

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-04-2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

REVIEW APPLICATION NO.124 OF 2019

O.Muthu

... Review Applicant

Versus

1. Mrs.Jothilakshmi @ Jothi
2. G.Balasubramanian
3. Mrs.Mahadevi
(Respondents 1 to 3 are represented by
their General Power of Attorney Agent
Umar Rahmathullah)
4. P.Shanmugam
5. Mrs.M.Mary
6. M.Sriraman
7. N.Sadasivam
8. Dharmalingam
9. N.Gunalan
10. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Housing & Urban Development,
Fort St. George,
Chennai.
11. The Land Acquisition Officer,
Special Tahsildar (LA) Unit III,
Tamil Nadu Housing Board,
Nandanam,
Chennai.
12. The Chairman,
Tamil Nadu Housing Board,
Nandanam,
Chennai.

... Respondents

PRAYER:-

Review Application filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure to review the Order dated 14.12.2018 passed in W.A.No.1046 of 2016 on the file of this Court.

Prayer in W.A.No.1046 of 2016:-

Writ Appeal filed under Clause 15 of the Letters patent against the Order dated 04/04/2016, passed by the Learned Single Judge in W.P.No.6150 of 2011 on the file of this Court.

Prayer in W.P.No.6150 of 2011:-

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records from the 2nd respondent pertaining to Award No.1/2010 (D/394/83), dated 08/06/2010, and to quash the same.

For Review Applicant : Mr.Silambannan
Senior Advocate
For Mr.B.S.Manjunath

For Respondents : Mr.M.Elumalai
Additional Government Pleader
For RR10 & 11

Mrs.R.Gowri for R12

JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

This Review Application is filed seeking to review the Judgment dated 14.12.2018 passed by this Court in W.A.No.1046 of 2016.

2. The aforesaid Writ Appeal No. 1046 of 2016 has been filed challenging the order dated 04.04.2016 passed by this Court in W.P. No. 6150 of 2011. The writ petition was filed to quash the award No. 1 of 2010 passed by the Land Acquisition Officer and Special Tahsildar, Unit III, Tamil Nadu Housing Board, Nandanam on 08.06.2010.

3. The respondents 1 to 9 in this Review Application along with the Review Applicant herein, who is arrayed as fifth writ petitioner, have filed W.P.No.6150 of 2011 to quash the award

No.1 of 2010 dated 08.06.2010 passed by the Land Acquisition Officer and Special Tahsildar, Tamil Nadu Housing Board, Nandanam, Chennai. The main contention urged in the writ petition is that as per Section 11-A of the Land Acquisition Act, the award has to be passed within two years from 15.04.1986, but it was passed on 08.06.2010 after several years and therefore, the award has to be treated as having been lapsed. However, the learned single Judge rejected such an argument by pointing out several proceedings initiated in respect of the property in question. The learned single Judge specifically pointed out that the period during which the writ petitions were pending before this Court has to be excluded. The learned single Judge of this Court, upon noticing that several writ petitions have been filed one after the other in respect of the same subject matter of the property, dismissed the writ petition with costs of Rs.50,000/- on the first writ petitioner and Rs.2,00,000/- on the second writ petitioner payable to Tamil Nadu Mediation and Conciliation Centre, attached to this Court. It would be useful to refer to para Nos. 6 to 10 of the order dated 04.04.2016 passed in W.P.No.6150 of 2011 by the learned single Judge of this Court.

"6. One more shocking aspect is, regarding the conduct of Balasubramanian, who is second writ petitioner, and son of first writ petitioner. He had also earlier filed several writ petitions as well, for the same property. He, along with his mother-first petitioner, filed W.P.No.6008 of 2010, to take action on the illegal occupation and the constructions made in the property in question. The said Writ Petition was dismissed, as withdrawn. Subsequently, another set of persons, namely, R.Radhakrishnan, J.Sathya, J.Vidya, J.Gayathiri and J.Ajay Varman filed W.P.No.20141 of 2011, challenging the very same acquisition proceedings, namely, the Notification under Section 4 (1) and the Declaration under Section 6 of the Land Acquisition Act. The Court elaborately considered the matter and dismissed the Writ Petition, by an order, dated 01.08.2012. In the said order, there was a reference to an order passed by the Division Bench in W.A.Nos.1144 and 1145 of 1996, which were also dismissed. Not stopping with that venture, Balasubramanian also filed another writ petition in W.P.No.1476 of 2011, wherein he challenged the public notice issued by the Housing Board, inviting applications for the purchase of the proposed HIG Flats, to be constructed in the subject property. He engaged

