

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAIWAMY

REVIEW APPLICATION NO.90 OF 2019
IN W.P.NO.20513 OF 2018

P.Nagajothi

.. Petitioner

-vs-

1. The Divisional Engineer,
Highways, Thiruvallur.
2. The Assistant Divisional Engineer,
Highways, Building and Maintenance,
Sub Divisional Office,
Gummudipoondi,
Thiruvallur District.
3. The District Collector,
Collectorate, Thiruvallur.
4. The Revenue Divisional Officer,
Revenue Divisional Office, Ponneri.
5. The Tahsildar,
Taluk Office, Gummudipoondi.

.. Respondents

Review Application filed under Order 47 Rule 1 & r/w 114 of CPC seeking to review the order passed in W.P.No.20513 of 2018, dated 11.12.2018, on the file of this court.

W.P.No.20513 of 2018:-

filed under Article 226 of the Constitution of India, praying for issue of writ of certiorarified mandamus, calling for the records relating to the impugned order made in 375/2016/E.Ne.U/ dated 23.07.2018 passed by the second respondent and quash the same and consequently direct forbear the respondents from any manner demolishing and interfering with petitioners peaceful possession and enjoyment of the land and building comprised in S.No.236/3B1A1 in Pethikuppam Village, Gummudipoondi Taluk Thiruvallur District.

For Petitioner : Mr.G.Ethirajulu

For Respondents : Mr.V.Jayaprakash Narayanan
Government Pleader (i/c)

ORDER

(Order of the Court was made by M.Duraiswamy, J.)

By an order dated 11.12.2018, this Court dismissed the writ petition challenging the order passed by the second respondent dated 23.07.2018. While dismissing the writ petition, this Court took into consideration the petitioner's reply dated 19.07.2018 and 24.07.2018, wherein the petitioner did not dispute the fact that she was also present at the time of inspection made by the Revenue and Highways officials on 11.07.2018. Further, we have observed that if the case of the petitioner is true, she would have raised objections at the time of inspection on 11.07.2018. But, the petitioner has not raised any objection on that date. Further, only when the petitioner sent the reply on 24.07.2018, she had raised all objections and even in her reply dated 24.07.2018, the petitioner has not denied the said averment. Now, the petitioner has filed the above review application stating that she was not present at the time of inspection and therefore, the order passed by this Court on 11.12.2018 in W.P.No.20513 of 2018 needs to be reviewed.

2. Countering the submission made by the learned counsel for the petitioner, Mr.V.Jayaprakash Narayanan, learned Government Pleader (i/c) appearing for the respondents submitted that the petitioner's husband viz., Mr.Palsamy, retired Tahsildar was very much present on 11.07.2018 i.e., the date on which inspection was conducted by the Revenue and Highways officials. In support of his contention, the learned Government Pleader (i/c) has filed the affidavit of the second respondent. Mr.M.Dilli Babu, Assistant Engineer, Highways Department, Gummidipoondi, who is present in Court has also confirmed the presence of the petitioner's husband at the time of inspection on 11.07.2018. Further, the learned Government Pleader (i/c) has produced three photographs, wherein the petitioner's husband viz., Mr.Palsamy, who is also a retired Tahsildar, was present. Mr.M.Dilli Babu, Assistant Engineer, present in Court, identified the petitioner's husband in the photographs in the open Court. Further, Mr.M.Dilli Babu, Assistant Engineer is also seen in the photographs. That apart the learned counsel for the petitioner also, on seeing the photographs produced by the learned Government Pleader (i/c), confirmed that it is the petitioner's husband. However, the learned counsel for the petitioner submitted that the photographs were not taken on 11.07.2018 and the same were taken on the earlier occasions.

3. The learned counsel for the petitioner submitted that the petitioner is denying the correctness of the averments stated in the affidavit filed by the second respondent and asserted that the petitioner's husband was not present on 11.07.2018 when the inspection was conducted by the officials. However, the petitioner has not stated either in the affidavit filed in support of the writ petition or in the present review application that on the earlier occasions her husband was present at the time of the inspection conducted by the officials. Only after seeing the photographs produced by the learned Government Pleader (i/c), the learned counsel for the petitioner for the first time has stated that the petitioner's husband was present at the time of inspection on the earlier occasions. The learned counsel for the petitioner also submitted that there is no personal animosity between the petitioner and the official respondents. That being the case, we do not find any reason to disbelieve the statement made by the second respondent, who has got no personal animosity with the petitioner. Therefore, from the averments stated in the affidavit filed by the second respondent, it is clear that though the petitioner was not present, her husband viz., Mr.Palsamy, who is a retired Tahsildar was very much present at the time of inspection i.e., on 11.07.2018 conducted by the officials.

4. In these circumstances, we do not find any reason to disbelieve the statement made by the second respondent, who has got no personal animosity with the petitioner. Therefore, from the averments stated in the affidavit filed by the second respondent, it is clear that though the petitioner was not present, her husband viz., Mr.Palsamy, who is a retired Tahsildar, was very much present at the time of inspection, i.e., on 11.07.2018, conducted by the officials. In these circumstances, the contention raised by the petitioner that the she was not aware of the inspection conducted by the officials on 11.07.2018 cannot be accepted. Since the respondent authorities have established that the petitioner's husband was very much present on 11.07.2018 when the inspection was conducted, the contention raised by the learned counsel for the petitioner is liable to be rejected. That apart the petitioner is not in a position to point out any error apparent on the face of the record warranting interference by this Court under Order 47, Rule 1 of the Code of Civil Procedure, 1908.

5. It is settled position that under the guise of review application, the petitioner cannot re-argue the matter. Further, the review application cannot be treated as an appeal in disguise.

6. In these circumstances, we do not find any merit in the review application. Accordingly, the review application is dismissed. No costs. Consequently, WMP.No.11265 of 2019 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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Rev.Aplw.No.90 of 2019
in W.P.No.20513 of 2018

PVS(CO)
CS/06/08/2019