

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.61 of 2018 and
WMP No. 10818 and 10819 of 2018

R.Mohala

... Review petitioner

vs.

1.M.Siva

2. The Director,
Town and Country Planning Department,
No.802, Annasalai,
Chennai – 600 002

3. The Commissioner of Municipal Administration
Ezhilagam, Chepauk, Chennai – 600 005

4. The Regional Joint Director of Municipal
Administration, No.124, G.S.T.Road
Chengalpattu

5. The Assistant Director,
Town and Country Planning Department,
No.56-A, Government Hospital Road,
Villupuram

6. The Commissioner,
Panruti Municipality, Panruti

7. The Branch Manager
Canara Bank,
Rajaji Street, Panruti

...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.N.L.Rajah, Senior Counsel for
Mr.S.Gururaj

For Respondents : Mr.Kannan Kumar for R1
Mr.A.N.Thambidurai for R2 to R5
Special Government Pleader

* * * * *

ORDER

(Order of the Court was made by S.VAIDYANATHAN,J.)

Aggrieved by the order dated 07.02.2018 made in W.P.No.6516 of 2017, the 7th Respondent in the Writ Petition has filed this Review petition seeking to review the same.

सत्यमेव जयते

2. The writ petitioner, namely M.Siva, originally filed W.P.No.6516 of 2017 seeking a direction to the 5th respondent to take action against the Review Petitioner / 7th Respondent's unauthorised construction located at Door No.84, 85-A, Kumbakonam Road, Ward-A, Block No.50, T.S.No.37, 38, 39, Panruti Town as per the letters of the 4th Respondent dated 10.06.2016 and 15.12.2017 and by affording opportunity to all concerned. In short, the plea of the petitioner therein is that when the construction has been made in violation of the sanctioned

plan by the Review Petitioner / 7th Respondent, the entire violated portion has got to be razed to the ground.

3. After hearing the learned counsel for the respective parties, this Court allowed the said Writ Petition on 07.02.2018, by holding as under:

“The petitioner has come forward with this writ petition to direct the 5th respondent to take action against the 7th respondent's unauthorised construction located at Door No.84, 85-A, Kumbakkonam Road, Ward-A, Block No.50, T.S.No.37, 38, 39, Panruti Town.

2.The case of the petitioner is that the 7th respondent has started construction for underground (basement) floor without any approval and that she has put up construction in violation of the Plan. The sum and substance of the pleadings of the petitioner is that when the construction has been made in violation of the sanctioned Plan, the entire violated portion has got to be razed to the ground.

3.Learned counsel for the petitioner contended that the 7th respondent had applied for Planning permission and that Planning permission for ground floor and first floor has been obtained and thereafter, even though an application for additional construction has been made, it has not been processed and orders have not been passed and without waiting for an order from the authorities concerned, she started construction.

8.It is not in dispute that the 7th respondent has obtained sanctioned Plan only to an extent of ground floor +

first floor and beyond the first floor, there is no Planning approval granted by the authorities. That apart, there is also a construction in the basement, which has not been approved by the authorities. Merely making an application for construction of additional floors could not be construed that there is a deeming permission granted to the 7th respondent to construct the building in violation of the Plan. In this case, as stated supra, admittedly there is no Planning permission given by any one, much less the authorities in question beyond ground floor + first floor.

14. As far as the undisputed facts are concerned, there is a building in existence which is in violation of the Plan, for which a notice has been issued and that a communication dated 06.04.2016 from the Panruti Municipality has been issued to the 7th respondent which is very clear that the 7th respondent cannot carry on with a building construction, which has not been approved. If the contention of the 7th respondent is accepted that when an application is pending before the authorities, it is open to her to construct without any sanction and that the same has got to be approved by the authorities, it would amount to putting the Cart before the Horse.”

4. Learned counsel for the Review Petitioner contended that Sections 197 to 203 of Tamilnadu District Municipalities Act, 1920 would have application even in cases where a building is being reconstructed and not just in cases of construction of a new building. Further, since, O.S.No.15 of 2016 is pending on the file of learned District Munsif, Panruti, the Writ Petition under Review is hit by constructive *resjudiata*

and *res subjudis*. According to the counsel for the Review Petitioner, the said aspects were not considered by this Court.

5. In the Writ petition, the contentions of the learned counsel for the parties were heard in detail and a detailed order has been passed to demolish the violated portions caused by the Review Petitioner / 7th Respondent within a time frame. Even though the Review Petitioner drew the attention of this Court to the provisions of Sections 197 to 203 of Tamilnadu District Municipalities Act, 1920 and contended that it does not fall under any of the said provisions, this Court has taken note of the entire facts and passed final orders and the Supreme Court has come down heavily with regard to encroachment matters. That apart, there is no ground to review this order.

6. To maintain a review application, the review petitioner must satisfy the three requirements of Order 47 Rule 1 of C.P.C., which are as under:

- (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.

7. 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.

8. 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.

9. 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."

10. 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."

11. 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
Speaking Order : Yes/No
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