another counsel, for whom Senior Counsel had appeared. In the said case, the same contentions, which are now focussed by the learned counsel for the petitioners Mr.Murugan were focussed, stating that Jothilakshmi's father was Kalyanasundara Pather and he died intestate, and, by virtue of the decree passed in C.S.No.166 of 1989 on the file of this Court, Kalyanasundara Pather perfected title to the suit property. It was further contended that physical possession had not been taken. The Court elaborately analysed the matter and, by a detailed order, dated 06.06.2014, dismissed the said Writ Petition and vacated the interim order granted. Two other writ petitions, namely, W.P.No.12047 of 2011 was filed by V.Anandhan and two others, and W.P.No.17050 of 2012 by Sambandam Pillai and eleven others, represented by their Power of Attorney Agent M.Dharman, who was the ninth petitioner in the said writ petition, and the petitioners therein sought for quashing the order passed by the Government, dated 03.03.2010, by which the request for reconveyance was rejected and they sought for reconveying the land measuring an extent of 21 grounds, which is, in fact, the subject matter in this Writ Petition also. The Court took into consideration the dismissal of W.P.No.1476 of 2011 filed by second petitioner herein, namely, G.Balasubramanian, and dismissed the matter, by an order, dated 23.07.2014. In the said Writ Petitions, the Court observed that the petitioners therein, namely, V.Anandhan and two others and Sambandam Pillai and eleven others were not the real owners, but they were land encroachers. Balasubramanian did not stop his journey of vexatious litigation, but preferred W.A.No.1068 of 2014 before the Hon'ble Division Bench, in which the counsel, who represented him in the Writ Petition, alone appeared and there was no Senior Counsel. The Hon'ble Division Bench, by its judgment, dated 14.10.2014, dismissed the said Writ Appeal.

7. In the light of the above facts, it is evidently clear that Balasubramanian and his mother Jothilakshmi have made clear attempts to grab the Government property. The filing of earlier writ petition in W.P.No.6008 of 2010 had not been disclosed in the present writ petition, which, itself is sufficient to impose heavy costs

on petitioners 1 and 2, as they were the petitioners in the said writ petition, namely, W.P.No.6008 of 2010. Thus, it is a clear criminal attempt to grab the Government property, by venturing upon the vexatious litations.

8. In the light of the above developments, no relief can be granted in this Writ Petition, which, is, accordingly, dismissed, and exemplary costs are to be imposed on first and second petitioners, namely, Jothilakshmi @ Jothi, wife of A.Ganesan, and G.Balasubramanian, son of A.Ganesan. Having taken note of the hard facts, this Court is of the view that unless stringent action is taken against first and second petitioners, their actions will not be abated. In spite of repeated dismissal of the cases, private parties have been set up to file cases against Government, with a view to drag on the matter. Complexity of the matter is total. It is not known as to how deep it will penetrate. Furthermore, the role of the Power Agents is also to be probed. Therefore, there will be a direction to third respondent to lodge a police complaint against petitioners 1 and 2 and all concerned, and, if such a complaint is lodged, it shall be transferred and entrusted to a senior and energetic Officer of CBCID, who shall conduct a thorough probe to bring to light the perpetrators of illegality.

