4th Respondent / Petitioner's property. After hearing the learned counsel for the respective parties, this Court allowed the said Writ Petition on 09.01.2018, by holding as under:

“13. It is disheartening to note that many buildings, including individual houses, Apartments, Commercial Complexes, etc. are constructed in violation of the sanctioned Plan, without leaving proper setback and in several cases, knowing well that it is a public road and Park, constructions are made. The fact remains that only the owner of the building is at loss, when a building, which is not constructed in accordance with the Plan, is ordered to be demolished, and the authorities, who issue Completion

Certificate to such buildings, make hay while the sun shines. It is in collusion with the officials, these buildings are raised and on complaint, this Court directs them to be razed. This Court is of the view that unless a liability is fixed on the Government Servants, it will be very difficult to curtail encroachments. To safeguard the interest of the public at large, this Court issues the following directions:

(i) *After getting the approved Plan, once the basement of the building is constructed, the applicant shall approach the authorities concerned seeking to inspect the site before further progress, to ensure that there is no encroachment on the road and that there is proper setback on all sides, in accordance with the Plan. The authorities concerned shall inspect the site within 15 days from the date of such application and point out the defects, if any;*

(ii) *Once the structure of the building is completed as per the Plan, the applicant shall apply for Completion Certificate, be it to the Corporation/ CMDA/Municipality/Local Authority, etc., and the authorities concerned shall inspect the building as to whether it is constructed as per the sanctioned Plan, within a period of 15 days from the date of receipt of application;*

(iii) *If any violations are pointed out by the said authorities, the applicant shall rectify the defects and send the Compliance Report to the authorities, who, on receipt of the same, shall again inspect the building and issue Completion Certificate to the applicant, if the building is in accordance with the sanctioned Plan. Such exercise shall be completed within a period of 15 days from the date of*

receipt of the Compliance Report from the applicant;

(iv) After obtaining Completion Certificate, if any construction is made in violation of the Approved Plan, such violated construction shall not be regularized at all;

(v) Thereafter, it is open to the applicant to apply for Electricity service connection/Water and Sewerage connection to the authorities concerned. The authorities of Tamil Nadu Electricity Board/Tamil Nadu Water and Sewerage Board shall effect the respective service connection to the applicant, only on receipt of a copy of the Building Completion Certificate issued by the Corporation/Municipality/local authority concerned;

(vi) The Officials concerned shall visit the site at every stage of completion of the building as may be identified or intimated to the authorities and that the second floor and floors above, shall be inspected at the stage of completion by CMDA/Corporation/local authority under whose jurisdiction, it falls, to avoid construction of buildings with violations;

(vii) The conditions applicable to multi-storied and special buildings shall also be equally applicable to the buildings that are constructed as per the Plan sanctioned by the Corporation / CMDA/ Municipality/local authority;

(viii) The authority, who issues Completion Certificate to the applicant, shall furnish a copy of his Aadhar Card/Government Identity Card/Employment Card/PAN Card/Passport, if any, with the Completion Certificate, so that he cannot escape from the clutches of law, in case, if he had issued Completion Certificate to a building constructed

in violation of the sanctioned Plan;

(ix) If there is any complaint from the applicant with regard to the non-issuance of Completion Certificate on the ground that officials have demanded bribe, such complaint will have to be investigated and in case, it is established by means of an enquiry, major penalty under various provisions of law/Service Regulations, shall be imposed on the officials demanding bribe and the same shall be entered into their service records.

(x) Details of the authorities, who sanction the Building Plan/inspects the Building/issues Completion Certificate, need to be uploaded in the internet together with their Employment Card, so that the applicant can have access to the same and in case of violation of the building Plan, the officials can be brought to book.

14.It is made clear that no interim order or final order shall be passed by the Courts below in any petition for effecting electricity supply, without ascertaining the fact from the Corporation/Municipality/CMDA or any local authority. It is further made clear that till Rules/Regulations are framed for inspection of site at every stage, the directions stipulated supra have to be followed by the authorities. The conditions mentioned in this order will apply even to the on-going constructions.

15.Registry is directed to mark a copy of this order to (i) the Commissioner of Land Administration, Chennai (ii) the Secretary to Government, Housing and Urban Development Department, Chennai (iii) the Secretary, Revenue Department, Secretariat, Chennai, (iv) the Director

of Town and Country Planning Department, Chennai, (v) the District Collector, Chennai, (vi) the Chief Secretary to Government, Secretariat, Pondicherry and (vii) the District Collector, Pondicherry, who shall forward the same to all the Departments working under them, to enable them follow the directions issued in this order, in letter and spirit.

