

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 25.04.2018****CORAM:**

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Review Application (MD) Nos.17 to 22 of 2018

P.Vasanth	...	Review Petitioner in Rev.Aplw.(MD)	No.17/2018
Baluchamy	...	Review Petitioner in Rev.Aplw.(MD)	No.18/2018
Karuppannan	...	Review Petitioner in Rev.Aplw.(MD)	No.19/2018
Vellaichamy	...	Review Petitioner in Rev.Aplw.(MD)	No.20/2018
Muthudurai	...	Review Petitioner in Rev.Aplw.(MD)	No.21/2018
Pitchai	...	Review Petitioner in Rev.Aplw.(MD)	No.22/2018

vs.

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.
2. The Assistant Engineer,
Public Works Department/
Water Resource Organization,
Parthipanoor Reservoir Section,
Paramakudi,
Ramanathapuram.
3. The Tahsildar,
O/o.The Tahsildar,
Ilayankudi Main Road,
Paramakudi,
Ramanathapuram District. ... Respondents in all Review Applications

Review Applications filed under Order 47 Rule 1 and Section 114 of C.P.C. against the common order dated 28.12.2017 passed by this Court in W.P.(MD) Nos.24234 to 24239 of 2017.

Prayer in WP(MD).Nos. 24234 to 24239/ 2017 :

Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari call for the records of impugned notice passed by the Respondent No.2 U/s.6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 dated 22.12.2017 in respect of the property of house in Ward No.B, Block No.5, Survey No.2 in Paramakudi, Ramanathapuram District.



For Review Petitioner
in all Petitions : Mr.S.M.A.Jinnah

C O M M O N O R D E R

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

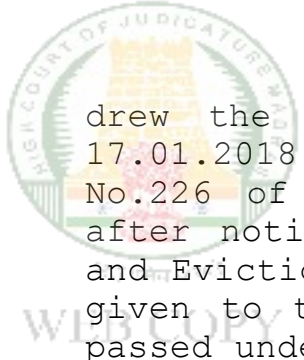
Seeking to review the common order dated 28.12.2017 made by this Court in W.P.(MD) Nos.24234 to 24239 of 2017, the Writ Petitioners have come up with the above Review Applications.

2. This Court, on 28.12.2017, after considering the submissions made by the respective parties, disposed of the said Writ Petitions by holding as under:

"12. At this juncture, the learned counsel for the petitioners would submit that since the petitioners' children are studying in various schools, the petitioners may be permitted to reside in the property till the end of the academic year and they undertake to vacate the premises on or before 1st of May 2018. Learned counsel also prayed for consideration of allotment of alternative sites to the petitioners on humanitarian grounds.

13. With regard to the alternative site, it is for the Government to decide and this Court has no power to issue such direction to the Government in a case of this nature. Since the children of the petitioners' are stated to be studying, some leniency is shown to the petitioners and they are directed to vacate the premises on or before first of May 2018 and if they fail to vacate the premises as undertaken above, the respondents are entitled to seek the assistance of Police Force for removal of encroachers.

14. It is made clear that if the encroachers are not evicted within the stipulated period as stated supra, suitable disciplinary proceedings will have to be taken against the officials, who are responsible for evicting the encroachers. It is also made clear that failure on the part of the immediate higher ups in initiation of disciplinary action against the erring officials, responsible for removal of encroachment, will result in dismissal of such higher ups themselves. ... "



drew the attention of this Court to the interim order dated 17.01.2018 passed by the Madurai Bench of this Court in W.P.(MD) No.226 of 2018 and W.M.P.(MD) No.227 of 2018, and stated that after notice under Rule 7 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007, an opportunity has to be given to the Petitioners and only thereafter, orders have to be passed under Rule 6.

4. In the Writ Petitions, it was pointed out by the learned Government Advocate that under the pretext of technical objections, the encroachers cannot continue to live in the area in question and that for more than a decade, the Petitioners have managed to live in the subject premises, illegally, by initiating various legal proceedings.

5. When the Writ Petitioners wanted this Court to interfere on technical grounds, taking note of the rulings of the Supreme Court that encroachments cannot be viewed lightly, this Court rejected the request of the Writ Petitioners and granted time to vacate the premises till 01.05.2018, as the education of their children should not be affected for the mistake committed by them.

6. 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.

7. The basic principle to entertain a 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.

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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."

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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 Petitions. In the case on hand, the Writ Petitioners have already approached this Court in the year 2013 with regard to the encroachment in Tanks and that the Writ Petitioner viz. P.Vasantha was also a party to the Writ Petition in W.P.No.4879 of 2005, which was disposed of on 16.04.2007. Since the Writ Petitioner/Vasantha was a party to the proceedings, it cannot be stated that other Writ Petitioners were not aware of the writ proceedings regarding encroachment.

12. In any event, this Court has passed a final order and we find no error apparent on the face of the record. That apart, the Supreme Court has come down heavily with regard to encroachments on Tanks and that the Petitioners cannot squat on the Government property for years together. Hence, the Review Petitions are not maintainable in view of the decisions cited supra. **Accordingly, the Review Petitions are dismissed. No costs.**

13. When the Review Petitions are being dismissed, learned counsel for the Petitioners requested that time may be granted in the Writ Petitions to enable the Writ Petitioners to move to the alternative place. Considering the said submission, **time is extended to the Petitioners, till 30.06.2018, to enable them to move to the alternative place,** taking into account the Examinations of their children in the months of April and May 2018.

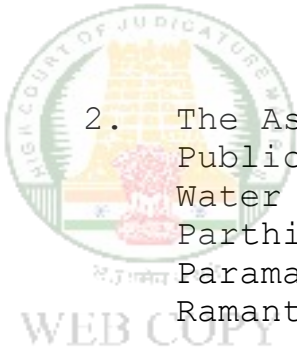
sd/
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To:

1. The District Collector,
Ramanathapuram District,
<https://hcservices.ecourts.gov.in/hcservices/>
Ramanathapuram.



2. The Assistant Engineer,
Public Works Department/
Water Resource Organization,
Parthipanoor Reservoir Section,
Paramakudi,
Ramanthapuram.

3. The Tahsildar,
O/o.The Tahsildar,
Ilayankudi Main Road,
Paramakudi,
Ramanathapuram District.

+6ccs to Mr.S.M.A.Jinnah, Advocate in SR.Nos. 63910 to 63915

aeb

AE/SV MMS/SAR /17.05.2018/6P/10C

Common Order in

Rev. Petn. (MD) Nos.17 to 22 of 2018

25.04.2018