9. In fact, I too had an occasion to deal with one of the writ petitions filed by second petitioner Balasubramanian in W.P.No.2382 of 2016, wherein he sought for an identical prayer i.e., issuance of writ of certiorari to quash the public notice, issued on 03.01.2016, inviting applications for the proposed HIG Flats in T.S.No.16/3, Block No.38, Puliyur Village, Kodambakkam Division, Egmore-Nungambakkam Taluk, Chennai District. When the earlier public notice was issued on 20.01.2011, the petitioner sought for identical relief in W.P.No.1476 of 2011, and the said writ petition was dismissed by an order, dated 06.06.2014, and confirmed by the Hon'ble Division Bench on 14.10.2014. Suppressing all these facts, second petitioner Balasubramanian had filed W.P.No.2382 of 2016. After noting the submissions of the Housing Board, this Court observed that the attempt of the petitioner

Balasubramanian cannot be encouraged and it has to be nipped in the bud. This Court took into consideration the elaborate order, dated 06.06.2014, and dismissed the said Writ Petition with costs of Rs.2,000/-.

10. As such, this Writ Petition is dismissed with costs of Rs.50,000/- on first petitioner and Rs.2,00,000/- on second petitioner, to be payable to Tamil Nadu Mediation and Conciliation Centre, attached to this Court, within a period of three weeks from the date of receipt of a copy of this order. If they fail to remit the costs as stated above, the said amount shall be recovered, by initiating appropriate proceedings for revenue recovery or such other proceedings. Though this Court issued directions to the Housing Board to file a criminal complaint before the Superintendent of Police and the matter to be referred to CBCID, this Court has not imposed any costs on third petitioner, namely, Mahadevi, so also the other petitioners viz., petitioners 4 to 10, Power Agents etc., and their complexity in the issue will also be investigated and, if the investigation reveals their culpability, they have to be proceeded in accordance with law.

4. Aggrieved by the order passed by the learned single Judge, Writ Appeal No. 1046 of 2016 has been filed by the Review Applicant herein. The respondents 1 to 3 herein have also filed Writ Appeal No.1009 of 2006 assailing the order passed by the learned single Judge. The Division Bench of this Court affirmed the order passed by the learned single Judge on 14.12.2018. It is this Judgment dated 14.12.2018 passed in W.A.No.1046 of 2016 that is sought to be reviewed in this Review application by the Review Applicant. As against the dismissal of Writ Appeal No. 1009 of 2016, the respondents 1 to 3 herein have not filed any Review Application.

5. The learned Senior counsel appearing for the Review Applicant vehemently contended that the award passed by the Land Acquisition Officer is contrary to the period specified under Section 11 A of the Land Acquisition Act. According to the learned Senior counsel, there is an error apparent on the face of the record in not considering the actual period of lapse. The award was passed two years after the notification dated 22.07.1984 issued under Section 4 (1) of the Land Acquisition Act. Thus, there is an enormous delay in passing the award by the Land Acquisition Officer. This fact has not been properly considered by this Court in the Judgment under review.

Therefore, the learned Senior counsel appearing for the Review Applicant prayed for allowing this Review Application.

6. On the above contention, we have heard the learned Additional Government Pleader appearing for the respondents and perused the materials placed on record.

7. It is seen from the records that the issue as regards the applicability of Section 11-A of the Land Acquisition Act has been elaborately dealt with by the learned single Judge of this Court and it was also affirmed by the Division Bench of this Court. Therefore, the very same plea cannot be allowed to be urged by the Review Applicant by way of this Review Application. In our opinion, the grounds which are raised in the present Review Application were already considered by this Court and they cannot be urged once again and it would amount to re-arguing the case, which is legally not permissible under the garb of a review. In this context, we gain strength from the decision of the Honourable Supreme Court in the case of (Kamlesh Verma vs. Mayawati and others) reported in (2013) 8 SCC 320 wherein the Honourable Supreme Court, after examining various judgments, has laid down the circumstances, as to when the Court can review its own judgments. The relevant portion of the judgment is extracted as under:

"12.This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

... ..

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction.

8. In the light of the above, we refuse to review the Judgment dated 14.12.2018 passed in W.A.No.1046 of 2016. Accordingly, the Review Application is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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1. The Secretary to Government,
Housing & Urban Development,
Fort St. George,
Chennai.
2. The Land Acquisition Officer,
Special Tahsildar (LA) Unit III,
Tamil Nadu Housing Board,
Nandanam,
Chennai.
3. The Chairman,
Tamil Nadu Housing Board,
Nandanam,
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REV.APPLN NO.124 OF 2019

JP-II (CO)
PBS/13/09/2021