16. The Registrar-Judicial (i/c) of this Court is directed to place this order before the Hon'ble The Chief Justice for marking a copy to all the Subordinate Courts in Tamil Nadu and the Union Territory of Pondicherry.

*In fine, the **Writ Petition is allowed with the above directions and observations. No costs.***"

3. The submission of the learned counsel for the Review Petitioner are as follows:-

(i) The order dated 09.01.2018 in W.P.No.14520 of 2017 passed by this Court is required to be reviewed based on the subsequent developments, wherein the Review Petitioner has removed a portion of the objectionable construction and he further seeks permission of this Court to have a construction to the minimum extent within the purview of the approved plan of construction. Learned Counsel for the Review petitioner submitted that the Review is required to be considered to meet the ends of justice and the parties be accorded an opportunity to redress the issues and seek for justice.

(ii) The Order dated 09.01.2018 in W.P.No.14520 of 2014 passed

by this Court is based on misconception of facts and on account of the false and misleading statements made by the 4th respondent / writ petitioner before this Court and with an intention to obtain an order from this Court prejudicial to the interest of the review petitioner. The review petitioner with a clear remorse is coming forward to comply with the law and in fact, giving up his rights attached to the property, which is guaranteed under Constitution and undertakes to have a small portion of construction within the purview of the approved plan and not to claim any other right.

(iii) The review petitioner states that the order dated 09.01.2018 passed by this Court affects the substantial right of the review petitioner herein. The 4th respondent / writ petitioner had approached this Court by filing the above said Writ petition aggrieved by the proposed construction. The building structure of the property owned by the 4th respondent / writ petitioner is more than 100 years and is in a very dilapidated condition. Except the 4th Respondent / writ petitioner, others have vacated the entire property.

(iv).The learned counsel for the Review Petitioner brings it to the notice of this Court that the review petitioner had failed to place certain facts for material consideration of this Court at the time of hearing of the

relied on the revised plan submitted to the authorities and requested this Court to consider the same by issuing necessary directions. However, the review petitioner by expressing remorse for his conduct is now, seeking to review the order dated 09.01.2018 based on the subsequent developments and on the facts by issuing modification to the said order to enable the review petitioner to construct within the approved plan with a small extent of 2000 Sq.Feet in the ground floor.

(v). The learned counsel for the review petitioner also contends that the land situated in Door No.212, TV samy Road, R.S.Puram, Coimbatore, measuring an extent of 8050 sq.ft., was originally owned by Rajamani, grandmother of the review petitioner. On executing a release deed no.552/2002 on February 18th of 2002 by Mrs.Rajamani, the property devolved upon the review petitioner's mother and her brother, Mr.Mohan Murali, on the death of mother, the review petitioner and his sister became jointly entitled to the half undivided share in the property.

(vi)The review petitioner and his sister had filed a suit for partition of the property by two equal shares and to allot the share of the property abutting the land of the 4th respondent herein in their favour, in O.S.No.382/2014, which is pending on the file of the District Court, Coimbatore. The other side of the subject property is to be allotted to the

maternal uncle of the review petitioner. In the meanwhile, the review petitioner had jointly applied for demolition and reconstruction in the subject property and in terms of the approved plan, construction was started in the portion of the property meant for the review petitioner.

(vii) the review petitioner had demolished the pillars, which are above the slab concrete of the basement area, closed the basements with the concrete walls, so that no access to the basement floor is provided. The construction in the basement has been done by earth excavation, including removing hard strata using hydraulic breakers and putting up concrete shear wall and slab concrete. The entire concrete shear wall and slab of the said basement area had cost the review petitioner about a sum of Rs.36 Lakhs and if the same had to be demolished, it would require spending further huge money. That apart, the Review petitioner will not be able to put up any construction in the ground floor or stilt floor by any foundation, as the underground earth has already been excavated. Any construction after filling up of the said land will be only on loose soil and there will be a danger to the construction, which has to come up.

(viii) Therefore, as per the advise from the chartered civil engineer and registered valuer, the review petitioner, intend to retain the concrete shear wall and slab, as foundation and plinth level of the building and to

proceed with construction on the same and on account of the same, the review petitioner will not be in violation of the approved plan as well as the order of this Court and hence, the petitioner seeks to review the order for the limited purpose of considering the said aspects.

