

WMP.No.12937 of 2019
in
WP.No.28791 of 2017

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

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

When this writ petition along with other cases, is posted today, under the caption "for reporting compliance", as the same was disposed of as early as on 05.02.2018, a petition in WMP.No.12937 of 2019 has been filed, by the third parties to the said writ petition viz., N.Ramachandran and others, seeking leave of this Court to recall the aforesaid order dated 05.02.2018 passed in WP.No.28791 of 2017.

2.Even though the matter is pending for more than a year, no steps have been taken by the petitioners to challenge the aforesaid order dated 05.02.2018 before the Apex Court, as the observation made in the same, more particularly Paragraph No.6, which is extracted below, is against them:

"6.Though the encroachers are not made parties before this Court and that there is possibility of the children of those persons who may be studying the said school, we make it clear that while taking action under the provisions of the Tamil Nadu Land Encroachment Act or

under any other enactment, the electricity supply to those encroachers must be disconnected with effect from 14.06.2018. In this regard, we suo-motu implead the Assistant Engineer, TANGEDCO/TNEB, Kumananchavadi Range, Senneerkuppam Village, Poonamallee, Chennai-56, as fifth respondent in this writ petition.”

3.Though this Court used the word 'encroachers' at paragraph no.6 of the aforesaid order dated 05.02.2018, the ball is in the Court of Authority concerned and they have to ascertain as to whether the petitioners are the encroachers or not.

4.Some of the petitioners have already approached this Court by filing WP.Nos.5507/2019 etc. batch of cases as against the order of eviction passed by the District Collector, Tiruvallur District and the First Bench of this Court, vide order dated 26.02.2019, directed the authority concerned to dispose of the stay applications of the petitioners within a period of one week and thereafter decide the appeals, as expeditiously as possible.

5.As directed by this Court, the appeal petition preferred by the petitioners herein along with others, has been rejected by the Additional Chief Secretary to Government, Revenue and Disaster

Management Department, Land Disposal Wing Section, Secretariat, Chennai-9/Appellate Authority, vide G.O.(Ms) No.104 dated 25.04.2019, holding that 'the petitioners therein are encroachers'. Since the Government has passed the final order with regard to the issue involved herein, it is open to the petitioners to challenge the same, if they are so aggrieved.

6.Now, the petitioners attempt to reopen the writ petition by means of getting an opportunity of hearing before this Court and quote the decisions of the Apex Court stating that the High Court has got powers to review its own order in order to prevent miscarriage of justice or to correct grave and palpable errors committed by it. It is further argued on the side of the petitioners that even though the petitioners were not the parties to the writ petition, they are the affected parties and hence, they have to be given an opportunity of hearing, by recalling the order dated 05.02.2018.

7.It is to be noted that the observation made by this Court is only for recording compliance. After the order was passed on 05.02.2018, the petitioners have appeared on no occasion either before this Court, when the matter was posted for reporting

compliance or before the authority concerned, when the appeal petition was pending. However, the authority concerned, without influenced by the observation made in the writ petition, independently came to the conclusion that the petitioners are encroachers.

8.It is no doubt true that in the petition for recalling the order, this Court cannot go into the merits of the matter, but simply recall the order, when the affected parties were not heard.

9.Admittedly, the petitioners were not parties to the writ petition. That is the reason, this Court had used the word 'encroachers' in paragraph no.6 of the order, which is extracted supra. In the said order, this Court issued a direction to the authority concerned, which has no bearing on the petitioners, but, at their behest, this Court need not interfere with the said order. Hence, this Court cannot recall the aforesaid order at this stage, as much water has flown.

10.For the sake of argument, the aforesaid order is going to be recalled, even then, the remedy available to the petitioners would be only to approach the authority concerned and establish that they are not the encroachers. This has already been done by the authority

concerned by passing the order dated 25.04.2019 holding that 'the petitioners are encroachers'.

11.The Apex Court at paragraph no.8 of the decision in the case of **Johra and others v. State of Haryana and others [(2019) 2 SCC 324]**, has held as follows:

“8.The fact that a person is made a party to the judicial proceedings in relation to a certain dispute, has a legitimate right to raise an objection that before passing any order in such proceedings, he should be at least heard and his views/stand in relation to the subject-matter of the proceedings be taken into consideration. The Court is duty-bound to hear all such person(s) by giving them an opportunity to place their stand.”