(ix). Moreover, the review petitioner had obtained necessary opinion from the experts as well as on legal advice hereby expressly undertake to this Court that on permitting him to use the sheer wall and slab concrete as a foundation and plinth level of the building and proceed with construction of the building in the ground floor, he will not use any area as basement in order to claim any right over therein. The Review petitioner has also closed the entire basement area with the concrete wall and provided for landing step from the ground floor, so that it is used only as a foundation for the construction in the ground floor.

(x) If the review petitioner is not permitted to use the construction of the shear wall and slab and proceed with construction of the ground floor, he will be put to serious hardship and loss, which is irreparable, apart from that, the review petitioner will also be put to huge monetary loss.

(xi) The review petitioner had demolished the pillars, put up above

the concrete slab, closed the basements with the concrete walls and provided a landing steps from the ground floor and undertakes to construct a ground floor of building with necessary set backs provided on the slab concrete, using the same as parapet wall and comply with the statutory regulations, if being permitted by this Court. He will not seek any right for any other construction in the property and the construction proposed will be within the approved plan and the same can be monitored by the officials of the Coimbatore Corporation.

3. Lastly, the learned counsel for the review petitioner prays this Court to review the final order in the writ petition for the purpose of issuing necessary modification, as sought for, by taking note of the undertaking and remorse of conduct expressed by the Review Petitioner.

4. In the Writ Petition, the contentions of the learned counsel for the parties were heard in detail and a detailed order with the directions has been passed. Earlier, this Court has taken note of the entire facts and passed final orders and the Supreme Court has come down heavily with regard to the encroachment matters. That apart, there is no ground to review this order.

5. 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.

6. 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.

7. 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.

8. 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."

9. 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 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."

10. 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.

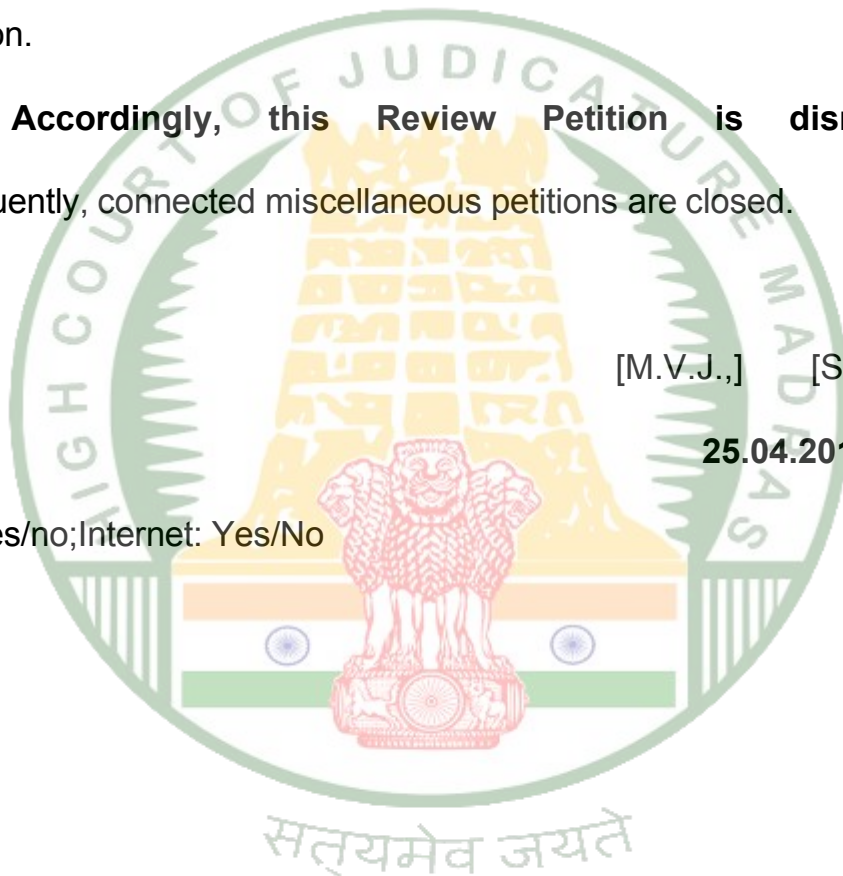
Consequently, connected miscellaneous petitions are closed.

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

25.04.2018

Index: Yes/no;Internet: Yes/No

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and
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