12.From the above, it is very clear that the Court is bound to hear all the parties to the proceedings before passing any order in such proceedings. In the present case, since the petitioners were not parties to the writ petition, this Court, in order to safeguard their interests, directed the authority concerned to decide whether they are encroachers. If so, the electricity power supply to those encroachers was directed to be disconnected and the writ petition was disposed of accordingly. Thus, the petitioners were afforded opportunity to establish their stand before the authority concerned, which they

miserably failed to avail. Without filing any petition to implead themselves as parties to the writ petition for more than a year, the petitioners cannot now seek leave of this Court by filing the present petition to recall the order of this Court dated 05.02.2018.

13.As stated supra, even assuming that the petitioners' contention is accepted, they are not going to get any relief, as this Court was not inclined to decide any disputed question of fact in the writ petition, but only remand the matter to the authority concerned and the petitioners have to approach the authority concerned and get the issue decided. This has already been done by the First Bench of this Court, vide order dated 26.02.2019, after which, G.O.(Ms).No.104 dated 25.04.2019 has been passed by the Authority concerned.

14.This Court is of the view that the word 'encroachers' used in the order dated 05.02.2018 is only for the purpose of disposal of the writ petition and not for any other purpose. If really, this Court has come to the conclusion that the petitioners are encroachers, there was no need to give one such liberty to the petitioners as mentioned in paragraph no.6 of the order dated 05.02.2018.

15.As the writ petition was already disposed of and thereafter, the authority concerned has passed the final order on 25.04.2019, the present petition seeking to recall the order dated 05.02.2018, cannot be entertained by this Court. However, it is for the petitioners to raise all the grounds that are available to them, if they are going to challenge the Government Order dated 25.04.2019 in one way or the other. It is needless to state that any observation made hereinabove, touching upon the merits of the matter, is only for the purpose of appraising the contentions of the encroachers (in adherence to the principles of natural justice), who have encroached upon the area in question based on the order dated 25.04.2019 and not otherwise.

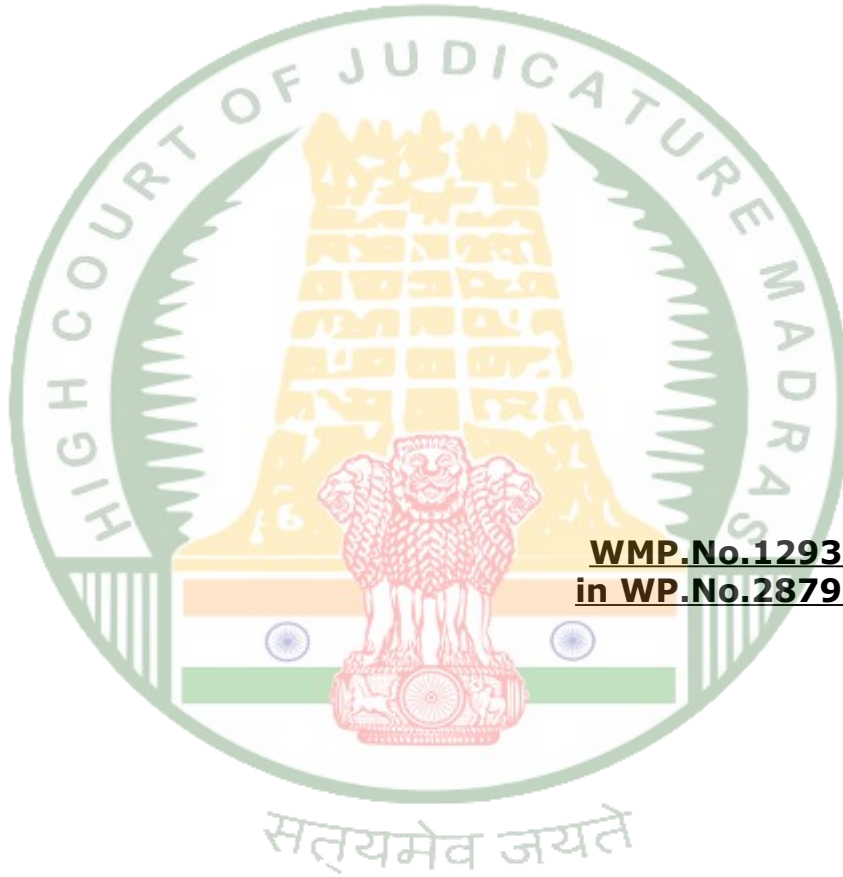
16.With the above observations, this Writ Miscellaneous Petition stands dismissed. No costs.

(M.V., J.) (S.V.N., J.)
26.04.2019

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Note: Issue Order Copy on 30.04.2019

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